

The House Committee on Judiciary offers the following substitute to HB 358:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated,  
2 relating to emergency powers, so as to provide when a declaration of a state of emergency  
3 or disaster by the Governor shall expire; to provide for extensions by the General Assembly;  
4 to provide for limitations on emergency powers; to provide for related matters; to provide an  
5 effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated, relating to  
9 emergency powers, is amended by revising Code Section 38-3-51, relating to the emergency  
10 powers of the Governor, termination of emergency, limitations in energy emergency, and  
11 immunity, as follows:

12 "38-3-51.

13 (a) In the event of actual or impending emergency or disaster of natural or human origin,  
14 or pandemic influenza emergency, or impending or actual enemy attack, or a public health  
15 emergency, within or affecting this state or against the United States, the Governor may  
16 declare that a state of emergency or disaster exists. ~~As a condition precedent to declaring~~

17 ~~that a state of emergency or disaster exists as a result of a public health emergency, the~~  
18 ~~Governor shall issue a call for a special session of the General Assembly pursuant to~~  
19 ~~Article V, Section II, Paragraph VII of the Constitution of Georgia, which session shall~~  
20 ~~convene at 8:00 A.M. on the second day following the date of such declaration for the~~  
21 ~~purpose of concurring with or terminating the public health emergency. The state of~~  
22 ~~emergency or disaster shall continue until the Governor finds that the threat or danger has~~  
23 ~~passed or the emergency or disaster has been dealt with, to the extent that emergency or~~  
24 ~~disaster conditions no longer exist, and terminates the state of emergency or disaster. No~~  
25 ~~state of emergency or disaster may continue for longer than 30 consecutive days, or 30~~  
26 ~~nonconsecutive days within a 90 day period, unless renewed by the Governor authorized~~  
27 ~~by concurrent resolution of the Senate and the House of Representatives for initial or~~  
28 ~~successive periods of not longer than 90 days each.~~

29 (b) The Governor shall issue a call for a special session of the General Assembly pursuant  
30 to Article V, Section II, Paragraph VII of the Constitution of Georgia for any state of  
31 emergency or disaster extending for a period of longer than 30 days or for multiple or  
32 successive states of emergency or disasters in effect for a combined total of more than 30  
33 days of emergency or disaster over the course of any 90 day period without authorization  
34 by a concurrent resolution of the Senate and the House of Representatives. Such session  
35 shall convene in person or virtually at 10:00 A.M. on the thirtieth day for which a state of  
36 emergency or disaster is in effect, unless sooner called as permitted by law. Upon  
37 convening, the General Assembly may, by concurrent resolution of the Senate and the  
38 House of Representatives, extend the state of emergency or disaster for an additional period  
39 of not longer than 90 days. Upon a call of the Governor or concurrent resolution of the  
40 Senate and the House of Representatives executed prior to the conclusion of any 90 day  
41 extension, the General Assembly may, by concurrent resolution of the Senate and the  
42 House of Representatives, authorize subsequent 90 day extensions of the state of  
43 emergency or disaster. The General Assembly by concurrent resolution of the Senate and

44 the House of Representatives may terminate or prescribe limitations to a state of emergency  
45 or disaster at any time. Thereupon, the Governor shall by take appropriate action and the  
46 state of emergency or disaster pursuant to the direction of the General Assembly.

47 ~~(b)~~(c) A declaration of a state of emergency or disaster shall activate the emergency and  
48 disaster response and recovery aspects of the state and local emergency or disaster plans  
49 applicable to the political subdivision or area in question and shall be authority for the  
50 deployment and use of any forces to which the plan or plans apply and for use or  
51 distribution of any supplies, equipment, and materials and facilities assembled, stockpiled,  
52 or arranged to be made available pursuant to Articles 1 through 3 of this chapter or any  
53 other law relating to emergencies or disasters.

54 ~~(c)~~(d) The Governor shall have and may exercise for such period as the state of emergency  
55 or disaster exists or continues the following additional emergency powers, subject to any  
56 limitations prescribed by the General Assembly:

57 (1) To enforce all laws, rules, and regulations relating to emergency management and to  
58 assume direct operational control of all civil forces and helpers in the state;

59 (2) To seize, take for temporary use, or condemn property for the protection of the public  
60 in accordance with condemnation proceedings as provided by law;

61 (3) To sell, lend, give, or distribute all or any such property among the inhabitants of the  
62 state and to account to the proper agency for any funds received for the property; and

63 (4) To perform and exercise such other functions, powers, and duties as may be deemed  
64 necessary to promote and secure the safety and protection of the civilian population.

65 ~~(d) In addition to any other emergency powers conferred upon the Governor by law, he~~  
66 ~~may:~~

67 (e) The Governor, subject to any limitations prescribed by the General Assembly may:

68 (1) Suspend any regulatory statute prescribing the procedures for conduct of state  
69 business, or the orders, rules, or regulations of any state agency, if strict compliance with

- 70 any statute, order, rule, or regulation would in any way prevent, hinder, or delay  
71 necessary action in coping with the emergency or disaster;
- 72 (2) Utilize all available resources of the state government and of each political  
73 subdivision of the state as reasonably necessary to cope with the emergency or disaster;
- 74 (3) Transfer the direction, personnel, or functions of state departments and agencies or  
75 units thereof for the purpose of performing or facilitating emergency services;
- 76 (4) Commandeer or utilize any private property if ~~he~~ the Governor finds this necessary  
77 to cope with the emergency or disaster;
- 78 (4.1) Compel a health care facility to provide services or the use of its facility if such  
79 services or use are reasonable and necessary for emergency response. The use of such  
80 health care facility may include transferring the management and supervision of the  
81 health care facility to the Department of Public Health for a limited or unlimited period  
82 of time not extending beyond the termination of the public health emergency;
- 83 (5) Direct and compel the evacuation of all or part of the population from any stricken  
84 or threatened area within the state if ~~he~~ the Governor deems this action necessary for the  
85 preservation of life or other disaster mitigation, response, or recovery;
- 86 (6) Prescribe routes, modes of transportation, and destinations in connection with  
87 evacuation;
- 88 (7) Control ingress and egress to and from a disaster area, the movement of persons  
89 within the area, and the occupancy of premises therein;
- 90 (8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,  
91 explosives, or combustibles; provided, however, that for purposes of this paragraph, the  
92 terms 'explosives' and 'combustibles' shall not include firearms or ammunition or any  
93 component thereof; and
- 94 (9) Make provision for the availability and use of temporary emergency housing.
- 95 ~~(e)~~(f) When the available funds are not sufficient for the purpose of paying the expenses  
96 incident to carrying out the provisions authorized by Articles 1 through 3 of this chapter,

97 the Governor may transfer from any available fund in the state treasury such sum as may  
 98 be necessary to meet the emergency or disaster; and the moneys so transferred shall be  
 99 repaid to the fund from which transferred when moneys become available for that purpose  
 100 by legislative appropriation or otherwise.

101 ~~(f)~~(g) In the event that the Governor proclaims an emergency or disaster, as defined by  
 102 Articles 1 through 3 of this chapter, to be a catastrophe within the meaning of Article III,  
 103 Section IX, Paragraph VI(b) of the Constitution of the state, the funds referred to in the  
 104 paragraph may be utilized by the Governor for the purpose of carrying out the provisions  
 105 authorized by Articles 1 through 3 of this chapter.

106 ~~(g)~~(h) In the event that the Governor proclaims an emergency or disaster, as defined in  
 107 Articles 1 through 3 of this chapter, the Governor may provide welfare benefits to the  
 108 citizens of this state in the form of grants to meet disaster related necessary expenses or  
 109 serious needs of individuals or families adversely affected by an emergency or disaster in  
 110 those cases where the individuals or families are unable to meet the expenses or needs from  
 111 other means, provided that such grants are authorized only when matching federal funds  
 112 are available for such purposes pursuant to the Disaster Relief Act of 1974 (Pub. L.  
 113 93-288).

114 ~~(h)~~(i) If the Governor declares a state of emergency solely because of an energy  
 115 emergency, ~~he~~ the Governor shall not have the authority to:

- 116 (1) Seize, take for temporary use, or condemn property other than energy resources as  
 117 authorized by paragraph (2) of subsection (c) of this Code section;
- 118 (2) Sell, lend, give, or distribute property other than energy resources as authorized by  
 119 paragraph (3) of subsection (c) of this Code section; or
- 120 (3) Commandeer or utilize property other than energy resources as authorized by  
 121 paragraph (4) of subsection (d) of this Code section.

122 ~~(i)~~(j)(1) Subject to any limitations which may be prescribed by the General Assembly in  
 123 concurring with the declaration of a state of emergency or disaster or adopting a

124 concurrent resolution extending such state of emergency or disaster, the The Governor  
125 may direct the Department of Public Health to coordinate all matters pertaining to the  
126 response of the state to a public health emergency including without limitation:

127 (A) Planning and executing public health emergency assessments, mitigation,  
128 preparedness response, and recovery for the state;

129 (B) Coordinating public health emergency responses between state and local  
130 authorities;

131 (C) Collaborating with appropriate federal government authorities, elected officials of  
132 other states, private organizations, or private sector companies;

133 (D) Coordinating recovery operations and mitigation initiatives subsequent to public  
134 health emergencies;

135 (E) Organizing public information activities regarding state public health emergency  
136 response operations; and

137 (F) Providing for special identification for public health personnel involved in a public  
138 health emergency.

139 (2) The following due process procedures shall be applicable to any quarantine or  
140 vaccination program instituted pursuant to a declaration of a public health emergency:

141 (A) Consonant with maintenance of appropriate quarantine rules, the department shall  
142 permit access to counsel in person or by such other means as practicable that do not  
143 threaten the integrity of the quarantine;

144 (B) An order imposing a quarantine or a vaccination program may be appealed but  
145 shall not be stayed during the pendency of the challenge. The burden of proof shall be  
146 on the state to demonstrate that there exists a substantial risk of exposing other persons  
147 to imminent danger. With respect to vaccination, the state's burden of proof shall be  
148 met by clear and convincing evidence. With respect to quarantine, the state's burden  
149 of proof shall be met by a preponderance of the evidence;

150 (C) An individual or a class may challenge the order before any available judge of the  
151 superior courts in the county where the individual or a member of the class resides or  
152 in Fulton County. Such judge, upon attestation of the exigency of the circumstances,  
153 may proceed ex parte with respect to the state or may appoint counsel to represent the  
154 interests of the state or other unrepresented parties. The judge hearing the matter may  
155 consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed  
156 to determine the interests of a class or classes. The rules of evidence applicable to civil  
157 cases shall be applied to the fullest extent practicable taking into account the  
158 circumstances of the emergency. All parties shall have the right to subpoena and  
159 cross-examine witnesses, but in enforcement of its subpoena powers the court shall take  
160 into account the circumstances of the emergency. All proceedings shall be transcribed  
161 to the extent practicable. Filing fees shall be waived and all costs borne by the state;  
162 (D) The judge hearing the matter may enter an appropriate order upholding or  
163 suspending the quarantine or vaccination order. With respect to vaccination, the order  
164 may be applicable on notice to the department or its agents administering the  
165 vaccination, or otherwise in the court's discretion. With respect to quarantines, the  
166 order shall be automatically stayed for 48 hours;  
167 (E) The department or any party may immediately appeal any order to the Supreme  
168 Court pursuant to paragraph (7) of subsection (a) of Code Section 5-6-34. The Supreme  
169 Court, or any available Justice thereof in the event that circumstances render a full court  
170 unavailable, shall consider the appeal on an expedited basis and may suspend any time  
171 requirements for the parties to file briefs. In the event no Justice is available, then a  
172 panel of the Court of Appeals, or any Judge thereof in the event that circumstances  
173 render a panel unavailable, shall consider the appeal on an expedited basis and may  
174 suspend any time requirements for the parties to file briefs. If the trial judge has  
175 proceeded ex parte or with counsel appointed for the state, the trial court shall either  
176 direct the filing of an appeal in its order or itself certify the order for appeal. Filing fees

177 for appeal shall be waived, all costs shall be borne by the state, and such appeals shall  
178 be heard expeditiously; and

179 (F) No provisions of this paragraph shall be construed to limit or restrict the right of  
180 habeas corpus under the laws of the United States.

181 ~~(j)~~(k) Any individual, partnership, association, or corporation who acts in accordance with  
182 an order, rule, or regulation entered by the Governor pursuant to the authority granted by  
183 this Code section will not be held liable to any other individual, partnership, association,  
184 or corporation by reason thereof in any action seeking legal or equitable relief.

185 (l) The General Assembly shall act pursuant to this Code section by meeting at the state  
186 capitol. However, pursuant to the call for a special session, the General Assembly may  
187 meet at a designated location or virtually in accordance with the rules of the Senate and the  
188 rules of the House of Representatives."

189 **SECTION 2.**

190 This Act shall become effective on February 1, 2022.

191 **SECTION 3.**

192 All laws and parts of laws in conflict with this Act are repealed.