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FISCAL IMPACT REPORT

SPONSOR Nibert/Ely/Pettigrew/ Dow **ORIGINAL DATE** 1/23/22
LAST UPDATED _____ **HJR** 3
SHORT TITLE Termination of States of Emergency, CA **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 very 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 Department (HSEMD)
 Administrative Office of the Courts (AOC)

BILL SUMMARY

Synopsis of Bill

House Joint Resolution 3 proposes to amend Article 4 of the New Mexico Constitution by adding a new section that would limit the length of time a governor may declare an emergency without intervention or approval of the Legislature. HJR3 specifies a governor’s emergency declaration will expire after 90 days unless the governor calls the Legislature into special session prior to that deadline. The bill permits the Legislature to restrict, suspend, or terminate a declaration of emergency during the special session, but if it does not do so, the governor may extend the declaration for up to 60 days after the adjournment of the special session. Subsequent extensions of up to 60 days each require the governor to call the Legislature into special session, continuing until the declaration of emergency is terminated by the governor or the Legislature or on expiration of the extension if the governor does not call the Legislature back into special session to renew it. The resolution provides that the governor may only declare one state of

emergency for an event; declaring another state of emergency for the same event requires prior consent of the Legislature for the declaration to be effective. The resolution states that it does not modify the Legislature’s power to address a “disaster emergency” provided by Article 4, Section 2 of the New Mexico Constitution (caused by an enemy attack of “such magnitude that a state of martial law is declared” and the U.S. president and governor declare an emergency).

FISCAL IMPLICATIONS

Passing HJR3 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 the State for a minimum of \$600 thousand.

As per EMNRD:

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.

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the SoS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The SoS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$125 thousand-\$150 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

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).

HJR3 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
- 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 sixty days from the date of adjournment of the special session.

- A declaration of a state of emergency shall be extended for no more than sixty 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 of the declaration to be effective.

OTHER SIGNIFICANT ISSUES

As per EMNRD:

[I]f [HJ3] is enacted, [it] 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 thirteen Executive Orders. It is unclear, if [HJ3] 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 a state agency 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 the vote on an emergency declaration during an emergency situation.

RELATIONSHIP

HJR3 is related to HB40 Termination of States of Emergency.

BM/al