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FISCAL IMPACT REPORT

SPONSOR Nibert/Ely/Rehm **ORIGINAL DATE** 02/02/21
LAST UPDATED 02/11/21 **HB** 139/ec
SHORT TITLE Leg. Oversight of Emergency Declarations **SB** _____
ANALYST Rabin/Iglesias

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Joint Resolution 6, House Bill 159, House Bill 180, Senate Bill 295; Conflicts with Senate Bill 74

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Governor

Department of Health (DOH)

Attorney General’s Office (NMAG)

Department of Homeland Security and Emergency Management (DHSEM)

Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

House Bill 139 establishes limits on the length of time a governor’s emergency orders can remain in effect without legislative approval under the All Hazard Emergency Management Act (AHEMA) and the Public Health Emergency Response Act (PHERA).

HB139 adds new sections to AHEMA and PHERA specifying that a governor’s emergency or public health emergency declaration will expire after 90 days unless the governor calls the Legislature into special session prior to that deadline. The bill permits the Legislature to restrict, suspend, or terminate a declaration of emergency or public health emergency during the special session, but if it does not do so, the governor may extend the declaration for up to 60 days after the adjournment of the special session. Subsequent extensions of up to 60 days each require the governor to call the Legislature into special session, continuing until the declaration of emergency is terminated by the governor or the Legislature or upon expiration of the extension if

the governor does not call the Legislature back into special session to renew it. The bill provides that the governor may only declare one state of emergency or public health emergency for an event; declaring another state of emergency or public health emergency for the same event requires prior consent of the Legislature for the declaration to be effective.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

Office of the Governor notes that the Legislative Council Service estimated a one-day special session in 2015 cost \$54,480. In the case of the current Covid-19 public health emergency, the office notes the governor would have been required to call four special sessions since her original emergency declaration, a cost of \$217.9 thousand.

It is impossible to predict what emergencies may occur in the future or the length of emergency declarations that would be required under the provisions of this bill. Future years may see no long-term emergency declarations, thus creating no additional costs for special sessions, or may see shorter emergencies than the Covid-19 pandemic, prompting fewer special sessions and lower costs.

SIGNIFICANT ISSUES

Office of the Governor, the Department of Health (DOH), and the Department of Homeland Security and Emergency Management all raise concerns that this bill could restrict the executive's ability to respond promptly and thoroughly to an emergency situation.

Office of the Governor notes that the purpose of the AHEMA and PHERA is to establish an effective, rapid, and flexible mechanism to manage and respond to emergencies, but only provides the executive with the authority to exercise these provisions during a declared state of emergency. The office adds that the Legislature may not be able to safely assemble during certain types of emergencies. Finally, the office states that the Legislature has the authority to call a special session itself if it disapproves of a continued state of emergency.

DOH and the Energy, Minerals and Natural Resources Department also note that federal funding for emergency and disaster relief often depends in part upon a state's declaration of an emergency, and expresses concerns that critical funding and distribution of resources for emergency response may be terminated or otherwise inhibited by the automatic termination of a declared state of emergency.

DHSEM notes that HB139 may create confusion over the lines of authority between the executive leading response and recovery efforts during an emergency, and the Legislature independently dictating an incident time frame.

CONFLICT, RELATIONSHIP

HB139 may conflict with Senate Bill 74, which also imposes restrictions on emergency health emergency orders, including requiring legislative approval to continue certain types of emergencies longer than 14 days.

HB139 relates to House Joint Resolution 6, which proposes to amend the New Mexico

Constitution to apply the same restrictions as HB139 on any type of emergency declaration.

HB139 relates to House Bill 159, which amends provisions governing rulemaking under PHERA to prohibit agencies from promulgating rules that add to or alter the New Mexico Administrative Code when a public health order is in effect, unless the proposed rule changes are authorized by the governor

HB139 relates to House Bill 295, which revises the system for executive allocations of emergency funding from the general fund by clarifying the emergency or disaster situations for which such funding may be allocated, restricting the allowable funding sources and amounts that may be allotted, and establishing requirements for reporting on allocations and expenditures.

TECHNICAL ISSUES

The Attorney General's Office (NMAG) notes the following potential technical issues:

HB 139 leaves unamended language in AHEMA it directly contravenes. AHEMA states that the governor—not the legislature—“shall have general direction and control of the activities of the homeland security and emergency management department and shall be responsible for carrying out the provisions of the All Hazard Emergency Management Act and, in the event of any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state, shall exercise direction and control over any and all state forces and resources engaged in emergency operations or related all hazard emergency management functions within the state.” PHERA at §12-10A-5 (A) authorizes the governor—not the legislature—to declare a public health emergency, after consulting with the secretary of health and to coordinate the response to that emergency. Although HB139 technically allows the governor to retain the power to declare an emergency, it limits the governor's ability to act on that emergency without legislative agreement after an initial 90 days.

OTHER SUBSTANTIVE ISSUES

NMAG notes that Article IV, Section 3 of the New Mexico Constitution states that “Upon the declaration of a disaster emergency the chief executive of the state shall within seven days call a special session of the Legislature which shall remain in continuous session during the disaster emergency, and may recess from time to time for more than three days.” The disaster emergency referred to is defined as “a period when damage or injury to persons or property in this state, caused by enemy attack, is of such magnitude that a state of martial law is declared to exist in the state, and a disaster emergency is declared by the chief executive officer of the United States and the chief executive officer of this state, and the legislature has not declared by joint resolution that the disaster emergency is ended.”

The purpose of AHEMA is to “provide an emergency operations plan for the protection of life and property adequate to cope with disasters resulting from acts of war or sabotage or from natural or man-made causes other than acts of war” (Subsection C of Section 12-10-2 NMSA 1978), which includes the type of disaster specified in the constitution as well as other types of disasters. The restrictions on AHEMA created by this bill would therefore apply to the types of emergencies specified in the constitutional provision, but the restrictions of the constitutional

provision would not appear to apply to the other types of emergencies AHEMA may apply to (such as natural disasters). In the event of a disaster emergency of the type envisioned by the constitutional provision, it appears that complying with the constitutional requirement to call the Legislature into special session within seven days and for the Legislature to remain in continuous session during the term of the emergency would also comply with the requirements of HB139.

ER/DI/sb