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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

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

**Date Prepared:** 2/11/25 *Check all that apply:*  
**Bill Number:** SB 340 Original  Correction   
 Amendment  Substitute

**Sponsor:** Sen. Jay C. Block **Agency Name and Code** AOC  
**Short Title:** Declarations of Emergency Changes **Number:** 218  
**Person Writing** Kathleen Sabo  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: SB 340 amends Section 12-10-4 NMSA 1978, within the All Hazard Emergency Management Act, (AHEMA) to place limitations upon the powers of the governor currently enumerated in the statute and with regard to emergency management.

Specifically, the SB 340 amendment to Section 12-10-4 NMSA 1978 requires an order or rule that restricts commerce, public assembly or a person's apparel, conduct or transport of personal items pursuant to the AHEMA to terminate at the end of 30 days unless prior to the termination:

- (1) The legislature extends the order or rule through legislation; or
- (2) The governor extends the order or rule upon a determination in writing that the order or rule needs to be extended to address the underlying emergency; provided that the governor may only extend an order or rule two times for a period of up to thirty days for each extension.

SB 340 also amends Section 12-10A-5 NMSA 1978, within the Public Health Emergency Response Act, (PHERA) to require a state of public health be terminated automatically after 30 days, unless prior to the termination date the declaration is extended by:

- (a) The legislature through legislation; or
- (b) The governor after consultation with the Secretary of Health; provided that the governor may only extend a declaration of a state of public health emergency two times, for up to thirty days for each extension.

#### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any challenges to the law and/or to restrictions, suspensions or terminations of states of emergency. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

#### **SIGNIFICANT ISSUES**

- 1) SB 19, introduced during the first special session of 2020, also provided for automatic termination of emergency orders and required approval of the legislature for renewal or amendment of the order. (See <https://www.nmlegis.gov/Sessions/20%20Special/bills/senate/SB0019.pdf>.) In its SB 19 FIR, the LFC noted the following argument regarding separation of powers made by the DOH

SB19 seeks to grant certain powers to the Legislature that are reserved specifically to the Executive under the New Mexico Constitution. "The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged

with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.” Art. III, § 1, NM Constitution. “The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed.” Id. at Art. V, § 4.

SB19 provides the Legislature with the ability to approve public health orders issued by the Executive (NMDOH) that are longer than 14 days. This may have the effect of significantly interfering with and restraining the Governor’s ability to execute the laws of the state.

On 1/21/21, the National Conference of State Legislatures (NCSL) published its report titled, *Legislative Oversight of Emergency Executive Powers*, at <https://www.ncsl.org/research/about-state-legislatures/legislative-oversight-of-executive-orders.aspx>. The report contains a table listing and describing statutes addressing legislatures and emergency declarations, that have been enacted by the states. The report also contains listings of 2020 and 2021 bills and resolutions from the various states that address legislative oversight of executive powers. (New Mexico’s 2021 SB 74 and 2020 SB 19 are not listed, while 2020’s HB 2, introduced during the Second Special Session, is.)

The NCSL report notes that

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

**Note:** the NCSL has collected legislation related to the COVID-19 pandemic (e.g., actions related to health or emergency management legislation, by state. See NCSL's *Covid-19 Legislation Archived Database*, including state legislation addressing legislative oversight of executive authority at <https://www.ncsl.org/health/covid-19-archive-database> .

- 2) The FIR for 2021's HB 139 (<https://www.nmlegis.gov/Sessions/21%20Regular/firs/HB0139.PDF>), providing that a declaration of a state of emergency pursuant to the All Hazard Emergency Management Act or the Public Health Emergency Response Act terminates after 90 days unless the governor calls the legislature into special session to address the circumstances of the emergency reveals that the Office of the Governor, the Department of Health (DOH) and the Department of Homeland Security and Emergency Management (DHSEM) raised concerns that HB 139 could restrict the governor's ability to respond promptly and thoroughly to an emergency situation. The Governor's Office noted that the legislature may not be able to safely assemble during certain types of emergencies.
- 3) The SB 340 amendments to Section 12-10-4 NMSA 1978 and 12-10A-5 NMSA 1978 allow for extension of an order or declaration or rule by the legislature through legislation. There is no explanation of how the legislature would draft and take legislation through the committee process and on to final votes and then seek the governor's signature at a time when the legislature was not in session, but it can probably be presumed that a special session would need to be called.

In the FIR for 2021's HB 139, it was stated that the

Office of the Governor notes that 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, [at] 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.

See <https://www.nmlegis.gov/Sessions/21%20Regular/firs/HB0139.PDF>

## **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

## **ADMINISTRATIVE IMPLICATIONS**

See "Fiscal Implications," above.

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

None.

## **TECHNICAL ISSUES**

1) In the 2021 FIR for HB 139, the Attorney General's Office noted the following potential technical issues:

HB 139 leaves unamended language in AHEMA it directly contravenes. AHEMA states that the governor—not the legislature—“shall have general direction and control of the activities of the homeland security and emergency management department and shall be responsible for carrying out the provisions of the All Hazard Emergency Management Act and, in the event of any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state, shall exercise direction and control over any and all state forces and resources engaged in emergency operations or related all hazard emergency management functions within the state.” PHERA at §12-10A-5 (A) authorizes the governor—not the legislature—to declare a public health emergency, after consulting with the secretary of health and to coordinate the response to that emergency. Although HB 139 technically allows the governor to retain the power to declare an emergency, it limits the governor's ability to act on that emergency without legislative agreement after an initial 90 days.

See <https://www.nmlegis.gov/Sessions/21%20Regular/firs/HB0139.PDF>

The same can be said for SB 340.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

## **AMENDMENTS**