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FISCAL IMPACT REPORT

SPONSOR <u>Lane/Townsend/Armstrong/Lord/Block</u>	LAST UPDATED	<u>2/2/2024</u>
	ORIGINAL DATE	<u>2/2/2024</u>
	BILL	House Joint
SHORT TITLE <u>Declarations of Emergency, CA</u>	NUMBER	<u>Resolution 8</u>
	ANALYST	<u>Hanika-Ortiz</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS/Elections	No fiscal impact	\$75.0 to \$85.0	No fiscal impact		Nonrecurring	General Fund
Up to four Sessions (if HJR8 is approved)	No fiscal impact	\$70.5 to \$282.2	\$70.5 to \$282.0		Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates and/or Conflicts with HJR1, HJR2, HJR5, HJR7, SJR3, SJR4, SJR7 and SJR10

Sources of Information

LFC Files

Agency Analysis Received From
Administrative Office of the Courts (AOC)
New Mexico Attorney General (NMAG)
Secretary of State (SOS)

SUMMARY

Synopsis of House Joint Resolution 8

House Joint Resolution 8 (HJR8) proposes to amend Article 4 of the Constitution of New Mexico to limit a declaration of a state of emergency to 90 days, unless a special session is called. At that time, upon the affirmative vote of three-fifths of members from each chamber, the Legislature may by joint resolution extend the state of emergency for up to 90 days and may restrict or modify an emergency order. If it does not act, the state of emergency would terminate on its expiration date.

The governor may call the Legislature into special session before the expiration of an extension, to consider an additional extension. If the joint resolution is not approved, the extension would terminate on its expiration date. HJR8 would also allow the Legislature to call itself into an extraordinary session, during a declaration of a state of emergency, to restrict, suspend, or

terminate an emergency order if three-fifths of the members from each chamber vote in the affirmative. To declare another state of emergency for the same event, prior consent of the Legislature is needed.

The joint resolution provides the amendment be put before the voters at the next general election (November 2024) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by a majority of the voters.

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 \$75 thousand to \$85 thousand depending on the size and number of ballots and if additional ballot stations are needed.

In a prior fiscal impact report for a similar bill, it stated a one-day special session in 2015 cost \$54,480. Adjusted for inflation, that amount is about \$70,543 today, assuming an average inflation rate of 3 percent from 2015 to 2024. In the first year of the Covid-19 public health emergency, the governor would have been required to call four special sessions since her original emergency declaration, at a cost of \$282,172 in today's dollars. Because this bill addresses all emergency declarations, including wildfires, the number and costs of special sessions may only increase.

SIGNIFICANT ISSUES

In its analysis for a similar bill last year, the Department of Health (DOH) explained the statute limited emergency allocations to \$750 thousand, but that limit fell short of the needs at that time and the 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 alone exceeded this limit at an even greater scale, and the governor issued several orders that outright exceeded the limit, including orders allocating \$10 million and \$20 million to DOH.

HJR8 would limit the governor to the issuance of one declaration of emergency for an event, without legislative approval. Should another emergency arise, the practice of issuing multiple declarations for the same emergency would no longer be allowed, and only \$750 thousand would be available, without the convening of a special session and the Legislature giving prior consent.

PERFORMANCE IMPLICATIONS

According to NMAG, parts of this bill are inconsistent with existing procedures governing emergency declarations. For example, Section 12 -10A-5(D) NMSA 1978 (2003) provides that a declared public health emergency shall be terminated by the governor or automatically after 30 days unless extended by the governor. Because this bill amends the Constitution, it would

supersede existing law. However, litigation may be required to establish constitutional supremacy.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates and/or conflicts with a number of joint resolutions that also seek to amend Article 4.

OTHER SUBSTANTIVE ISSUES

NMAG reports 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, AOC called attention to a recent report issued by the National Conference of State Legislatures (NCSL) “Legislative Oversight of Emergency Executive Powers,” which suggests:

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. In other words, 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>.