

## Memorandum 2022-21

**Emergency-Related Reforms: Emergency Powers  
(Discussion of Issues)**

---

In May 2020, in response to the COVID-19 pandemic, the Commission<sup>1</sup> decided to devote part of its resources to studying legal issues related to the public health crisis.<sup>2</sup>

In 2021, the Commission was authorized to study the following topic:

Whether the law should be revised to provide special rules that would apply to an area affected by a state of disaster or emergency declared by the federal government, a state of emergency proclaimed by the Governor under Section 8625 of the Government Code, or a local emergency proclaimed by a local governing body or official under Section 8630 of the Government Code. Before beginning a study under this authority, the commission shall provide notice to legislative leadership and any legislative policy committee with jurisdiction over the proposed study topic and shall consider any formal or informal feedback received in response to the notice...<sup>3</sup>

The Commission commenced work on this topic in 2022.<sup>4</sup> Memorandum 2022-12 provided background information on the California Emergency Services Act (“CESA”), with a particular focus on the Governor’s emergency powers related to statutory and regulatory requirements.

The memorandum also identified two possible topics of study:

- (1) Revising and clarifying CESA in light of the lessons learned during the COVID-19 pandemic. Specifically, the memorandum discussed

---

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Minutes (May 2020), p. 3; see also Memorandum 2020-19 and its supplements.

3. See 2021 Cal. Stat. res. ch. 108 (ACR 24 (Chau)).

4. See Memorandum 2022-12; see also Memorandum 2022-3, pp. 29-30, 46; Minutes (Jan. 2022), p. 3.

revising the statute to include an illustrative, non-exhaustive list of powers granted to the Governor.

- (2) Revising the law to expressly accommodate necessary adjustments to professional licensure requirements during an emergency.<sup>5</sup>

At its February meeting, the Commission discussed another possible area of study — refining the mechanisms to terminate a state of emergency and the Governor’s associated emergency powers.

At that meeting, the staff also noted that, with the ongoing pandemic, there has been and continues to be significant interest in emergency-related law reforms. The staff indicated that a future memorandum would discuss pending legislation to revise CESA and whether it should have any effect on the conduct of this study. After a brief note describing prudential considerations for the Commission, this memorandum discusses pending legislation. This memorandum also describes ongoing emergency-related work of the Uniform Law Commission, as well as uniform and model acts that may be relevant to this study.

As further background, this memorandum provides a high-level summary of litigation related to the Governor’s emergency actions during the COVID-19 pandemic. The memorandum includes two brief updates: (1) describing an additional provision of CESA related to the Governor’s emergency powers and (2) discussing stakeholder outreach. Finally, this memorandum highlights a central issue for emergency-related reforms and requests a Commission decision on how to proceed with work on this topic.

#### PRUDENTIAL CONSIDERATIONS

In general, the Commission avoids undertaking work on topics that are receiving active attention in the Legislature, for prudential reasons.<sup>6</sup> It would be problematic if the Commission’s deliberative materials were cited in arguments for or against pending legislation. There may also be less need for Commission involvement in a matter that the Legislature may resolve.

---

5. See generally Memorandum 2022-12, pp. 2-3.

6. See Gov’t Code § 8288(a) (“No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor. An employee or member of the commission appointed by the Governor shall not advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in that person’s official capacity as an employee or member.”).

For example, in 2015, the Commission had completed its analysis of the law governing electronic surveillance and was about to begin the preparation of specific law reform recommendations. The Commission then learned that a bill had been introduced to address the same general topic (SB 178 (Leno), proposing the California Electronic Communications Privacy Act). In that case, the Commission decided not to proceed with development of a recommendation, but instead to prepare a purely informational report. For that decision, the memorandum noted two key considerations:

- (1) The Commission is prohibited from taking any position on pending legislation on topics that it has been authorized to study. If the Commission continues to work on the matters that overlap with SB 178, it will need to be very careful to remain strictly neutral as to the merits of that bill.
- (2) The Commission was about to begin the process of drafting proposed legislation. To the extent that the proposed legislation covers the same ground as SB 178, it could be a waste of the Commission's resources. If SB 178 is enacted, much of the drafting work would become redundant.<sup>7</sup>

Similar concerns may exist here, to the extent that pending legislation addresses issues that would be the subject of this study. This memorandum describes the recent and pending legislation affecting CESA below.

#### RECENT AND PENDING LEGISLATION AFFECTING CESA<sup>8</sup>

During this legislative session, CESA has been the subject of a number of different bills. This section describes the changes to CESA enacted during this session and pending efforts to amend or add to CESA.

#### **Enacted Legislation**

Several bills amending or adding to CESA were enacted during the 2021-2022 legislative session.<sup>9</sup> The effect of these bills on CESA is described briefly in the attached Exhibit.

The enacted legislation focuses more on emergency preparedness and planning. For the most part, these bills do not amend the provisions of CESA

---

7. See Second Supplement to Memorandum 2015-3, p. 1.

8. The legislation discussed in this section was identified using the Table of Sections Affected prepared by Legislative Counsel on February 22, 2022. Unless otherwise indicated, all the bills cited in this memorandum are from the 2021-2022 legislative session.

9. With one exception, these enacted bills were chaptered in 2021. See 2022 Cal. Stat. ch. 3.

discussed in the prior memorandum, which relate to the Governor’s powers in an emergency related to statutory or regulatory requirements.<sup>10</sup>

In 2021, there were also two bills to amend or add to CESA that passed the Legislature, but were subsequently vetoed by the Governor.<sup>11</sup>

### **Bills Pending Before the Legislature**

Currently, there are over 25 bills pending before the Legislature that would amend or add to CESA. Several bills would directly affect either the provisions related to the Governor’s authority to proclaim a state of emergency or the provisions granting the Governor powers related to statutory or regulatory requirements. Those bills include:

- Senate Bill 468 (Dodd) – would add an electromagnetic pulse attack to the definitions of “state of emergency” and “local emergency.”
- Senate Bill 933 (Melendez) – would enact the Emergency Power Limitation Act, which, in part, would require an emergency order to “be narrowly tailored to serve a compelling public health or safety purpose and ... be limited in duration, applicability, and scope.”<sup>12</sup>
- Senate Bill 1368 (Dahle) – would amend the act to specify that a state of emergency shall terminate 45 days after the Governor’s proclamation, unless extended by a concurrent resolution of the Legislature.
- Assembly Bill 1687 (Seyarto) – would amend the Governor’s authority to suspend law, statutes, ordinances, regulations, or rules to specify that the Governor may only suspend provisions “in connection with the specific conditions of emergency.”
- Assembly Bill 2212 (Gallagher and Kiley) – would amend the act to specify the Governor may exercise all “executive” power, as opposed to “police” power, during a state of emergency.
- Assembly Bill 2902 (Kiley) – similar to Senate Bill 1368 (above), except the state of emergency would terminate 30 days after the proclamation, unless extended by the Legislature. This bill also seeks to limit the Legislature’s ability to extend a state of emergency,

---

10. See Memorandum 2022-12, pp. 3-6. Only one of the bills, SB 52 (Dodd), amended a section of CESA that was discussed in Memorandum 2022-12. That bill amended Government Code Section 8558 to expand the definition of “local emergency” to include a “deenergization event” (a planned power outage that meets specified conditions).

11. See AB 1403 (Levine) (would have included a deenergization event in the definition of “state of emergency”), see also *supra* note 10 (discussing SB 52); AB 418 (Valladares) (would have created a grant program to improve resiliency in response to power outage events).

12. See proposed Gov’t Code § 8662.3(a) in SB 933; see also SB 448 (Melendez), cited in note 13 *infra*.

such that extensions could only extend 30 days beyond the current termination date.

In addition, several bills introduced in 2021 sought to amend CESA's emergency power-related provisions, but those bills failed to meet legislative deadlines.<sup>13</sup>

#### RECENT NOTABLE LEGISLATIVE AND EXECUTIVE ACTIVITY

In addition to the pending legislation discussed above, the Commission should be aware of there is other current legislative and executive activity involving the Governor's emergency powers and orders related to the COVID-19 pandemic.

Senate President Pro Tempore Toni Atkins recently announced that a concurrent resolution to terminate the current state of emergency related to the COVID-19 pandemic would be heard in committee.<sup>14</sup> SCR 5 (Melendez) will be heard by the Senate Committee on Governmental Organization on March 15. This resolution would terminate the Governor's proclaimed state of emergency related to COVID-19 and, in doing so, terminate the Governor's powers associated with that state of emergency.<sup>15</sup>

Governor Newsom has been taking action to roll back the executive orders associated with the COVID-19 pandemic.<sup>16</sup> According to a February 25, 2022 press release, the Governor's action lifts all but 5 percent of COVID-19 related executive order provisions.<sup>17</sup> In addition, Governor Newsom terminated a number of active states of emergency, related to non-COVID emergencies.<sup>18</sup>

---

13. See Cal. Const. Art. IV, § 10(c), Joint Rules 56, 61.

Those bills include AB 69 (Kiley) (would terminate a state of emergency after 60 days unless extended by a concurrent resolution of the Legislature), 108 (Cunningham) (would require legislative approval of an order or regulation issued pursuant to CESA more than 60 days after the emergency proclamation), 1123 (Rodriguez) (would require periodic updates from CalOES to the Legislature on emergency response and would require audits, pending a legislative appropriation, of emergency fund expenditures) and SB 397 (Jones) (would deem religious services to be an essential service during a state of emergency or local emergency) and 448 (Melendez) (would enact the Emergency Power Limitation Act, similar to SB 933).

14. See <https://sd39.senate.ca.gov/news/20220217-senate-leader-atkins-issues-statement-scr-5-and-state-emergency>.

15. See SCR 5 (Melendez); see also Gov't Code § 8629.

16. See <https://www.gov.ca.gov/2022/02/25/as-california-enters-next-phase-of-pandemic-response-governor-newsom-continues-to-wind-down-executive-orders-while-maintaining-states-preparedness-and-flexibility/>; see also [https://www.gov.ca.gov/wp-content/uploads/2022/02/EO-COVID-19-Rollback-2022\\_GGN-Signed.pdf](https://www.gov.ca.gov/wp-content/uploads/2022/02/EO-COVID-19-Rollback-2022_GGN-Signed.pdf).

17. <https://www.gov.ca.gov/2022/02/25/as-california-enters-next-phase-of-pandemic-response-governor-newsom-continues-to-wind-down-executive-orders-while-maintaining-states-preparedness-and-flexibility/>.

18. [https://www.gov.ca.gov/wp-content/uploads/2022/02/2022-Termination-Proclamation\\_GGN-Signed.pdf](https://www.gov.ca.gov/wp-content/uploads/2022/02/2022-Termination-Proclamation_GGN-Signed.pdf); <https://abcnews.go.com/Health/wireStory/california-governor-ends-12->

## EMERGENCY-RELATED UNIFORM AND MODEL LEGISLATION

In considering what issues to address in this study and how best to allocate its resources on this topic, the Commission should also be aware of the current activities of the Uniform Law Commission (“ULC”) and the existing uniform and model laws that may provide a starting point for work on these issues. Those items are summarized below.

### **Ongoing Emergency-Related Work at the Uniform Law Commission**

The ULC has also undertaken work related to emergencies in response to the COVID-19 pandemic. In particular, the ULC has, since the COVID-19 pandemic began, established drafting committees on Public Meetings During Emergencies<sup>19</sup> and Public Health Emergency Authorities.<sup>20</sup> The purpose of these committees and the status of their work is noted briefly below:

- **Public Meetings During Emergencies:** “This drafting committee will draft a uniform or model act granting state and local agencies the authority to conduct meetings and hearings during emergencies using communication technology and alternative forms of voting, subject to minimum standards relating to technologies used, security, record retention, public access, the protection of the rights of parties to contested cases, training to establish competency to use remote communication technologies effectively, and other relevant requirements.”<sup>21</sup>

A draft of the Public Meetings During Emergencies Act was presented at the 2021 Annual Meeting of the ULC (in July 2021).<sup>22</sup> The next meeting of the committee is currently scheduled for April 22-23, 2022.<sup>23</sup>

- **Public Health Emergency Authorities:** “The committee will draft model state legislation focused on the allocation of authority between state executive branch officials and the legislature (including with respect to preemption of local governments), and processes for the use of such authorities in responding to public

---

emergencies-covid-83120765 (noting after Governor’s order terminating the emergencies, California has 48 active states of emergency).

19. See <https://www.uniformlaws.org/committees/community-home?CommunityKey=6cfc51d8-f3bc-4549-aebb-ddbcd42901d8>.

20. See <https://www.uniformlaws.org/committees/community-home?CommunityKey=be7c4af5-73e0-4307-8d5a-ca281b8216cd>.

21. See <https://www.uniformlaws.org/committees/community-home?CommunityKey=6cfc51d8-f3bc-4549-aebb-ddbcd42901d8>.

22. See <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=39e9a208-02ad-f2b1-d353-b2df41022074&forceDialog=0>.

23. See <https://www.uniformlaws.org/events/calendar>.

health emergencies including epidemics and pandemics. The committee will provide options to accommodate variations in state constitutions and legal traditions relating to local authority.”<sup>24</sup>

The committee held a meeting on December 7, 2021 to discuss the definition of “public health emergency” and other drafting issues.<sup>25</sup> The next meeting of the committee is currently scheduled for April 8-9, 2022.<sup>26</sup>

In addition to these issues, the ULC is currently working on other projects that, while less directly related to emergencies, could provide particular benefits during emergency situations.<sup>27</sup>

### **Preexisting Uniform and Model Laws Related to Emergencies**

The ULC committee materials point to a few preexisting model or uniform acts that relate to emergency powers or authorities. Those model and uniform acts include:

- 2001 Model State Emergency Health Powers Act<sup>28</sup> and subsequent 2003 Model State Public Health Act.<sup>29</sup>

---

24. See <https://www.uniformlaws.org/committees/community-home?CommunityKey=be7c4af5-73e0-4307-8d5a-ca281b8216cd>.

25. See <https://www.uniformlaws.org/committees/community-home/librarydocuments/viewdocument?DocumentKey=c6088bce-216b-4d15-8743-fa72dbbaac95>.

26. See <https://www.uniformlaws.org/events/calendar>.

27. See, e.g., <https://www.uniformlaws.org/committees/community-home?CommunityKey=44fb214b-abb6-4d45-8d03-02824bb1c856> (The Telehealth Committee “will draft a uniform or model act addressing a variety of legal issues related to telehealth services. Issues to be considered include the definition of telehealth, formation of the doctor-patient relationship via telehealth, creation of a registry for out-of-state physicians, insurance coverage and payment parity, and administrative barriers to entity formation.”); <https://www.uniformlaws.org/committees/community-home?CommunityKey=def3a6c2-dffa-4ca8-900a-a6a4edffbe0c> (The Electronic Estate Planning Documents Committee “will draft amendments to the Uniform Electronic Wills Act, the Uniform Trust Code, and the Uniform Power of Attorney Act to address remote execution of paper documents and the use of electronic estate planning documents other than wills. The committee will also consider whether to develop a stand-alone act for use in states that have not enacted the relevant uniform acts.”).

28. See generally [https://www.jhsph.edu/research/centers-and-institutes/center-for-law-and-the-publics-health/model\\_laws/MSEHPA.pdf](https://www.jhsph.edu/research/centers-and-institutes/center-for-law-and-the-publics-health/model_laws/MSEHPA.pdf); [https://en.wikipedia.org/wiki/Model\\_State\\_Emergency\\_Health\\_Powers\\_Act](https://en.wikipedia.org/wiki/Model_State_Emergency_Health_Powers_Act).

29. See generally <https://law.asu.edu/sites/default/files/pdf/turning-point-model-act.pdf>. Regarding the relationship in the 2001 and 2003 model acts:

At the request of the Centers for Disease Control and Prevention, the Centers for Law and the Public’s Health at Georgetown and Johns Hopkins Universities presented a draft of the Model State Emergency Health Powers Act (MSEHPA), which they explained was “designed to serve as a tool for state, local, and tribal governments to use to revise or update public health statutes and administrative regulations”, in October 2001. The original draft was revised due to criticisms and completed on December 21, 2001. The document was revised further by the Turning Point National Collaborative on Public Health Statute Modernization, funded by the Robert Wood Johnson Foundation as part of its Turning Point Initiative, and a final draft was released on September 16, 2003.

- Uniform Emergency Volunteer Health Practitioners Act.<sup>30</sup>

Although the staff has not taken an in-depth look at the listed acts yet, the staff has come across resources suggesting that the model acts have been the subject of some controversy.<sup>31</sup>

On a related note, the ULC Committee materials also discuss the Emergency Management Assistance Compact (a mutual aid agreement among U.S. states and territories).<sup>32</sup> California is a member of that compact.<sup>33</sup>

### Other Uniform Laws Relevant to COVID-19 Emergency

The Uniform Law Commission prepared a summary of pre-existing uniform acts that could assist the states during the COVID-19 pandemic.<sup>34</sup> Several of these uniform acts would authorize remote or electronic acts in situations where physical presence has traditionally been required (e.g., remote notarization, electronic wills, electronic recording for real property transactions).

---

*Virtual Mentor*. 2010; 12(9):735-738, available at <https://journalofethics.ama-assn.org/article/turning-point-model-state-public-health-act-emergency-public-health-law-versus-civil-liberties/2010-09>.

30. See <https://www.uniformlaws.org/committees/community-home?CommunityKey=565933ce-965f-4d3c-9c90-b00246f30f2d>.

This uniform act “establishes a system whereby health professionals may register either in advance of or during an emergency to provide volunteer services in an enacting state. Registration may occur in any state using either governmentally established registration systems, such as the federally funded ‘ESAR VHP’ or Medical Reserve Corps programs, or with registration systems established by disaster relief organizations, licensing boards or national or multi-state systems established by associations of licensing boards or health professionals.”

<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8f6ff289-5f38-4ee9-ab64-81f1399697f4&forceDialog=0>.

The factsheet for this uniform act indicates that it has not been adopted in California. See <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=d254e0ab-16f7-cfaf-5d43-2a09ae46e6b3&forceDialog=0>.

31. See <https://www.aclu.org/other/model-state-emergency-health-powers-act>; <https://journalofethics.ama-assn.org/article/turning-point-model-state-public-health-act-emergency-public-health-law-versus-civil-liberties/2010-09>.

32. See generally <https://www.emacweb.org/>. The “What is EMAC?” page under “About EMAC” states:

EMAC is the first national disaster-relief compact since the Civil Defense and Disaster Compact of 1950 to be ratified by the U.S. Congress. Since ratification and signing into law in 1996 (Public Law 104-321), 50 states, the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands and the Northern Mariana Islands have enacted legislation to become EMAC members.

EMAC offers assistance during governor-declared states of emergency or disaster through a responsive, straightforward system that allows states to send personnel, equipment, and commodities to assist with response and recovery efforts in other states.

33. See *supra* note 32.

34. See documents available at <https://www.uniformlaws.org/acts/covid19>.



## LITIGATION RELATED TO EMERGENCY ACTIONS

In addition to the legislative activity, there has also been significant litigation related to the COVID-19 emergency. This section of the memorandum focuses on litigation challenging the Governor's acts related to the COVID-19 emergency.

At this stage, the staff focused on litigation summaries to get a sense of the character of the different claims. In particular, the staff used two interactive tables prepared by Ballotpedia listing lawsuits about state actions and policies in the COVID-19 pandemic, as well summaries of noteworthy lawsuits from different sites.<sup>35</sup> From these sources, the staff identified over 30 cases related to COVID-19 actions where Governor Newsom is a named defendant.<sup>36</sup>

The staff reviewed the summary information for these cases. The staff found that many of the cases were one of the following types:

- Cases involving religious institutions seeking the ability to hold in-person services. These cases typically involve claims that the Governor's executive orders that preclude in-person services run afoul of the U.S. Constitution's religious protections, although the claims in these cases may also involve other constitutional rights or more general challenges to the Governor's emergency authority.<sup>37</sup>

---

35. See [https://ballotpedia.org/Lawsuits\\_about\\_state\\_actions\\_and\\_policies\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic,\\_2020-2021](https://ballotpedia.org/Lawsuits_about_state_actions_and_policies_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020-2021).

While Ballotpedia was the primary source used to identify cases, the staff also reviewed litigation summaries on <https://www.clearinghouse.net/results.php?searchSpecialCollection=62>; <https://healthyelections.org/election-litigation-tracker>; <https://www.kff.org/report-section/litigation-challenging-mandatory-stay-at-home-and-other-social-distancing-measures-table/>.

36. From Ballotpedia, the case names are: *A.A. v. Newsom*, *Benitez v. Newsom*, *Brandy v. Newsom*, *Burfitt v. Newsom*, *California Fitness Alliance v. Newsom*, *California Republican Party v. Newsom*, *Caymus Vineyards v. Newsom*, *City of Huntington Beach v. Newsom*, *Cross Culture Christian Center v. Newsom*, *Culinary Studios, Inc. v. Newsom*, *Excel Fitness Fair Oaks, LLC v. Newsom*, *Gateway City Church v. Newsom*, *Gish v. Newsom*, *Givens v. Newsom*, *Gondola Adventures v. Newsom*, *Grace Community Church of the Valley v. Newsom*, *Harvest Rock Church, Inc. v. Newsom*, *Immanuel Schools v. Newsom*, *Issa v. Newsom*, *Looney v. Newsom*, *Metroflex Oceanside, LLC v. Newsom*, *Mitchell v. Newsom*, *Mountain Christian Fellowship v. Newsom*, *Orange County Board of Education v. Newsom*, *Republican National Committee v. Newsom*, *Reyes v. Newsom*, *Samuel A. Fryer Yavneh Hebrew Academy v. Newsom*, *South Bay United Pentecostal Church v. Newsom*, and *Tandon v. Newsom*.

The Healthy Elections Case Tracker includes additional cases related to COVID and election law. The additional cases from that database are: *Blakenship v. Newsom*, *Gallagher v. Newsom*, *Hettinga v. Newsom*, and *Kishore v. Newsom*.

In addition, there are several cases in the Ballotpedia materials where state agencies or officials are named defendants: *Center for American Liberty v. California Department of Public Health*, *Christensen v. California Judicial Council*, *Fugazi v. Padilla*, *Mueller v. Regents of the University of California*, *Smith v. Employment Development Department*, *Utsay v. California State University System*, and *Voice of San Diego v. Regents of the University of California*.

37. See, e.g., descriptions of *Burfitt v. Newsom* (claims include equal protection, non-delegation, and separation of powers), *Mountain Christian Fellowship v. Newsom* (claims include freedom of speech and assembly) and *South Bay United Pentecostal Church v. Newsom* (claims include due

- Cases involving schools seeking the ability to hold in-person classes.<sup>38</sup> In some instances, these cases involved private, religious schools or charter schools and raise claims specifically related to the school’s status as such.
- Cases involving businesses seeking to re-open.<sup>39</sup> These cases involve a variety of different types of claims, but often include a claim involving different treatment of similarly situated businesses or alleging arbitrariness in the rules for businesses to operate during the pandemic.
- Cases involving elections issues.<sup>40</sup>
- Cases alleging the infringement of other constitutional rights (e.g., right to bear arms, freedom of association) or other constitutional issues.<sup>41</sup>

## UPDATES

### **Additional CESA Provision related to Governor’s Emergency Powers**

Memorandum 2022-12 identified several provisions of CESA relating to the Governor’s emergency authority to suspend statutory or regulatory requirements. Since the preparation of that memorandum, the staff identified an additional provision to note. Government Code Section 8654(a) applies in situations where the Governor has proclaimed a state of emergency and the President has declared an emergency or major disaster to exist in the state. In that situation, the Governor may:

Under regulations as the Governor shall make, temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, or intrastate transportation law, ordinance, or regulation when by proclamation he or she declares the suspension

---

process and equal protection) on [https://ballotpedia.org/Lawsuits\\_about\\_state\\_actions\\_and\\_policies\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic,\\_2020-2021](https://ballotpedia.org/Lawsuits_about_state_actions_and_policies_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020-2021).

38. See, e.g., descriptions of *A.A. v. Newsom*, *Immanuel Schools v. Newsom* (includes claims related to status as private school), *Looney v. Newsom*, *Orange County Board of Education v. Newsom*, and *Samuel A. Fryer Yavneh Hebrew Academy v. Newsom* (includes claims related to status as religious school) on [https://ballotpedia.org/Lawsuits\\_about\\_state\\_actions\\_and\\_policies\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic,\\_2020-2021](https://ballotpedia.org/Lawsuits_about_state_actions_and_policies_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020-2021).

39. See, e.g., descriptions of *California Fitness Alliance v. Newsom*, *Caymus Vineyards v. Newsom*, *Excel Fitness Fair Oaks, LLC v. Newsom*, *Gondola Adventures v. Newsom*, and *Mitchell v. Newsom* on [https://ballotpedia.org/Lawsuits\\_about\\_state\\_actions\\_and\\_policies\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic,\\_2020-2021](https://ballotpedia.org/Lawsuits_about_state_actions_and_policies_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020-2021).

40. See, e.g., descriptions of *Gallagher v. Newsom*, *Hettinga v. Newsom*, *Issa v. Newsom*, *Kishore v. Newsom*, and *Republican National Committee v. Newsom* on <https://healthyelections-casetracker.stanford.edu/>.

41. See, e.g., descriptions of *Brandy v. Newsom* (related to firearms), *City of Huntington Beach v. Newsom* (related to local government authority over beaches) and *Givens v. Newsom* (related to protests) on [https://ballotpedia.org/Lawsuits\\_about\\_state\\_actions\\_and\\_policies\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic,\\_2020-2021](https://ballotpedia.org/Lawsuits_about_state_actions_and_policies_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020-2021).

or modification essential to provide temporary housing for disaster victims.<sup>42</sup>

### **Stakeholder Outreach**

The staff has been gathering contact information for legislative stakeholders, stakeholders in the executive branch, as well as other potentially interested entities (local governments, nonprofit disaster relief organizations). However, given the pending decision regarding the scope of the Commission's work, the staff has not yet begun the process of reaching out to stakeholders (depending on the decision about scope, different stakeholders may be involved).

**As always, anyone is welcome to participate in the Commission's study.** Interested persons can subscribe to the email distribution list on the study page for this topic: <http://clrc.ca.gov/X100.html>.

### SCOPE OF THIS STUDY

#### **Interest in Emergency-Related Reforms, Generally**

As discussed in this memorandum, emergency-related law is receiving attention from the California Legislature and the ULC. In addition, many other states are also considering emergency-related law reform, both generally and focused specifically on the issue of legislative oversight of emergency executive powers.<sup>43</sup>

The balance of power between the legislative branch and the executive branch during an emergency is an issue that has been a focus of legislative interest throughout the pandemic.<sup>44</sup>

As noted above, several pending bills in California relate to the balance of legislative and executive power in an emergency. And, the work of the ULC's committee on Public Health Emergency Authorities focuses on this topic.

---

42. Gov't Code § 8654(a)(3).

43. See <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx>; <https://www.ncsl.org/research/about-state-legislatures/legislative-oversight-of-executive-orders.aspx>.

44. Back in the early days of the pandemic (July 2020), a brief from the National Conference of State Legislatures indicated that there were legislative efforts in nearly half of the states to limit governors' powers or executive spending. Those efforts included changes to the duration of an emergency declaration and requirements that notice of certain orders be provided to the legislature (or legislative leaders). See [https://www.ncsl.org/Portals/1/Documents/legisbriefs/2020/JulyLBs/Executive-Powers-in-Emergencies\\_25.pdf](https://www.ncsl.org/Portals/1/Documents/legisbriefs/2020/JulyLBs/Executive-Powers-in-Emergencies_25.pdf).

## Options for Study Scope

The staff is seeking a Commission decision on how to proceed with work in this study. In general, the staff sees four options for the Commission to consider:

- (1) *Proceed with work on a broad reform involving the scope and duration of the Governor's emergency powers.*

The Commission will need to consider whether it is willing to tolerate a higher degree of tension between this study and pending legislation (and other efforts, like those at the ULC). And, given the prohibition on the Commission against advocating for or against pending legislation,<sup>45</sup> the Commission should consider whether it could fully and fairly deliberate on this topic given the different pending legislation discussed above.

- (2) *Focus on a narrower reform (e.g., license reciprocity or authorizing remote/electronic document preparation).*

For such work, the Commission may be able to steer more clear of pending legislation and other efforts. In addition, depending on the narrower topic selected, the Commission could benefit from prior work of the ULC.

- (3) *Work on preparation of an informational report (as discussed above for the Commission's electronic surveillance study).*

The Commission could consider gathering information for such a report initially and reconsidering whether the Commission should also make recommendations for proposed legislation at a later time.

- (4) *Suspend work on this topic for now.*

The Commission may be interested in this path if the Commission is concerned about any possible duplication of legislative effort or misunderstanding of the Commission's position of neutrality. The Commission could direct the staff to revisit this issue at a specified time in the future (e.g., after the legislative session has ended or in the next New Topics memorandum).

## How would the Commission like to proceed?

Respectfully submitted,

Kristin Burford  
Staff Counsel

---

45. See *supra* note 6.

## **ENACTED LEGISLATION FROM 2021-2022 SESSION AFFECTING CESA**

- AB 9 (Wood) (2021 Cal. Stat. ch. 225) – amends section related to wildfire planning to specify that duties of the Department of Forestry and Fire Protection were delegated to the Office of the State Fire Marshal.
- SB 109 (Dodd) (2021 Cal. Stat. ch. 239) – adds section establishing the Office of Wildfire Technology Research and Development and addressing related issues.
- SB 816 (Committee on Governmental Organization) (2021 Cal. Stat. ch. 292) – amends section defining “Master Mutual Aid Agreement” to include federally recognized California Indian tribes as potential parties to the agreement.
- AB 619 (Calderon) (2021 Cal. Stat. ch. 412) – adds section requiring county emergency plans to incorporate certain material related to air quality emergencies caused by wildfires and other sources.
- SB 52 (Dodd) (2021 Cal. Stat. ch. 597) - amends provisions to include a planned power outage that meets specified conditions as a local emergency.
- AB 474 (Chau) (2021 Cal. Stat. ch. 615) – updates cross-reference to the California Public Records Act.
- AB 580 (Rodriguez) (2021 Cal. Stat. ch. 744) – amends provisions related to emergency preparedness and planning to address vulnerable populations, including the access and functional needs population.
- SB 113 (Committee on Budget and Fiscal Review) (2022 Cal. Stat. ch. 3) – adds a provision to CESA establishing and funding the California Emergency Relief Fund.