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FISCAL IMPACT REPORT

SPONSOR Nibert/Ely ORIGINAL DATE 2/13/21
 LAST UPDATED _____ HJR 6

SHORT TITLE Termination of Emergency Declarations, CA SB _____

ANALYST Rabin/Iglesias

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Election costs		\$150.0- \$200.0		\$150.0- \$200.0	Nonrecurring	General Fund
Legislative Costs	See Fiscal Implications					General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 139, House Bill 159, House Bill 180, Senate Bill 295
 Conflicts with Senate Bill 74

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Governor
 Department of Health (DOH)
 Attorney General's Office (NMAG)
 Department of Homeland Security and Emergency Management (DHSEM)
 Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

House Joint Resolution 6 proposes to ask voters to add a new section to Article 4 of the New Mexico Constitution establishing limits on the length of time a governor's emergency orders can remain in effect without legislative approval.

HJR6 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 bill 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 constitutional amendment would only be effective if passed by voters in the next general election (2022) or via a statewide special election held for this purpose.

FISCAL IMPLICATIONS

The Office of the Governor notes the Legislative Council Service estimated a one-day special session in 2015 cost \$54,480. In the case of the current Covid-19 public health emergency, the office notes the governor would have been required to call four special sessions since her original emergency declaration, a cost of \$217.9 thousand.

It is impossible to predict what emergencies may occur in the future or the length of emergency declarations that would be required under the provisions of this bill. Future years may see no long-term emergency declarations, thus creating no additional costs for special sessions, or may see shorter emergencies than the Covid-19 pandemic, prompting fewer special sessions and lower costs.

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. 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 \$150 thousand to \$200 thousand, depending upon the size and number of ballots and if additional ballot stations are needed.

SIGNIFICANT ISSUES

The Office of the Governor, the Department of Health (DOH), and the Department of Homeland Security and Emergency Management (DHSEM) all raise concerns this bill could restrict the executive's ability to respond promptly and thoroughly to an emergency situation.

The Office of the Governor notes the purpose of current laws giving the governor emergency powers – the All Hazard Emergency Management Act (AHEMA) and the Public Health Emergency Response Act (PHERA) – is to establish an effective, rapid, and flexible mechanism to manage and respond to emergencies but only provides the executive with the authority to exercise these provisions during a declared state of emergency. The office adds the Legislature may not be able to safely assemble during certain types of emergencies. Finally, the office states the Legislature has the authority to call a special session itself if it disapproves of a continued state of emergency.

DOH and DHSEM also note federal funding for emergency and disaster relief often depends in part on a state's declaration of an emergency and express concerns that critical funding and distribution of resources for emergency response may be terminated or otherwise inhibited by the automatic termination of a declared state of emergency.

DHSEM notes the amendment proposed in HJR6 may create confusion over the lines of authority between the executive leading response and recovery efforts during an emergency, and the Legislature independently dictating an incident timeframe.

DHSEM explains that, while disaster response does occur in the days immediately following the disaster, the recovery phase can last for weeks, months, or years, depending on the specific damage, extent of its impact, and available resources to remediate the damage. The agency notes that most emergency declarations in the last five years have lasted longer than 90 days because the recovery phase is a required aspect of emergency management. DHSEM notes limiting the timeline for a state disaster declaration deprives state agencies, local governments, and tribal entities of sufficient time to respond to and recover from such events, potentially jeopardizing lives and property.

The Energy, Minerals and Natural Resources Department (EMNRD) expresses concerns HJR6 could impact the state's ability to fight wildfires because it would likely apply to disaster declarations under Sections 12-11-23 through 25 NMSA 1978. These disaster declarations are issued as wildfire season hits – which is generally longer than 90 days – and cover expenses for multiple wildfires. EMNRD states HJR6's limitations on duration of emergencies and its prohibition on declaring multiple emergencies for a single event (such as wildfire season) without legislative consent conflict with the current system for funding wildfire mitigation.

CONFLICT, RELATIONSHIP

HJR6 may conflict with Senate Bill 74, which also imposes restrictions on emergency health orders, including requiring legislative approval to continue certain types of emergencies longer than 14 days.

HJR6 relates to House Bill 139, which proposes to amend statute to apply the same restrictions as HJR6 on emergency declarations under AHEMA and PHERA.

HJR6 relates to House Bill 159, which amends provisions governing rulemaking under PHERA to prohibit agencies from promulgating rules that add to or alter the New Mexico Administrative Code when a public health order is in effect, unless the proposed rule changes are authorized by the governor

HJR6 relates to Senate Bill 295, which revises the system for executive allocations of emergency funding from the general fund by clarifying the emergency or disaster situations for which such funding may be allocated, restricting the allowable funding sources and amounts that may be allotted, and establishing requirements for reporting on allocations and expenditures.

TECHNICAL ISSUES

The Attorney General notes the following technical issues:

The HJR6 provisions for the special session called by the governor for extension of an emergency declaration do not specify what actions the legislature must take during the session regarding the extension. Therefore, it is not clear whether the legislature would be required to take a vote to restrict, suspend or terminate the emergency declaration and, if so, by what margin.

Under HJR6 as drafted, it seems a governor could not declare both a disaster emergency and a public health emergency or declare an emergency for a toxic spill at the same time as a public health emergency. If that is not the kind of situation intended in the constitutional amendment, perhaps the word “event” could be defined for clarity.

ER/DI/sb/al