

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>Nibert/Pettigrew/Lord</u>	LAST UPDATED _____
	ORIGINAL DATE <u>1/24/23</u>
SHORT TITLE <u>Termination of States of Emergency</u>	BILL NUMBER <u>House Bill 80</u>
	ANALYST <u>Daly</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate but substantial	Indeterminate but substantial	Indeterminate but substantial	Indeterminate but substantial	Recurring	General Fund

Conflicts with SB65 and HJR3

Sources of Information

LFC Files

Responses Received From

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

SUMMARY

Synopsis of House Bill 80

Senate Bill 80 amends the All Hazard Emergency Management Act, which authorizes state and local government responses for disasters generally, to limit any declaration of a state of emergency issued under the act to 90 days unless the governor calls the Legislature into special session within those 90 days to address the circumstances of that state of emergency. The Legislature may restrict, suspend or terminate the declaration; if it does not, the governor may extend the declaration for up to 60 days from adjournment without further legislative action. This process may be repeated as necessary, but the governor may not declare another state of emergency for the same event.

SB80 makes similar amendments to the Public Health Emergency Response Act (PHERA).

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023 (90 days after the Legislature adjourns) if signed.

FISCAL IMPLICATIONS

In a 2021 analysis of similar proposed legislation, the Office of the Governor reported that the Legislative Council Service had estimated a one-day special session in 2015 cost \$54,480. In the first year of the Covid-19 public health emergency, the Office noted the governor would have been required to call four special sessions since her original emergency declaration, a cost of \$217.9 thousand. Because this bill addresses not only public health emergencies but all emergency declarations, such as for wildfires, the number and costs of special sessions may only increase.

In addition, current statute limits emergency allocations to \$750 thousand per emergency, but for years that limit has fallen short of the needs for fire suppression and matching requirements for federal emergency funds. The executive has routinely bypassed this limit by issuing a series of identical orders for \$750 thousand on the same day, effectively allocating millions to address a single disaster. The emergency costs related to the Covid-19 pandemic exceeded this limit at an even greater scale, and the governor issued several orders that outright exceeded the limit, including orders allocating \$10 million and \$20 million to the Department of Health.

SIGNIFICANT ISSUES

HB80 contains language in Section 1(E) that limits the governor to issuance of one declaration of emergency for an event without legislative approval. Should another public health emergency arise, or another large wildfire occur, the current practice of issuing multiple declarations for the same emergency would not be allowed, and only \$750 thousand would be available without the convening of a special session and the granting of prior consent in that session.

In addition, EMNRD expresses concern over the 90 day limitation on a declaration of emergency, which could impact its ability to access federal funds to respond to an emergency, along with its ability to reimburse local governments for fire response on state and private lands. As it notes:

HB80 could add significant administrative burden to EMNRD's Forestry Division. For example, a large complex fire like the Ute Park fire in 2018 required around 48 months of work by the Forestry Division to recover via federal reimbursement all the costs incurred for firefighting. More immediately, at the time of writing the Forestry Division is still in the process of initial recovery of the costs of the Hermits Peak/Calf Canyon wildfire (HPCC). The costs for the HPCC fire were paid out of more than forty-six Executive Orders, as fighting the fire required over 120 days of active fire suppression response. It is unclear, if HB80 was enacted, whether the Forestry Division would have to seek reauthorization from the legislature every 60 days for each executive order issued over the estimated two-year period for cost recovery, since multiple orders are often needed to respond to a catastrophic 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 to public health emergencies, current law requires termination of an emergency declaration after 30 days under PHERA, although the governor may renew the declaration after consultation with the DOH secretary. See Section 12-10A-5(D), NMSA 1978. HB80 requires termination after 90 days, unless legislative action is taken, or for no more than 60 days if no action is taken. DOH warns that termination after 150 days could severely impact the State's ability to respond to a public health emergency. It also advises that federal funding for emergency and disaster relief often depends in part on a state declaration, and fears that critical funding and distribution of those resources may be prematurely terminated or otherwise inhibited by the automatic termination provision of this bill.

DOH goes on to comment:

In order to appropriately respond to emergencies, the executive branch has autonomy to make independent, timely, scientifically based decisions that are not reliant upon the timelines and the politics of the legislative process. Under the separation of powers established by the New Mexico Constitution, the Governor is the chief executive of the state, and the Governor possesses the inherent power to preserve and protect the health and welfare of the state. HB80 would conflict with that constitutional framework and could potentially jeopardize the health and welfare of New Mexicans.

CONFLICT

HB80 conflicts with SB65, which provides that certain public health emergency declarations under PHERA automatically terminate after 45 days without further action by the Legislature or the Legislative Council, while under HB80 any emergency declaration under that act terminates after 90 days, subject to a 60 extension if no legislative action is taken in a special session called for that purpose. SB65 also requires the DOH secretary to transmit copies of any closure/restrictive orders to legislative leadership.

HB80 also conflicts with HJR3, which requires a three-fifths vote of each chamber of the Legislature to restrict, suspend, or terminate a declaration of emergency; action by the Legislature under HB80 would be by simple majority of each chamber.

OTHER SUBSTANTIVE ISSUES

NMAG reports that the Covid-19 era executive orders have survived several judicial challenges. See *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), and *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).

AOC calls attention to a recent report issued by the National Conference of State Legislatures (NCSL) "Legislative Oversight of Emergency Executive Powers," which comments:

Although governors need to be able to respond to emergencies quickly, legislatures have an important role in making sure these powers are not abused and that they do

not undermine the separation of powers vital to our democratic system of government. Legislatures exercise several types of checks on state executives' emergency authority in ways that vary between states. However, some common features exist.

Statutes defining executive authority during an emergency cannot be modified by executive order. Kind of like the fictional rule that a genie's lamp can't be used to wish for more wishes, governors can't promulgate emergency rules that grant themselves authority beyond the statutory limits, even if they otherwise have the power to temporarily alter statutes. As a result, legislatures have the authority to legislate firm limits on emergency executive power. Several states impose specific limits on the exercise of emergency powers. Common restrictions include prohibiting governors from limiting freedom of the press or confiscating citizens' firearms. Additionally, constitutional limits on state authority and any guaranteed rights remain in full effect during an emergency.

Legislatures may retain the power to nullify an emergency proclamation by a resolution. In most cases, it takes a simple majority vote of both chambers. In Louisiana, an emergency declaration may be terminated by a resolution of either chamber. State laws may grant legislatures even greater oversight power by requiring legislative approval for an emergency to continue beyond a specified length of time. If a state's legislature is out of session during an emergency, some states will require the governor to call a special session. Alternatively, some statutes permit an interim committee or group of legislative leaders to extend or reject emergency proclamations.

See full report at <https://www.ncsl.org/research/about-state-legislatures/legislative-oversight-of-executive-orders.aspx>.

MD/al/ne