

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB835

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Wilt

3. Committee: Committee on Rules

4. Title: Emergency Services and Disaster Law; limitation on duration of executive orders.

5. Summary: Currently, except for emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, the law provides that rules, regulations, and orders including executive orders issued by the Governor pursuant to his powers under the Emergency Services and Disaster Law are effective until June 30 following the next regular session of the General Assembly unless an earlier termination date is specified. Current law allows the same or similar rule, regulation, or order to be reissued as long as it is not contrary to law.

This bill provides that no rule, regulation, or order related to a state of emergency issued by the Governor that restricts, limits, or prohibits otherwise lawful action by a private business, nonprofit entity, or individual can exceed a period of 45 days in duration unless the General Assembly votes in the affirmative to approve a period longer than 45 days by a two-thirds majority of each house of all members elected. The Governor is thereafter prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency. The bill prohibits the General Assembly from approving the extension of an emergency executive order that restricts, limits, or prohibits otherwise lawful action by a private business, nonprofit entity, or individual to a date beyond the first full week of the next regular session of the General Assembly, unless such date is requested by the Governor.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: Currently, when a state of emergency has been declared in the Commonwealth by the Governor of Virginia, the Governor may, by Executive Order, grant certain powers and authority to state agencies. It is not uncommon for these Executive Orders to provide authority for agencies to waive certain state requirements or regulations (not required by law), and they usually allow agencies to enter into contracts for emergency procurements to address emergency needs without regard to normal procedures or formalities. These provisions are intended to allow agencies to respond efficiently and effectively to the emergency. They also allow agencies to waive certain limits or restrictions on the public that might hinder adequate response to the emergency. Normally, these

provisions expire with the expiration of the Executive Order, or if not specified in the Executive Order, on June 30, following the next regular session of the General Assembly.

In the case of a presidentially declared disaster, the Federal Emergency Management Agency (FEMA) generally provides financial assistance under various programs to the Commonwealth. Under these programs, eligible disaster-related costs are typically split 75 percent/25 percent between FEMA and the Commonwealth respectively.

Current law allows the Governor to choose an expiration date that is earlier than the deadline of June 30 following the next regular session of the General Assembly. However, there are events that may require emergency response beyond thirty days, such as a public health emergency.

The limitation on the duration of the Executive Order, as proposed in the bill, could impact eligibility for contracting/procurement if disaster-related contracting requirements are needed after the Executive Order has expired. Specifically, 2 CFR § 200.317 (federal regulation addressing state procurement using federal funds) requires a state to follow the same policies and procedures it uses for procurements from its non-federal funds when procuring services funded by a federal award.

According to the Virginia Department of Emergency Management (VDEM), under the provisions of this bill, procurement policies would have to revert back to non-emergency procurement rules after an Executive Order expires. In such cases, VDEM believes that if new emergency procurements were made, due to an ongoing public emergency after the executive order expires, the state would be out of compliance with its own policies and costs incurred outside of the Executive Order would not qualify for the 75 percent FEMA reimbursement.

9. Specific Agency or Political Subdivisions Affected: Virginia Department of Emergency Management

10. Technical Amendment Necessary: None

11. Other Comments: None