

LFC Requester:	Davidson, Austin
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment** _____
Correction _____ **Substitute** _____

Date 1/23/24
Bill No: HJR 8

Sponsor: Rep. T. Ryan Lane
Short Title: Declarations of Emergency, CA

Agency Name and Code AOC 218
Number: _____
Person Writing Kathleen Sabo
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflicts with HJR 1, HJR 2, HJR 5, HJR 7, SJR 3, SJR 4, SJR 7 and SJR 10, also proposing to amend Article 4 of the Constitution of NM.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HJR 8 proposes to amend Article 4 of the Constitution of New Mexico, governing the legislative branch, to provide that a state of emergency terminates after ninety days unless the governor calls the legislature into special session to address the circumstances of the state of emergency. Under HJR 8, if the governor fails to call the legislature into special session, the emergency order automatically terminates on its existing expiration date.

HJR 3 sets out additional requirements, as follows:

- The special session shall convene no later than the ninetieth day after the initial declaration of the state of emergency. (Section 1(B))
- The legislature may extend a declaration by joint resolution upon the affirmative vote of three-fifths of the members in each chamber. A joint resolution may extend a state of emergency for up to 90 days and may restrict or modify an emergency order issued pursuant to the emergency declaration. If the legislature does not so act, then the state of emergency shall terminate on its existing expiration date. (Section 1(C))
- The governor is required to call the legislature into special session before the expiration of an extension to consider an additional extension, which procedure shall repeat until the declaration of the state of emergency is terminated by the governor or the legislature. If a joint resolution extending a state of emergency is not approved pursuant to this section, the existing extension shall automatically terminate on its expiration date. (Section 1(D))
- During a declaration of a state of emergency, the legislature may call itself into extraordinary session pursuant to Article 4, Section 6 of the Constitution of NM to restrict, suspend or terminate a declaration of a state of emergency by joint resolution upon the affirmative vote of three-fifths of the members elected to each chamber. (Subsection 1(E))
- 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 of the declaration to be effective.

HJR 8 provides that nothing in the amendment shall modify Article 4, Section 2 of the Constitution of New Mexico.

The HJR 8 amendment is required to be submitted for approval by the voters of the state in the next general election or any special election called for that purpose.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any challenges to the law and/or to extensions, restrictions, suspensions or terminations of states of emergency. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1) Article 4, Section 2 of the Constitution of New Mexico, governing the legislature's powers, generally, and disaster emergency procedure, specifically, requires the governor, within seven days of a declaration of a disaster emergency, to 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 not more than three days. A "disaster emergency" 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."
- 2) There is a concern that HJR 8 could restrict the governor's ability to respond promptly and thoroughly to an emergency situation, as well as a concern that the legislature may not be able to safely assemble during certain types of emergencies.
- 3) On 1/21/21, the National Conference of State Legislatures (NCSL) published its report titled, "Legislative Oversight of Emergency Executive Powers," at <https://www.ncsl.org/about-state-legislatures/legislative-oversight-of-emergency-executive-powers>. The report was last updated on September 22, 2023. The report contains a table listing and describing statutes addressing legislatures and emergency declarations, that have been enacted by the states. The report also contains listings of 2020, 2021, 2022 and 2023 bills and resolutions from the various states that address legislative oversight of executive powers.

The NCSL report notes that

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. Governors cannot 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. 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 <https://www.ncsl.org/about-state-legislatures/legislative-oversight-of-emergency-executive-powers>.

- 4) It can be anticipated that an argument may be made that HJR 8 seeks to grant certain powers to the Legislature that are reserved specifically to the Executive under the Constitution of NM. “The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.” Art. III, § 1, NM Constitution. “The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed.” Id. at Art. V, § 4.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HJR 1, HJR 2, HJR 5, HJR 7, SJR 3, SJR 4, SJR 7 and SJR 10, also proposing to amend Article 4 of the Constitution of NM.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS