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FISCAL IMPACT REPORT

SPONSOR Nibert/Ely/Pettigrew/ Lord/Black ORIGINAL DATE 1/23/22 LAST UPDATED _____ HB 40/ec

SHORT TITLE Termination of States of Emergency SB _____

ANALYST Mulvaney

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands) *

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

*There could be significant loss of federal funding in the case of an emergency be it a health emergency, a fire emergency, or any other emergency.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Energy, Minerals and Natural Resources (EMNRD)
 Department of Health (DOH)
 Homeland Security and Emergency Management (HSEMD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 40 amends the All Hazard Emergency Management Act (AHEMA), Section 12-10-1 NMSA 1978 et. seq, and the Public Health Emergency Response Act (PHERA), Section 12-10A-1 NMSA 1978 et. seq., to provide that a state of emergency terminates after 90 days unless the governor calls the Legislature into special session to address the circumstances of the state of emergency.

HB 40 sets out additional requirements, as follows:

- The special session shall convene no later than the 90th day after the initial declaration of the state of emergency
- The Legislature may restrict, suspend, or terminate a declaration by joint resolution. If the Legislature does not so act, then the declaration may be extended by the governor for a period not to exceed 60 days from the date of adjournment of the

special session.

- A declaration of a state of emergency shall be extended for no more than 60 days. The governor is required to call the Legislature into special session before the expiration of an extension to consider an additional extension, and this procedure shall be repeated until the declaration of the state of emergency is terminated by the governor or the Legislature or automatically upon expiration of the extension if the governor fails to call the Legislature into special session.
- The governor is permitted to declare one state of emergency for an event, and any effort to declare another for the same event requires prior consent of the Legislature for the declaration to be effective.

HB40 also amends Section 12-10A-5 NMSA 1978, within the PHERA, to provide that pursuant to the HB40 amendment of the PHERA listed above, a declaration of a state of public health emergency shall cease to be in effect after 90 days unless the governor calls the Legislature into special session to address the circumstances of the public health emergency.

The Act contains an emergency clause.

FISCAL IMPLICATIONS

The Act could potentially impair the ability of numerous state agencies to receive funding and resources in the event that a declared emergency could be automatically terminated. DOH points out that this could impact the ability of state agencies to continue receiving federal funding and resources which are dependent upon such declarations. HSEMD states that Covid-19 has taught us that a public health crisis can last an entire year. So, in theory, six additional special sessions could be called with the average of two days for each session thus impacting New Mexico at a cost of \$600 thousand minimum.

SIGNIFICANT ISSUES

The executive has survived several judicial challenges brought by members of the Legislature and the public. See, e.g., *Grisham v. Romero*, 2021-NMSC-009 (holding in part that the governor is empowered by law to issue business restrictions and the public health orders were neither arbitrary nor capricious); *Grisham v. Reeb*, 2021-NMSC-006 (holding in part that DOH emergency orders were authorized by law); *State v. Wilson*, 2021-NMSC-022 (holding in part that public health orders issued by DOH are a reasonable exercise of the State's police power to protect public health).

SIGNIFICANT ISSUES

As per EMNRA:

Having a state of emergency which could expire within a relatively short timeline, could set up a circumstance under which New Mexico's declaration expired before the federal processing timeframe concluded, potentially precluding us from accessing funds. Inability to access funds would negatively impact performance of the emergency preparedness or response measures for which funds were requested.

Moreover, HB40, if enacted, could add significant administrative burden to EMNRD's Forestry Division. For example, a large complex fire like the Ute Park fire in 2018 took

the Forestry Division about 48 months to recover all the costs incurred for firefighting. The costs for the Ute Park fire were paid out of more than 13 Executive Orders. It is unclear, if HB40 were enacted, whether the Division would have to seek reauthorization every 90 days for each Executive Order over the two-year period for cost recovery, since multiple orders are often needed to respond to a large and dangerous wildfire, or whether those multiple orders would even be timely permitted. Ultimately, this could impair access to funding and the Forestry Division's ability to respond to complex situations.

As per HSEMD:

Public Health Emergency Crisis can be unpredictable and does not follow a timeline. Living in a current Public Health Emergency Crisis like we are today, we cannot limit a time frame around a crisis. We must be flexible and evolve with the Public Health Crisis as well as work and listen to the medical professionals who have the expertise in understanding what the Public Health Crisis is about. By invoking the Legislative Body every 60 days, it would be costly and would also cause panic, frustration, and mixed messages to the Constituents of New Mexico.

Another concern would be that adding an additional administrative level of oversight could impact the State of New Mexico by delaying distribution of federal funds, PPE, and vaccines for our constituents. To date, New Mexico has been a leading state in proliferating such items to the citizens of New Mexico.

PERFORMANCE IMPLICATIONS

The ability of state agencies' to access federal and state emergency funding may be adversely impacted by the requirement of the Act to call a legislative session over and over again to vote on an emergency declaration during an emergency situation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB40 is related to HJR3 Termination of States of Emergency.

BM/al