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# Wisconsin Legislative Council



Anne Sappenfield  
Director

TO: SPEAKER ROBIN VOS

FROM: Steve McCarthy, Senior Staff Attorney

RE: Senate Amendment 1 to Assembly Amendment 1 to Senate Substitute Amendment 1 to Assembly Bill 1

DATE: January 29, 2021

Senate Amendment 1 to Assembly Amendment 1 to Senate Substitute Amendment 1 to Assembly Bill 1 (the amendment), which was adopted by the Senate on January 28, 2021, explicitly grants the Governor the power to issue an executive order declaring a public health emergency under s. 323.10, Stats., related to the COVID-19 pandemic solely for receiving certain federal emergency funds and allotments, if the receipt of the funds or allotments requires an active state-declared emergency or disaster.

You asked two questions relating to the amendment:

- Though the amendment limits the purpose for which the Governor may issue an executive order declaring a public health emergency under s. 323.10, Stats., does the amendment limit any of the powers that the Governor may exercise under s. 323.12 (4), Stats., during a state of emergency declared under s. 323.10, Stats.?
- Does the amendment allow the Governor to issue an executive order declaring a state of emergency for the purpose of receiving emergency funds or other allotments from a future act of Congress that requires an active state-declared emergency or disaster for the receipt of funds?

As discussed in more detail below, the answer to both questions is no.

## **SENATE AMENDMENT 1 TO ASSEMBLY AMENDMENT 1 TO SENATE SUBSTITUTE AMENDMENT 1 TO ASSEMBLY BILL 1**

The amendment creates a nonstatutory provision that provides the following:

The governor may issue an executive order under s. 323.10 declaring a public health emergency related to the COVID-19 pandemic solely for the purpose of receiving emergency or other allotments under the federal Coronavirus Preparedness and Response Act of 2020; the Families First Coronavirus Response Act of 2020; the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; the Paycheck Protection Program and Health Care Enhancement Act of 2020; and the Consolidated Appropriations Act, 2021. The governor may issue this executive order only if the receipt of the allotments requires an active state-declared emergency or disaster.

## GOVERNOR'S POWERS DURING A STATE OF EMERGENCY

As mentioned, the amendment grants the Governor the authority to issue an executive order under s. 323.10, Stats., declaring a public health emergency for certain limited purposes. Under s. 323.10, Stats., a state of emergency declared by the Governor may not exceed 60 days, except that it may be extended by joint resolution of the Legislature. The executive order may also be revoked at any time by the Governor by executive order or by the Legislature by joint resolution.

During any state of emergency declared under s. 323.10, Stats., the Governor has the powers specified in s. 323.12 (4), Stats., which include the power to do any of the following:

- Issue such orders as he or she deems necessary for the security of persons and property.
- Suspend the provisions of any administrative rule if the strict compliance with that rule would prevent, hinder, or delay necessary actions to respond to the disaster.
- Declare priority of emergency management contracts over other contracts, allocate materials and facilities in his or her discretion, and take, use, and destroy, in the name of the state, private property for emergency management purposes.
- Contract on behalf of the state with any person to provide, on a cost basis, equipment and services to be used to respond to a disaster or the imminent threat of a disaster.
- Waive fees required by the state to replace permits, licenses, approvals, or other authorizations that were lost or destroyed in connection with the state of emergency.

## DISCUSSION

Though the amendment limits the purpose for which the Governor may issue an executive order declaring a public health emergency under s. 323.10, Stats., it does not specify any limit to any of the powers that the Governor may exercise under s. 323.12 (4), Stats., during a state of emergency declared under s. 323.10, Stats.

In addition to more specific powers, s. 323.12 (4), Stats., grants the Governor the broad power to “[i]ssue such orders as he or she deems necessary for the security of persons and property.”<sup>1</sup> Therefore, without limiting language in the amendment, the Governor would retain the authority under current statutes to issue any order the Governor deems necessary for the security of persons and property while a state of emergency is in effect.

As it relates to your second question, the amendment limits the receipt of emergency funds or other allotments to those funds included in five explicitly identified acts of Congress that require an active state-declared emergency or disaster. Therefore, the amendment does not allow the Governor to issue an executive order declaring a state of emergency for the purpose of receiving emergency funds or other allotments from any future act of Congress that requires an active state-declared emergency or disaster.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

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<sup>1</sup> During the COVID-19 pandemic, Governor Tony Evers has issued numerous emergency orders pursuant to this authority. For example, most recently, the Governor issued [Emergency Order #1](#), “Relating to Stopping the Spread of a New Highly Contagious Variant of COVID-19 by Requiring Face Coverings,” pursuant to the state of emergency declared under [Executive Order #104](#).