

LFC Requester:

Kelly Klundt

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

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

Date Prepared: 2/21/2025

Check all that apply:

Bill Number: House Bill 535

Original

Correction

Amendment

Substitute

Sponsor: Sen. Stefani Lord  
Sen. Jay C. Block

Agency Name and Code Number: 305 – New Mexico  
Department of Justice

Person Writing

Analysis: Blaine N. Moffatt

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#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY25          | FY26 |                           |               |
|               |      |                           |               |
|               |      |                           |               |

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

| Estimated Revenue |      |      | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY25              | FY26 | FY27 |                           |               |
|                   |      |      |                           |               |
|                   |      |      |                           |               |

(Parenthesis ( ) indicate revenue decreases)

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

|              | FY25 | FY26 | FY27 | 3 Year<br>Total Cost | Recurring<br>or<br>Nonrecurring | Fund<br>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**

Synopsis:

Section 1: House Bill 535 (“HB535”) proposes that a declaration of emergency pursuant to the All Hazard Emergency Management Act would automatically terminate after ninety (90) days, unless the governor calls the legislature into special session within that time. Such special session must convene prior to the ninetieth (90<sup>th</sup>) day after the initial declaration of the state of emergency. The legislature may restrict, suspend, or terminate the state of emergency by resolution. Should there not be a vote by the legislature to restrict, suspend, or terminate the state of emergency, then the governor may extend the emergency by sixty (60) days beyond the close of the special session. Additional extensions shall be passed by a special session of the legislature and terminated either by the legislature, the governor, or the expiration of the emergency. Only one state of emergency for a particular event may be declared without specific consent of the legislature.

Section 2: HB535 proposes that a declaration of emergency pursuant to the Public Health Emergency Response Act would automatically terminate after ninety (90) days, unless the governor calls the legislature into special session within that time. Such special session must convene prior to the ninetieth (90<sup>th</sup>) day after the initial declaration of the state of emergency. The legislature may restrict, suspend, or terminate the state of emergency by resolution. Should there not be a vote by the legislature to restrict, suspend, or terminate the state of emergency, then the governor may extend the emergency by sixty (60) days beyond the close of the special session. Additional extensions shall be passed by a special session of the legislature and terminated either by the legislature, the governor, or the expiration of the emergency. Only one state of emergency for a particular event may be declared without specific consent of the legislature.

Section 3: HB535 seeks to amend NMSA 1978, Section 12-10A-5(D)(2) to add the following: “provided that pursuant to Section 2 of this 2025 act, a declaration of a state of public health emergency shall cease to be in effect after ninety days unless the governor calls the legislature into special session to address the circumstances of the public health emergency.”

**FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

HB535 could limit the executive branch's ability to execute emergency orders and powers during a prolonged emergency. The New Mexico Supreme Court has held that the executive branch has the ability through the inherent constitutional police powers to issue emergency orders subject to review. *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).

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

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

### **Conflict:**

Senate Bill 340 ("SB340"): Relating to public emergencies: Terminating declarations of emergency orders or rules restricting commerce, public assembly and personal conduct after thirty (30) days. SB340 would also authorize limited gubernatorial extensions of declarations, orders, or rules and provide for legislative extensions of declarations, orders, or rules.

### **Companionship:**

House Joint Resolution 17 ("HJR17"): HJR17 proposed an amendment to the New Mexico Constitution Article IV to provide that a declaration of a state of emergency pursuant to a power granted to the Governor by law and orders issued in accordance with that declaration shall terminated within ninety (90) days and not be re-declared unless the declaration of the state of emergency is extended, modified, or terminated by a joint resolution of the Legislature on an affirmative vote of three-fifths (3/5) of each house of the Legislature. HJR17 would allow for the limitations of HB535. HJR17 and HJR 21 are duplicative of one another.

House Joint Resolution 21 ("HJR21"): HJR21 proposed an amendment to the New Mexico Constitution Article IV to provide that a declaration of a state of emergency pursuant to a power granted to the Governor by law and orders issued in accordance with that declaration shall terminated within ninety (90) days and not be re-declared unless the declaration of the state of emergency is extended, modified, or terminated by a joint resolution of the Legislature on an affirmative vote of three-fifths (3/5) of each house of the Legislature. HJR21 would allow for the limitations of HB535. HJR21 and HJR17 are duplicative of one another.

### **Relationship:**

House Bill 436 ("HB436"): Relating to public emergencies: HB436 would require rules, orders, or other directives issued by government entities pursuant to the All Hazard Emergency Management Act, the Public Health Emergency Response Act, the Riot Control Act, or the

Energy Emergency Powers Act that close certain businesses or facilities and that include exemptions for some businesses or facilities also include exemptions for facilities operated by religious organizations that are exempt from taxation pursuant to federal law.

House Bill 249 (“HB249”): Relating to unemployment compensation law: allowing the secretary of workforce solutions to waive the one week waiting period requirements for eligibility for benefits in the event of a federal or state emergency or disaster declaration

#### **TECHNICAL ISSUES**

N/A

#### **OTHER SUBSTANTIVE ISSUES**

N/A

#### **ALTERNATIVES**

N/A

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

Status quo

#### **AMENDMENTS**

N/A