

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: SB4 H1

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

2. Patron: Suetterlein

3. Committee: 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.

The substitute bill limits the duration of any rule, regulation, or order issued by the Governor pursuant to his powers under the Emergency Services and Disaster Law to no more than 30 days from the date of issuance. The substitute bill provides that thirty days after the date of issuance, the Governor may extend the rule, regulation, or order for a period of 30 days, during which period the General Assembly may be convened at any time to consider and take action on the rule, regulation, or order. The Governor is required to report to the General Assembly on the status of the continued necessity of the rule, regulation, or order at the time of any extension.

The substitute bill also provides that if the General Assembly takes no action on the rule, regulation, or order within 60 days of the issuance of the rule, regulation, or order, the Governor may extend the rule, regulation, or order for an additional period of 30 days, during which period the General Assembly may be convened at any time to consider and take action on the rule, regulation, or order. In the event the Governor deems it to be in the interest of the Commonwealth that the rule, regulation, or order be in effect for more than 90 days, the General Assembly must be convened to consider and take action on such extension. The Governor is thereafter prohibited from issuing the same or a similar rule, regulation, or order related to the same emergency without the approval of the General Assembly.

6. Budget Amendment Necessary: Indeterminate

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.

Senators and Delegates receive \$209 per day in compensation while in session; therefore, convening a special session to consider further action on an Executive Order would have a fiscal impact on the General Assembly. The total cost per day is \$20,900 for the House of Delegates and \$8,360 for the Senate; the total cost for any special session called as a result of this bill would depend on the length of the session.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Department of Emergency Management, Virginia General Assembly

10. Technical Amendment Necessary: None

11. Other Comments: None