

HOUSE No. 6557

The Commonwealth of Massachusetts

LEGISLATIVE RESEARCH COUNCIL

Report Relative to

GUBERNATORIAL EXECUTIVE ORDERS

**FOR SUMMARY, SEE
TEXT IN BOLD FACE TYPE**

April 3, 1981

The Commonwealth of Massachusetts

ORDER AUTHORIZING STUDY

(House, No. 6782 of 1980)

Ordered, That the Legislative Research Council be authorized and directed to make a study and investigation of the constitutional and statutory authority of the governor to issue executive orders having the force of law; and that said Council file its statistical and factual report hereunder with the Clerk of the House of Representatives on or before the last Wednesday of February in the year nineteen hundred and eighty-one.

Adopted:

By the House of Representatives, June 27, 1980

By the Senate, in concurrence, June 30, 1980

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The Commonwealth of Massachusetts

**LETTER OF TRANSMITTAL TO THE
SENATE AND HOUSE OF REPRESENTATIVES**

To the Honorable Senate and House of Representatives:

LADIES AND GENTLEMEN: — In compliance with the legislative directive in House, No. 6782 of 1980, the Legislative Research Council submits herewith a report prepared by the Legislative Research Bureau relative to the constitutional and statutory authority of the Governor to issue executive orders having the force of law.

The Legislative Research Bureau is restricted by statute to “statistical research and fact-finding.” Hence, this report contains only factual material without recommendations or legislative proposals by that Bureau. It does not necessarily reflect the opinions of the undersigned members of the Legislative Research Council.

Respectfully submitted,

MEMBERS OF THE LEGISLATIVE RESEARCH COUNCIL

Sen. ANNA P. BUCKLEY of Plymouth, *Chairman*
Rep. MICHAEL J. LOMBARDI of Cambridge, *House Chairman*
Sen. JOSEPH B. WALSH of Suffolk
Sen. JOHN F. PARKER of Bristol
Sen. ROBERT A. HALL of Worcester
Rep. WILLIAM P. NAGLE, JR. of Northampton
Rep. IRIS K. HOLLAND of Longmeadow
Rep. SHERMAN W. SALTmarsh, JR. of Winchester
Rep. BRUCE N. FREEMAN of Chelmsford
Rep. CHARLES N. DECAS of Wareham

The Commonwealth of Massachusetts

**LETTER OF TRANSMITTAL TO THE
LEGISLATIVE RESEARCH COUNCIL**

To the Members of the Legislative Research Council:

LADIES AND GENTLEMEN: — The joint order, House, No. 6782 of 1980, reprinted on the inside of the front cover of this report, directed the Legislative Research Council to study and investigate the constitutional and statutory authority of the Governor to issue executive orders "having the force of law."

The Legislative Research Bureau submits such a report herewith. Its scope and content have been circumscribed by statutory provisions which limit Bureau output to factual reports, without recommendations by the Bureau. The preparation of this report was the primary responsibility of James Hugh Powers of the Bureau staff.

Respectfully submitted,

DANIEL M. O'SULLIVAN, *Director*
Legislative Research Bureau

The Commonwealth of Massachusetts

GUBERNATORIAL EXECUTIVE ORDERS

SUMMARY OF REPORT

Study Directive

This report is submitted by the Legislative Research Council pursuant to a joint order which was introduced into the 1980 General Court by Representative Michael J. Lombardi of Cambridge, House Chairman of that Council, and adopted by the two branches late in June 1980 (House, No. 6782). That directive required the Council to examine the constitutional and statutory authority of the governor to "issue executive orders having the force of law."

In Massachusetts, as in all other states whose practices on this score have been reported to the Legislative Research Bureau, there are no formal definitions of the term "executive order" or "proclamation" in the state constitution, and few such definitions in the statutes. In certain instances, gubernatorial "proclamations," like certain proclamations of the President of the United States, have "executive order" characteristics.

Gubernatorial executive orders and "proclamations" may be ceremonial, or may amount to little more than public relations exercises. Or, they may be substantive instruments with the force of law. Some gubernatorial executive orders are indistinguishable from rules and regulations issued by regulatory and quasi-judicial agencies of the state executive branch, apart from the fact that those orders emanated directly from the governor himself.

Proclamations by a governor may or may not have the characteristics of gubernatorial executive orders. They may be ceremonial only, without legal effects. Proclamations may also be used to invoke or to activate otherwise "dormant" constitutional and statutory provisions, with very significant legal consequences. Among the gubernatorial and presidential proclamations of this sort are those establishing martial law, proclaiming civil defense emergencies, taking over public utilities threatened by labor disputes, dedicating public property to particular uses, and calling special elections. At the national level, presidential proclamations are used to put into effect treaties, conventions and

