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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Nibert/Pettigrew/Lord</u>	<b>LAST UPDATED</b> <u>3/2/23</u>	<b>ORIGINAL DATE</b> <u>1/27/23</u>
<b>SHORT TITLE</b> <u>Termination of States of Emergency, CA</u>	<b>BILL NUMBER</b> <u>House Joint Resolution 3</u>	<b>ANALYST</b> <u>Daly</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS	\$0.0	\$0.0	\$150.0-200.0	\$150.0-200.0	Nonrecurring	General Fund
Special Sessions				See Fiscal Implications for future year costs	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

Conflicts with SB65 and HB80

### Sources of Information

LFC Files

### Responses Received From

Secretary of State (SOS)  
 New Mexico Attorney General (NMAG)  
 Department of Health (DOH)  
 Homeland Security and Emergency Management Department (HSEMD)

## SUMMARY

### Synopsis of House Joint Resolution 3

House Joint Resolution 3 proposes to amend Article 4 of the New Mexico Constitution to limit any declaration of a state of emergency issued by the governor to 90 days unless the governor calls the Legislature into special session within those 90 days to address the circumstances of that state of emergency. The Legislature may restrict, suspend, or terminate the declaration upon affirmative vote of three-fifths of the members of each chamber; if it does not, the governor may extend the declaration for up to 60 days from adjournment without further legislative action. This process may be repeated as necessary, but the governor may not declare another state of emergency for the same event.

HJR3 is to be submitted for approval by the people of the state in the next general election (November 2024) or any special election called for that purpose.

## FISCAL IMPLICATIONS

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 10 percent of the registered voters in the state. SOS is also required to publish the samples 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 on the size and number of ballots and if additional ballot stations are needed.

As to the provisions requiring the calling of special sessions, in a 2021 analysis of similar proposed legislation, the Office of the Governor reported that the Legislative Council Service had estimated a one-day special session in 2015 cost \$54,480. In the first year of the Covid-19 public health emergency, the Office noted the governor would have been required to call four special sessions since her original emergency declaration, a cost of \$217.9 thousand. Because this bill addresses not only public health emergencies but all emergency declarations, such as for wildfires, the number and costs of special sessions may only increase.

In addition, current statute limits emergency allocations to \$750 thousand per emergency, but for years that limit has fallen short of the needs for fire suppression and matching requirements for federal emergency funds. The executive has routinely bypassed this limit by issuing a series of identical orders for \$750 thousand on the same day, effectively allocating millions to address a single disaster. The emergency costs related to the Covid-19 pandemic exceeded this limit at an even greater scale, and the governor issued several orders the outright exceeded the limit, including orders allocating \$10 million and \$20 million to the Department of Health.

## SIGNIFICANT ISSUES

HJR3 contains language in Section 1(E) that limits the governor to issuance of one declaration of emergency for an event without legislative approval. Should another public health emergency arise, or another large wildfire occur, the current practice of issuing multiple declarations for the same emergency would not be allowed, and only \$750 thousand would be available without the convening of a special session and the granting of prior consent in that session.

EMNRD expresses concern over the 90 day limitation on a declaration of emergency, which could impact its ability to access federal funds to respond to an emergency, along with its ability to reimburse local governments for fire response on state and private lands. As it noted, the limitation:

Could add significant administrative burden to EMNRD's Forestry Division. For example, after the Ute Park fire in 2018 there was a 48 month delay for the state to all the reimbursable expenses incurred for fighting that large, complex fire. The costs for the Ute Park fire were paid out of more than thirteen Executive Orders. The Forestry Division is currently in the process of cost recovery for the 2022 Hermits Peak/Calf Creek (HPCC) fire, which is expected to take 48 months. The initial costs for the HPCC fire were paid out of more than seventy Executive Orders.

EMNRD also questions whether this limitation would require its Forestry Division to:

Have to seek reauthorization from the legislature every 90 days for each executive order while waiting for cost reimbursements, since multiple orders are often needed to respond to a catastrophic wildfire, or whether those multiple executive order requests could even be authorized. Ultimately, impaired access to funding will limit the Forestry Division's ability to respond to large, complex long-duration wildfires.

As to public health emergencies, current law requires termination of an emergency declaration after 30 days under PHERA, although the governor may renew the declaration after consultation with the DOH secretary. See Section 12-10A-5(D), NMSA 1978. Like HB80, HJR3 requires termination after 90 days, unless legislative action is taken, or for no more than 60 days after adjournment if no action is taken. DOH warned in its HB80 analysis that termination after 150 days could severely impact the State's ability to respond to a public health emergency. It also advised that federal funding for emergency and disaster relief often depends in part on a state declaration, and fears that critical funding and distribution of those resources may be prematurely terminated or otherwise inhibited by the automatic termination provision of this resolution.

DOH, in its HB80 analysis, went on to comment:

In order to appropriately respond to emergencies, the executive branch has autonomy to make independent, timely, scientifically based decisions that are not reliant upon the timelines and the politics of the legislative process. Under the separation of powers established by the New Mexico Constitution, the Governor is the chief executive of the state, and the Governor possesses the inherent power to preserve and protect the health and welfare of the state. HB80 would conflict with that constitutional framework and could potentially jeopardize the health and welfare of New Mexicans.

Similarly, in its analysis of HB80, HSEMD commented that an emergency requires quick action and decisions based on preparedness and policies enacted prior to an emergency. It warns that passage of legislation like HJR3 could cause potentially serious and detrimental delays in the crisis management.

## **CONFLICT**

HJR3 conflicts with SB65, which provides for an automatic termination of an emergency public health declaration 45 days after issuance.

HJR3 also conflicts with HB80, which amends current law to limit the duration of emergency declarations to 90 days unless the Legislature by a simple majority vote (not three-fifths) in each chamber restricts, suspends or terminates that declaration

## **OTHER SUBSTANTIVE ISSUES**

NMAG reports that the Covid-19 era executive orders have survived several judicial challenges. See *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), and *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).

In its analysis of HB80, AOC called attention to a recent report issued by the National Conference of State Legislatures (NCSL) “Legislative Oversight of Emergency Executive Powers,” which comments:

Although governors need to be able to respond to emergencies quickly, legislatures have an important role in making sure these powers are not abused and that they do not undermine the separation of powers vital to our democratic system of government. Legislatures exercise several types of checks on state executives' emergency authority in ways that vary between states. However, some common features exist.

Statutes defining executive authority during an emergency cannot be modified by executive order. Kind of like the fictional rule that a genie’s lamp can’t be used to wish for more wishes, governors can’t promulgate emergency rules that grant themselves authority beyond the statutory limits, even if they otherwise have the power to temporarily alter statutes. As a result, legislatures have the authority to legislate firm limits on emergency executive power. Several states impose specific limits on the exercise of emergency powers. Common restrictions include prohibiting governors from limiting freedom of the press or confiscating citizens' firearms. Additionally, constitutional limits on state authority and any guaranteed rights remain in full effect during an emergency.

Legislatures may retain the power to nullify an emergency proclamation by a resolution. In most cases, it takes a simple majority vote of both chambers. In Louisiana, an emergency declaration may be terminated by a resolution of either chamber. State laws may grant legislatures even greater oversight power by requiring legislative approval for an emergency to continue beyond a specified length of time. If a state's legislature is out of session during an emergency, some states will require the governor to call a special session. Alternatively, some statutes permit an interim committee or group of legislative leaders to extend or reject emergency proclamations.

See full report at <https://www.ncsl.org/research/about-state-legislatures/legislative-oversight-of-executive-orders.aspx>.

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