

**LFC Requester:**

**Kelly Klundt**

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**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**      X      **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_    **Substitute**    \_\_\_\_\_

**Date Prepared:**    January 26, 2024

**Bill No:**    SB 194

**Sponsor:**    Sens. G. Baca, G. Nibert

**Short Title:**    Termination of Public Health Orders

**Agency Name and Code Number:**    305 – New Mexico Department of Justice  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Under the Emergency Powers Code (EPC, the governor may, after consultation with the secretary of health, declare a public health emergency. *See* NMSA 1978, § 12-10A-5 (2003). Under existing law, a declared public health emergency remains in place until it is terminated by the governor or automatically after 30 days unless extended by the governor. *See* Section 12-10A-5(D). Senate Bill (“SB”) 194 would change existing law related to the termination of a public health order “of general applicability throughout the state or a portion of the state that closes any public place or forbids or limits gatherings of people.”

Section 1 of the bill would create a new section in the EMC. Subsection (A) would require the governor to transmit copies of any public health order “of general applicability throughout the state or a portion of the state that closes any public place or forbids or limits gatherings of people” to certain legislative personnel (speaker of house, etc.). Subsection (B) would provide that any such public health order shall terminate automatically after 30 days, and no new order shall issue for the “same subject matter” unless extended by a joint resolution of the Legislature (if in session) or a joint statement transmitted by the governor and signed by three of the following: president pro tempore of the senate, minority floor leader of the senate, speaker of the house, or minority floor leader of the house.

Section 2 of the bill would amend Section 12-10A-5, which governs the procedure for declaring a public health emergency and its termination. It adds a requirement that a public health order “of general applicability throughout the state or a portion of the state that closes any public place or forbids or limits gatherings of people” must state whether the expected duration is greater than 14 days and for all other orders whether the expected duration is less than 30 days. It would require the governor to transmit copies of any public health order “of general applicability throughout the state or a portion of the state that closes any public place or forbids or limits gatherings of people” to certain legislative personnel (speaker of house, etc.). Finally, it provides that any such public health order shall terminate automatically after 30 days, and no new order shall issue for the “same subject matter” unless extended by a joint resolution of the Legislature (if in session) or a joint statement transmitted by the governor and signed by three of the following: president pro tempore of the senate, minority floor leader of the senate, speaker of the house, or minority floor leader of the house.

Section 3 of the bill would create a new section in the EMC. Subsection (A) would require the

secretary of health to transmit copies of any public health order “of general applicability throughout the state or a portion of the state that closes any public place or forbids or limits gatherings of people.” Subsection (B) would provide that any such public health order shall terminate automatically after 30 days, and no new order shall issue for the “same subject matter” unless extended by a joint resolution of the Legislature (if in session) or a joint statement transmitted by the governor and signed by three of the following: president pro tempore of the senate, minority floor leader of the senate, speaker of the house, or minority floor leader of the house.

Section 4 declares an emergency, and this bill would take effect immediately.

## **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

## **SIGNIFICANT ISSUES**

N/A

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill conflicts with the procedure for terminating a declared emergency that is proposed in HJR 8.

## **TECHNICAL ISSUES**

This bill disallows a new public health order on the “same subject matter” as a previous one unless authorized by the Legislature. It contains no temporal limits - as an example, it could theoretically bar the governor from issuing a second public health order for an infectious disease if a previous order was issued for the same infectious disease years prior. The phrase “same subject matter” is an ambiguous term susceptible to both narrow and broad constructions.

## **OTHER SUBSTANTIVE ISSUES**

This bill is repetitive and would result in several duplicative provisions in Article 10A in Chapter 12 of the NMSA. Section 1 (subsection (B)), Section 2 (addition of Section 12-10A-5 (E)(2)), and Section 3 (subsection (B)) of this bill all contain the same substantive provision stating that any qualifying public health order shall terminate automatically after 30 days, and no new order shall issue for the “same subject matter” unless extended by a joint resolution of the Legislature (if in session) or a joint statement transmitted by the governor and signed by three of the following: president pro tempore of the senate, minority floor leader of the senate, speaker of the house, or minority floor leader of the house. Subsection (B) from both Section 1 and Section 3 can be deleted, because the substance is covered by Section 2’s amendment to Section 12-10A-5(E)(2).

Moreover, Section 1 (subsection (A)) and Section 2 (addition of Section 12-10A-5(C)) both identically require the governor to transmit copies of a qualifying order to certain legislative personnel. The requirement that the governor transmit copies in Section 2 should be deleted because it is covered by Section 1.

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo for public health orders

**AMENDMENTS**

N/A