

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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

House Joint Resolution (“HJR”) 8 proposes a constitutional amendment aimed at curtailing the emergency powers of the governor. It proposes to add a new section to Article 4 of the New Mexico Constitution, providing for the following:

- Generally, this bill declares that a state of emergency declared by the governor expires after 90 days unless the governor calls a special session to address the circumstances of the emergency. The special session must convene within 90 days.
- This bill provides that a state of emergency declared by the governor may only be extended by joint resolution upon a 3/5 vote of both chambers of the Legislature. The bill provides that the governor may call the Legislature into a special session to consider additional extensions.
- This bill provides the Legislature with the power to call itself into an extraordinary session, pursuant Article 4, § 6, if the governor declares a state of emergency. At the extraordinary session, the Legislature is given the power to restrict, suspend, or terminate the state of emergency by a 3/5 vote by both chambers.
- Finally, this bill provides that the governor may only declare one state of emergency for “an event” and that any effort to declare a further emergency for the same event requires prior consent from the Legislature.

FISCAL IMPLICATIONS

The fiscal implications of this resolution are not yet clear. If the resolution were to pass, then it would be presented to the voters of New Mexico, most likely at the next general election in November. Then, it would only have any effect in the event of an emergency. The resolution does not create any revenue sources or appropriations, do there are no direct fiscal implications. The indirect fiscal implications, which could be substantial, would depend on the nature of the emergency. The limitation on the duration of an emergency would likely to save the state money in the short term, as the governor is given substantial spending powers. However, given that special sessions would likely be required, perhaps under fairly difficult situations, this would be an additional expense incurred by the state. Moreover, if an emergency were to be cancelled

prematurely, the hazardous event would likely have a greater impact on the economy of the state, which would result in a net loss of revenue.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

Section 1, paragraph F, which prevents two states of emergency from being declared per “event,” but does not define the term. For instance, if there were an extended period of stormy weather, and multiple high wind incidents (tornadoes or derechos) resulted, would each wind incident be considered to be an event? Or would the whole weather pattern be considered one event? Or, for instance, would different waves of an infectious pandemic be considered multiple “events”?

OTHER SUBSTANTIVE ISSUES

Parts of this bill are inconsistent with existing procedures governing emergency declarations by the governor. For example, NMSA 1978, § 12-10A-5(D) (2003) provides that a declared public health emergency shall be terminated by the governor or automatically after 30 days unless extended by the governor. As another example, NMSA 1978, § 12-12-5 (1980) provides that the governor has the sole power to terminate a declared energy emergency or energy supply emergency. Because this bill amends the Constitution, if enacted, it would supersede existing statutory law. However, litigation may be required to establish the constitutional supremacy.

This proposed amendment would transfer a substantial amount of responsibility for the continuation and modification of states of emergencies from the governor to the legislature.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A