



October 20, 2021

Hon. Rob Bonta  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Anabel Renteria  
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative (A.G. File No. 21-0018) related to emergency shutdown orders.

## Background

***Government Authorized to Respond to Emergencies.*** Existing law in California provides the state and local governments with powers to respond to emergency situations to mitigate the impacts of emergencies that threaten the lives and safety of people and property. These powers generally become available once a disaster has been declared.

***Government Authorized to Declare Emergencies Under Various Conditions.*** The Governor can declare a state of emergency when the Governor finds that there exist conditions of extreme peril to the safety of persons and property caused by various conditions such as fire, flood, storm, earthquake, and epidemic. In the past several years, the Governor has declared states of emergency related to wildfires, public health issues, and an energy shortage. Similarly, local governing bodies (such as city councils or county boards of supervisors) or local officials selected by the governing body can declare local emergencies. In recent years, local governments have declared local emergencies to respond to public health issues as well as emergencies from various toxic hazards.

***Government Has Significant Powers to Restrict Activities During Emergencies.*** During a declared state of emergency, the Governor and local governments have significant powers that allow the government to respond quickly to circumstances that threaten the lives and safety of people and property. In particular, the Governor has the authority to issue and enforce emergency orders and regulations. Local governments can also issue emergency orders and regulations to respond to a local emergency.

State emergency orders stay in effect until they are rescinded by the Governor or the declared emergency has ended. Under current law, the Legislature has the authority to end a declared emergency with the passage of a concurrent resolution. However, the Legislature does not have the authority to review or approve specific emergency orders while an emergency is ongoing.

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Local emergency orders stay in effect until they are rescinded by the local jurisdiction or the declared emergency has ended.

In some cases, the Governor and local governments issue emergency orders requiring people, businesses, and schools to significantly restrict certain activities. Examples of past orders include:

- Issuing stay at home, or shelter in place, orders.
- Ordering the evacuation of communities in the path of wildfires.
- Establishing curfews in response to civil unrest.
- Preventing people from accessing hazardous areas until a public health issue, such as toxic contamination, is addressed.
- Requiring infected individuals to quarantine themselves to prevent the spread of illness.
- Limiting the ability of schools to provide in-person learning.
- Limiting the occupancy of retail stores.
- Prohibiting indoor dining at restaurants.

## **Proposal**

This measure amends the California Constitution in various ways related to certain types of emergency orders that restrict activities, which the measure defines as “shutdown orders.” The measure specifies that its provisions apply to all emergencies except an “ongoing” earthquake, volcanic eruption, fire, flood, insurrection or riot, or foreign invasion. Accordingly, the measure applies to emergencies such as epidemics, storms, droughts, cyberterrorism, and energy shortages.

***Defines Shutdown Order.*** This measure defines a shutdown order as an emergency order issued by a state or local official that does any of the following:

- Closes or restricts to less than 75 percent the capacity of 24 or more individual elementary or high schools, houses of worship, or businesses or other commercial enterprises.
- Imposes a curfew or quarantine on a majority of the residents of the state or any city or county within the state.
- Prohibits travel into or out of the state or any city or county within the state.
- Requires the majority of residents of the state, or any city or county within the state, to remain inside their residences for more than 72 consecutive hours.

***Requires Justification for Shutdown Orders Be Posted Online.*** The measure requires a state or local official who issues a shutdown order during an emergency to post the justification for the order on a publicly accessible website within seven days of issuing the order. The online posting

shall include all data, statistics, studies, forecasts, projections, modeling, and any other information that was relied upon as the justification to issue the shutdown order. The measure requires that the posting specify precisely which piece of information justifies each specific component of a shutdown order. If the information relied upon as justification for a shutdown order changes, the updated information shall be posted online within seven days. The measure does not require information to be posted online if doing so would create a severe and immediate threat to state or national security, disclose trade secrets or confidential financial information, create a severe invasion of privacy for a “nonpublic person,” or violate federal law. In cases where the information justifying a shutdown order falls under one of these exemptions, this measure requires the information to be posted in a redacted form.

***Requires Uniform Treatment of Businesses in Shutdown Orders.*** The measure prohibits shutdown orders from treating businesses that offer substantially the same goods or services differently based on size, market share, stock price, square footage, or number of employees. The measure specifies that if one business is permitted to offer a good or service while a shutdown order is in effect, then all businesses that offer that good or service be permitted to do so “on an equal basis.”

***Requires In-Person Learning at Public K-12 Schools to the Maximum Extent Possible.*** The measure requires that in-person K-12 public school instruction be maintained as an essential service to the “maximum extent possible” while a shutdown order is in effect for all students who wish to attend in-person instruction.

***Requires Shutdown Orders to Expire Unless Extended by Legislative Bodies.*** The measure requires that all emergency shutdown orders expire within 30 days of being issued, unless the orders are extended by the legislative body within the jurisdiction that issued the order. Specifically, the Legislature could extend state-issued shutdown orders by a two-thirds vote, and city councils and county boards of supervisors could extend shutdown orders issued by their jurisdictions by a six-tenths vote. The measure does not limit the number of extensions that can be approved. However, extensions may be approved for no more than 30 days at a time, except one extension of 60 days would be allowed during the calendar year for any given shutdown order.

***Places Requirements on Legal Challenges to Shutdown Orders.*** The measure states that in any legal challenge to a shutdown order, the state or local official that issued the order shall be bound by the justifying information posted online and that no other information shall be relied upon in justifying the shutdown order.

## **Fiscal Effects**

***Unknown Fiscal Effect on the State and Local Governments.*** This measure could have various fiscal effects on the state and local governments. The actual fiscal impact is unknown and would depend on how the measure is implemented and interpreted, as well as on factors that are difficult to predict. These factors include the type of emergencies that will be experienced in the future and the extent to which state and local governments modify their use of shutdown orders due to the measure.

On the one hand, to the extent the measure results in the state and local governments not issuing a shutdown order or not allowing an order to stay in place longer than necessary, the measure could prevent such orders from harming business activity. This, in turn, could prevent reductions in state and local tax revenues that would otherwise occur as well as change state and local emergency-related costs. On the other hand, to the extent the measure results in the state and local governments not issuing a shutdown order that could mitigate an emergency or ending such an order prematurely, the measure could result in more severe emergencies. This, in turn, could increase state and local emergencies-related costs and harm business activity, which could reduce state and local tax revenues relative to what otherwise would be the case.

*Summary of Fiscal Effects.* This measure would have the following major fiscal effect:

- Unknown fiscal effect on the state and local governments due to requirements that could change the use of shutdown orders during emergencies.

Sincerely,

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for Gabriel Petek  
Legislative Analyst

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for Keely Martin Bosler  
Director of Finance