

Senate Executive Departments and Administration Committee

Cameron Lapine 271-2104

HB 417, relative to the powers of the governor during a renewal of a declared state of emergency, and relative to the acceptance of federal assistance.

Hearing Date: May 5, 2021

Time Opened: 9:30 a.m.

Time Closed: 10:08 a.m.

Members of the Committee Present: Senators Ricciardi, Cavanaugh, Prentiss and Reagan

Members of the Committee Absent: Senator Carson

Bill Analysis: This bill terminates a state of emergency called by the governor after 30 days and modifies the procedure for renewal. Any orders issued during the period of a renewal of the state of emergency shall be subject to prior approval by the legislature. This bill also requires executive council approval in the acceptance of services, equipment, supplies, materials, or funds from the federal government.

Sponsors:

Rep. Roy

Rep. Belanger

Rep. Layon

Rep. Avellani

Rep. Vail

Rep. Cushman

Who supports the bill: Andrew Manuse, Representative Melissa Blasek (Hillsborough – District 21), Representative Leah Cushman (Hillsborough – District 2), Representative Carol McGuire (Merrimack – District 29), Kimberly Owens, Dan Groves, Linda Darrow, Gerry Lesmerises, Robert Dutton, Mabel Dutton, Leah Weston, Janis Anthes, Gregory Anthes, Representative David Meuse (Rockingham – District 29), Cindy Kudlik, Jean Kimball, Michael Kimball, Representative Erica Layon (Rockingham – District 6), Representative Walter Stapleton (Sullivan – District 5), Dan McGuire, Eric Pauer, Ronald Garnett, Nicholas Thomas, and Elliot Axelman.

Who opposes the bill: Representative Peter Schmidt (Strafford – District 19), Janet Lucas, Beth Fenner-Lukaitis, David Bates, Glenda Johnson, Erin Pospychala, Sara Johnson, and Elissa Rasmussen.

Who is neutral on the bill: None.

Summary of testimony presented in support:

Representative Terry Roy

Rockingham – District 32

- Representative Roy said that during the COVID-19 pandemic, constituents have expressed concern over the executive branch wielding so much power. He said that the original emergency

order bill never contemplated an emergency like the COVID-19 pandemic, or an emergency that has gone on as long.

- Rep. Roy said that for the last year constituents have been unrepresented, with one branch of government, the executive, making and enforcing laws.
- Rep. Roy said that HB 417 extends what is in statute to 30 days, which would cover any emergency situation that was contemplated, including storms and natural disasters.
- Rep. Roy said that any emergency beyond 30 days would need to go before the General Court so that Senators and Representatives can answer to their constituents as to why the emergency exists. He said that during the COVID-19 pandemic he learned of many executive and emergency orders through the media or constituents.
- Rep. Roy said that the state of emergency would automatically extend in the event that the General Court could not convene.
- Senator Prentiss asked if states of emergency would exist for 30 days and then be renewed by the General Court.
 - Rep. Roy said that that was correct.
- Senator Prentiss asked what would happen if the General Court could not get together in time.
 - Rep. Roy said that the state of emergency would automatically renew for 14 days.
- Senator Prentiss asked if the state of emergency would extend in 14-day increments.
 - Rep. Roy said that that was correct and added that the executive has to help the General Court get together, saying that the executive would need to send a plow to clear the roads if it was a snow-related emergency.
- Senator Prentiss said that she has a background in emergency services and is looking for clarity with respect to HB 417. She said that she has a concern that the General Court could not get in in a timely manner and get work done. She said that she has seen situations where the Senate has raced to pass a bill only for the House to not take it up swiftly.
 - Rep. Roy said that he understands the executive has to move swiftly and that is why HB 417 gives the executive 30 days instead of 21 before renewal. He said that if the General Court cannot meet, the state of emergency extends for 14 days, ensuring that the executive has flexibility until the General Court can get together. He said that if the General Court gets together and does not agree, then the General Court does not agree, but at least they will have had a seat at the table.
- Senator Prentiss asked if during a state of emergency, after 30 days, the General Court gets together and by a majority vote of both houses agrees, then the state of emergency would continue.
 - Rep. Roy said that that was correct.
- Senator Prentiss asked what would happen if one body does not agree with the other about a state of emergency or an emergency order.
 - Rep. Roy presented a hypothetical situation where a state of emergency has existed for four months and the Governor proposes a new emergency order. The General Court would get together and if the House passes the emergency order but the Senate does not, the emergency order fails. He said that the Governor could try again with the emergency order to educate the General Court on why it is needed or tweak the emergency order to meet the desire of the General Court. Rep. Roy said he viewed it the same as when the House and Senate cannot agree to pass a bill as written.
- Senator Prentiss said that there are times when the House and Senate do not agree on a bill and there is a process to resolve that, through a Committee of Conference. She said that it would be different dealing with emergency powers. She asked if the Governor could reissue an emergency order or try to persuade the General Court to adopt it.
 - Rep. Roy said that that was correct. He said that there is nothing in HB 417 to prohibit the Governor from reissuing, and attempting to lobby the General Court to support, an

emergency order. He said that it should not be hard to get the General Court to support an emergency order if it is a good order.

Representative Carol McGuire

Merrimack – District 29

- Representative McGuire said that House Executive Departments and Administration amended HB 417 to ensure that it did not interfere with actual emergencies. She said that nearly all emergencies last 30 days or less. She said the House Committee also made sure that there would be no changes to the current emergency situation.
- Rep. McGuire said HB 417 addresses the issues that most people had. She said that there were concerns that the executive and emergency orders had not been reviewed by anyone and that the Governor could accept and spend money without advisement.
- Rep. McGuire said that HB 417 adds the Executive Council into the process of accepting and spending emergency funds. She said that putting all of the responsibility on the Governor was unnecessary and excessive.
- Rep. McGuire said that HB 417 passed the House with an overwhelming majority.
- Senator Cavanaugh asked if Rep. McGuire and the House Committee had found how often states of emergency were extended beyond 30 days.
 - Rep. McGuire said that they could not find any but they did not go back 100 years. She said that they did look in House journals from 1917, during the Spanish Flu pandemic, and did not find “influenza” appearing.

Representative Leah Cushman

Hillsborough – District 2

- Representative Cushman serves on House Health, Human Services, and Elderly Affairs.
- Rep. Cushman said that the separation of powers was based on the generally held principles that each branch of government performs unique functions and no one person can serve in more than one branch.
- Rep. Cushman said that the COVID-19 pandemic has shown the need to keep power decentralized. She said that HB 417 allows a reasonable amount of time for the Governor to act unilaterally but shifts the balance back.
- Rep. Cushman said that it is human nature to not want to give up control. She said that during the COVID-19 pandemic a parajudicial system was established within the executive branch, with the executive branch acting as the lawmaker, the enforcer, and the judge.
- Rep. Cushman said that the General Court can be called to act swiftly if it is needed. She said that HB 417 ensures that one person cannot have absolute rule forever and aligns statute with the Constitution and the intent of the founders.
- Rep. Cushman said that a future Governor may not have restraint in their emergency powers.

Representative Melissa Blasek

Hillsborough – District 21

- Representative Blasek said that she approves of HB 417 but believes there are a few elements to consider.
 - First, HB 417 does not compel the General Court to meet. She said that she doesn’t agree with automatic renewal for 14 days. She encouraged the Committee to add

- language currently in HB 2 as passed by the House creating an exception if the General Court truly cannot meet;
- Second, HB 417 allows the approval or rejection of individual emergency orders, avoiding issues where the Governor makes a single order that is objectionable but the entire state of emergency is approved;
- Third, the acceptance of federal funds should be approved by the General Court;
- Fourth, the Wisconsin Legislature voted to terminate their Governor's state of emergency but then the Governor issued a new state of emergency. She said that while current statute does not allow the Governor to issue a new state of emergency unless it is for a new emergency, the General Court cannot allow a future Governor to abuse that;
- Fifth, she would like the Committee to create an amendment for a nominal state of emergency, so that the state could still receive federal funds that are dependent on being in a state of emergency; and
- Sixth, she would like the Committee to add language requiring the Governor to make benchmarks during the initial state of emergency as to what will constitute the end of the emergency. She said that a similar law passed in Florida.
- Rep. Blasek encouraged the Committee to strengthen the checks and balances during a state of emergency.
- Senator Reagan asked what committee Rep. Blasek serves on.
 - Rep. Blasek serves on House Public Works and Highways.
- Senator Reagan asked if Rep. Blasek gave the same testimony when the House considered HB 417.
 - Rep. Blasek said that House Executive Departments and Administration heard many state of emergency bills and combined them into HB 417. She said that things had changed since the House hearing on HB 417.

Representative Mark Alliegro

Grafton – District 7

- Speaking as a member of House Executive Departments and Administration, Representative Alliegro said that HB 417 started as three or four bills that the committee pared down and crafted into a single, solid bill. He said that it was important that HB 417 be crafted to take out the politics and personalities.
- Rep. Alliegro said that once an emergency has proceeded, the issue becomes emergency management and is not a fast-moving issue.
- Speaking a citizen who went through Hurricane Katrina and its recovery efforts, Rep. Alliegro said that when things are fast-moving, if it is an emergency, the General Court is essential and must get together.

Andrew Menuse

- Mr. Menuse said that he prefers the language in HB 2's Sections 76 and 77 to HB 417.
- Mr. Menuse said that he agrees with Section 3, Part 5 and Section 4 of HB 417.
- Mr. Menuse said that the oversight of expenditures is very important and HB 417 is a good structure to work from.
- Mr. Menuse said that HB 2's language is more precise and is less likely for a future Governor to misconstrue towards an autocratic government.
- Mr. Menuse said that he supports ending the current state of emergency.

- Mr. Menuse said that there is not a need for a nominal state of emergency, as federal aid is currently still available to two states not currently in states of emergency.
- Mr. Menuse said that, in reading RSA 445, he would never have imagined an abuse of power like what has been seen. He said that the Governor has made and suspended laws and created an adjudication process outside of the judicial branch during the COVID-19 pandemic.
- Mr. Menuse said that the Governor is one of 425 individuals elected to represent the whole people. He said that checks need to come together on emergency issues and that the only emergency situation where the whole population would be at risk of death in a day or two is a nuclear issue.
- Mr. Menuse said that he is more terrified of one individual wielding so much authority than he is of any virus.
- Senator Prentiss asked for an example of how the General Court would manage an emergency, such as the hypothetical Rep. Roy presented.
 - Mr. Menuse said that there have been several things during the COVID-19 pandemic than that General Court could have managed. He said that violating a lawful emergency order is a misdemeanor and the Governor has created a parallel adjudication system with higher penalties and no courts. He said that people have a right to defend themselves in court.
- Senator Prentiss asked for an example of how the General Court would manage an emergency, such as the hypothetical Rep. Roy presented, when people like the Governor, local emergency managers, and agency staff are involved.
 - Mr. Menuse said that there are laws in place that allow emergencies to be managed by the executive. He said that the General Court has a duty to get together and change those laws so that emergencies can be managed directly.
- Senator Reagan asked if Mr. Menuse gave the same testimony when the House considered HB 417.
 - Mr. Menuse said that his testimony in the House was different but similar.

Summary of testimony presented in opposition:

Representative Peter Schmidt

Strafford – District 19

- Representative Schmidt said that he does not disagree with the attempt of HB 417 but said that it does not address the current situation.
- Rep. Schmidt said that in a typical emergency the provisions of HB 417 would be unnecessary and obstructive. He said that in the situation of a pandemic or a nuclear emergency at the Seabrook Station Nuclear Power Plant, the idea of the General Court going in and micromanaging the Governor would cause chaos and be unworkable.
- Rep. Schmidt said that the fact that HB 417 does not take effect until after the current state of emergency ends means that there is time to examine the situation more fully with a blue-ribbon commission that can deliberate and call witnesses and get at the issue of whether or not the Governor's powers are excessive.
- Rep. Schmidt said that not all constituents complained during the COVID-19 pandemic and he received very few complaints from his constituents. He said that there was a lot of disinformation on a federal level that caused concern and many of the claims made by people were not merited.
- Speaking for a second time, Rep. Schmidt said that the House Committee considered a nominal state of emergency and decided that it would not qualify the state for federal aid.

- Senator Prentiss asked if it would be appropriate to have someone from the Governor's Office weigh in and provide feedback on HB 417. She said she would follow up with Senators Carson and Reagan.

Neutral Information Presented: None.

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Date Hearing Report completed: May 6, 2021