

CO-SPONSORSHIP MEMORANDUM



TO: All Legislature
FROM: Senator David Craig
RE: Co-Sponsorship of [LRB-5953/1](#): **Legislative Emergency Oversight Act**
DATE: Wednesday, March 25, 2020

SHORT DEADLINE: Wednesday, March 25, 2020 at 5pm

(due to the end of the regular legislative session tomorrow)

In these unprecedented times, citizens and business across our state have been drastically impacted by the government shutdown of our economy during the COVID-19 crisis. However, the Executive Branch does not have unchecked authority in such a crisis. To impair fundamental rights - as gathering bans, etc. do - the government must have a compelling state interest to do so AND must do so in a narrowly-tailored and least restrictive means possible under the constitution. Without additional clarity by the executive branch, it is clear that this authority has been exceeded. During this and future times of crisis, the people of Wisconsin need the surety, specificity, and constitutional consideration that would come from actions of the Legislature done in coordination with the Executive Branch.

In an effort to alleviate the uncertainty surrounding the cascade of Emergency Orders and the negative impacts they have had on our fundamental civil liberties and the state's economy, I am introducing legislation to provide legislative oversight of the Executive Branch during times of emergency or pandemic. The measures include:

- Requiring legislative approval of any statewide "shelter-in-place" order for reasons of pandemic or infectious disease
- Requiring legislative passive review of any "Emergency Declaration" after 30 days, with affirmative approval needed for a state of emergency lasting longer than 60 days
- Requiring a written report detailing the satisfaction of strict scrutiny concerns be given to the legislature prior to a ban of gatherings of 50 or fewer is to be in effect
- Requiring an immediate report to the legislature of arrests for mass gathering violations

These are measured and appropriate checks which re-assert the Legislature's role in establishing the appropriate, constitutionally-required balance between public safety, economic impact, and constitutional rights in times of emergency.

Should you wish to be added on as a co-sponsor of the [Legislative Emergency Oversight Act](#), please reply to this email. Should you have any questions, please feel free to contact Chad Taylor in Senator Craig's office (6-5400).

Under current law, the governor may issue an executive order declaring a state of emergency if he or she determines that an emergency exists due to disaster, public health emergency, or computer or telecommunications systems. Under current law, a state of emergency cannot exceed 60 days, unless it is extended by joint resolution of the legislature, and the executive order may be revoked at the discretion of either the governor by executive order or the legislature by joint resolution.

This bill requires the governor to submit a copy of any order declaring a state of emergency that may exceed 30 days to the Joint Committee on Legislative Organization. Under the bill, if the cochairpersons of JCLO do not notify the governor that JCLO has scheduled a meeting to review the order within 14 working days after the date the governor submits the order, the state of emergency may last for up to 60 days. If, within 14 working days after the date the governor submits the order, the cochairpersons of JCLO notify the governor that JCLO has scheduled a meeting to review the order, the state of emergency may exceed 30 days only if approved or as modified by JCLO. This bill applies retroactively to any executive order declaring a state of emergency that is in effect on the effective date of the bill.

Under current law, a person who fails to comply with an order issued by the Department of Health Services for the control of an outbreak or epidemic may be imprisoned for not more than 30 days or fined not more than \$500 or both. Under this bill, if a person is arrested for such a violation, the arresting law enforcement agency must immediately report the arrest to the legislature.

This bill provides that any statewide order issued by DHS or any other state agency requiring individuals to stay at their home or place of residence for reasons related to an epidemic, pandemic, or communicable disease may not go into effect unless legislation authorizing the specific order is enacted.

Under current law, the governor may issue an executive order declaring a state of emergency. During a declared state of emergency, state agencies have authority to issue orders and otherwise act to respond to the emergency. Regardless of whether a state of emergency has been declared, under current law, without additional approval, DHS may, among other things, close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics, and authorize and implement all emergency measures necessary to control communicable diseases.

This bill requires that before any ban of gatherings of 50 or fewer individuals goes into effect, a written report be submitted to the legislature detailing the justification for the ban, including how the restrictions in the order serve a compelling governmental interest and are narrowly tailored to achieve that compelling governmental interest.