

# Powers of the Governor: Sources

By Janice Selberg

*[E]nergy in the executive is the leading character in the definition of good government.*

—Alexander Hamilton,  
*The Federalist* No. 70

## Constitutional

The executive powers provisions of the Michigan Constitution of 1835 were contained in Article V, summarized here:

- The governor shall be commander-in-chief of the militia and of the army and navy of this state.
- The governor shall transact all executive business with the officers of government, civil and military.
- The governor shall take care that the laws be faithfully executed.
- The governor shall have the power to convene the legislature on extraordinary occasions.
- The governor shall have the power to adjourn the legislature to such time as he or she may think proper, in case of a disagreement between the two houses with respect to the time of adjournment.
- The governor may direct the legislature to meet at some other place than the seat of government, if that shall become, after its adjournment, dangerous from a common enemy or a contagious disease.
- The governor shall have the power to grant reprieves and pardons after conviction, except in cases of impeachment.
- When any office, the appointment to which is vested in the governor and senate or in the legislature, becomes vacant during the recess of the legislature, the governor shall have the power to fill the vacancy.<sup>1</sup>

The 1850 and 1908 constitutions kept the provisions as to commander-in-chief, executive business, and convention of the legislature in extraordinary sessions, as well as the power to convene the legislature in an alternate location in case of danger and the granting of reprieves and commutations.

The 1850 document eliminated the power to adjourn the legislature and added the requirement to report on the condition of the state to the legislature at the end of the governor's term. The governor was also given the power to issue writs of election for vacancies in the legislature.<sup>2</sup>

In a pre-Constitutional Convention study, authors Albert L. Sturm and Fred S. Steingold review the history of the state executive officer to that time.<sup>3</sup> Post-revolutionary state constitutions reflected the preference of the citizenry for a governor with relatively few powers compared to the legislature, and in some cases, the legislature elected the governor. By the time of Michigan's statehood in 1835–1837, this viewpoint had begun to change.<sup>4</sup> The 1835 constitution, therefore, contains most of the executive powers granted to the governor today, with the major exclusion of the late-nineteenth-century rise of the administrative state.<sup>5</sup>

Despite the 1961–1962 Constitutional Convention preparation and guidance, the Action Journal for the Committee on the Exec-

utive Branch reflects no groundbreaking changes proposed for the role of governor in the new constitution.<sup>6</sup>

## Statutory

The two most-discussed statutes in connection with the executive power of the governor in 2020 are the 1945 Emergency Powers of Governor Act<sup>7</sup> and the 1976 Emergency Management Act.<sup>8</sup> The 1945 bill was introduced 21 months after the wartime Detroit race riot of June 21–22, 1943.<sup>9</sup> *The Detroit News* cited “legal complications” and reported on sponsors’ perception of the need in cases of “public disaster or unrest” to “control public activities without the declaration of martial law.”<sup>10</sup> The preserved record of the legislative history of the act is unremarkable; the bill was unamended and became law within two months from the date of introduction. The Library of Michigan/State Law Library has scanned these documents and made them available in the LM Digital portal (<https://lmdigital.libraryofmichigan.org>).

The 1976 Emergency Management Act was described in an executive analysis by the State Police:

House Bill No. 5314 is essentially the same as a nationally recommended model bill

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which was drafted after careful consideration was given to the legislative needs to effectively prepare for and respond to disasters. Similar legislation has been adopted in other states and has proven effective. The authority and responsibilities of the various individuals, governmental agencies, and jurisdictions is clearly defined; it should contribute to a rapid, orderly recovery from disaster conditions without duplication of efforts. The bill will provide the necessary state legislation to complement federal disaster legislation.<sup>11</sup>

The legislative history reflected the more complicated political times of the 1970s in contrast to the relatively united legislative front of 1940s wartime. The bill was amended several times during passage, and although it passed with a substantial majority in both houses, three House members exercised the right of recorded protest statements upon passage.<sup>12</sup> LM Digital also has the legislative documents for this law as well as its seven amendments.

## Cases

There is one appellate court decision generally cited that construes the Emergency Powers of Governor Act.<sup>13</sup> The 1943 act was interpreted in *Walsh v City of River Rouge*, in which the mayor of River Rouge responded to civil unrest by declaring a state of emergency and issuing emergency orders for a 6 p.m.–5 a.m. curfew in the city. The prohibition of personal weapons and explosives and curtailment of the purchase of alcohol and gasoline were also ordered. On the following day, the city council passed an emergency ordinance that

gave the mayor the power to proclaim a “State of Emergency whenever the Chief of Police advises that a civil disturbance is in progress.” The mayor then reissued his orders after the passage of the ordinance.<sup>14</sup>

The plaintiff Walsh, an attorney, filed an action seeking mandamus and a declaratory judgment annulling the emergency ordinance and the proclamations by the mayor. He was joined by a River Rouge resident who had been arrested for violation of the curfew. The circuit court upheld the power of the city to pass the emergency ordinance and the emergency orders made under it.<sup>15</sup> Upon appeal (the Supreme Court granted leave to appeal directly), the plaintiffs argued that home rule cities have no express or implied power to declare states of emergency, which was granted to the governor by 1945 PA 302, and that the emergency ordinance violated the city’s own provisions for the publication of ordinances. The defendant city’s position was that the police power granted the right to respond to emergencies to maintain order.<sup>16</sup>

The court stated:

We consider only the question of preemption of the field by the statute giving to the Governor exclusive power since our determination of that issue is dispositive of this case. A point-by-point comparison of the powers granted to the Mayor... will reveal that every power granted by the ordinance is also granted to the Governor by Act 302.<sup>17</sup>

The court also pointed out that on at least two occasions, the Michigan legislature passed bills granting localities the power to declare a state of emergency, which were vetoed by Governors Romney and Milliken, respectively, and accompanied by veto mes-

sages in both cases. Milliken’s message included the following:

Again, however, the major consideration prompting this action is that I think it bad policy to afford numerous political units throughout the state this authority which could result in a totally chaotic situation in the event of a civil emergency affecting one or more of them.<sup>18</sup>

The power of the governor in this pandemic has us looking to historical context for an understanding of our present time. As usual, the results are mixed. With a recognition of the need to work together for the good of us all, lawyers can play a part in improving our current situation. ■

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## ENDNOTES

1. Const 1835, art 5, §§ 5, 6, 7, 8, 9, 10, 11, and 12.
2. Const 1850, art 5, §§ 8 and 10.
3. Sturm & Steingold, *The Executive and Civil Service in the Michigan Constitution*, Constitutional Convention Preparatory Comm, State of Michigan (1961).
4. *Id.* at 4.
5. Const 1963, art 5.
6. *Action Journal, Hearings, Calendars: Michigan Constitutional Convention*, State of Michigan (1961–1962), v 5, “Executive branch.”
7. MCL 10.31–10.33.
8. MCL 30.401–30.420.
9. Sitkoff, *The Detroit Race Riot of 1943*, 53 Mich Hist 183, 183 (1969).
10. *Bill Aimed at Red Tape on ‘State of Emergency’*, The Detroit News (April 6, 1945), p 20.
11. *Executive Analysis: HB 5314*, Dept of State Police (July 29, 1975), available at <<https://lmdigital.libraryofmichigan.org/collections/pl6110coll6/items/148498>> [<https://perma.cc/3UNB-KQ37>] (accessed June 19, 2020).
12. 1976 House Journal 2316.
13. 22 Mich Civ Jurisprudence, *State of Michigan: Powers of Governor—Emergency Powers* (February 2020), § 18.
14. *Walsh v City of River Rouge*, 385 Mich 623, 625–626; 189 NW2d 318 (1971).
15. *Id.* at 626.
16. *Id.* at 628.
17. *Id.* at 628.
18. *Id.* at 634.