



Legislative Council Staff

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FISCAL NOTE

Drafting Number: LLS 20B-0009
Prime Sponsors: Rep. Humphrey, Sen. Marble

Date: November 30, 2020
Bill Status: House Public Health Care
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Bill Topic: EMERGENCY POWERS CHECKS AND BALANCES ACT

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill limits the power of the Governor and other state and local officials to issue emergency orders that infringe on the rights of public parties. Only the Governor may issue an emergency order that infringes on constitutional rights in a nontrivial manner and such order is limited to 7 days unless the General Assembly takes action. Other orders are limited to 30 days without legislative action. State courts are required to hear cases challenging emergency orders within 72 hours of being filed.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$73,991 to multiple state agencies. For FY 2021-22, the bill requires an appropriation of \$132,726 to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 20B-1013

Table with 4 columns: Category, FY 2020-21, FY 2021-22, FY 2022-23. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total, Total FTE), Transfers, and TABOR Refund.

Summary of Legislation

This bill limits the exercise of any emergency power by the Governor and other state and local officials to issue emergency orders that infringe on the rights of public parties. Such orders must be narrowly tailored to serve a compelling public health or safety purpose and limited in duration, applicability, and scope. Only the Governor may issue an emergency order that infringes on constitutional rights in a nontrivial manner. Any such order expires in 7 days unless the General Assembly is in a regular legislative session and has at least 15 days to consider and vote to ratify or terminate the order by adopting a joint resolution. If the General Assembly is not in session, the Governor may call a special session. Emergency orders issued by the Governor that are not subject to the 7-day limit, expire in 30 days unless action is taken by the General Assembly. The General Assembly may take action remotely if allowed by the rules of each house or as specified by the presiding officer of each house.

State courts are required to hear cases challenging the lawfulness of state and local emergency orders within 72 hours. State and local officials may issue nonbinding recommendations and guidelines that do not include provisions for enforcement or surveillance.

Background

Under current law, the Governor is authorized to declare a state of disaster emergency by executive order or proclamation if he finds a disaster has occurred or that a threat of a disaster is imminent. A state of disaster emergency is limited to 30 days, but can be renewed by the Governor. The General Assembly may terminate a state of disaster emergency at any time by joint resolution after which the Governor must issue an executive order or proclamation ending a state of disaster emergency.

State Revenue

To the extent that the bill increases civil case filings, state revenue from court fees will increase. This amount has not been estimated.

State Expenditures

This bill will increase workload and expenditures for several state agencies. For FY 2020-21, General Fund expenditures will increase by \$92,905 and 0.8 FTE. For both FY 2021-22 and FY 2022-23, expenditures increase by \$175,427 and 2.0 FTE. Costs are prorated for a January 1, 2021, start date and include a General Fund paydate shift. Expenditures are shown in Table 2 and explained below.

**Table 2
Expenditures Under HB 20B-1013**

Cost Components	FY 2020-21	FY 2021-22	FY 2022-23
Department of Public Safety			
Personal Services	\$39,126	\$93,905	\$93,905
Operating Expenses	\$1,215	\$2,025	\$2,025
Capital Outlay Costs	\$12,400	-	-
Centrally Appropriated Costs*	\$15,552	\$34,432	\$34,432
FTE – Personal Services	0.6 FTE	1.5 FTE	1.5 FTE
(Subtotal)	\$68,293	\$130,362	\$130,362
Office of the Governor			
Personal Services	15,050	36,121	36,121
Operating Expenses and	-	675	675
Capital Outlay Costs	6,200	-	-
Centrally Appropriated Costs*	3,362	8,269	8,269
FTE – Personal Services	0.2 FTE	0.5 FTE	0.5 FTE
(Subtotal)	\$24,612	\$45,065	\$45,065
Total	\$92,905	\$175,427	\$175,427
Total FTE	0.8 FTE	2.0 FTE	2.0 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Department of Public Safety. The Division of Homeland Security and Emergency Management in the Department of Public Safety will have an increase in expenditures to:

- prepare and coordinate emergency orders with local authorities that will require action by the Governor;
- prepare background and testimony on emergency orders in anticipation of legal challenges;
- testify in court on legal challenges; and
- testify before the General Assembly on emergency orders.

It should be noted that limitations created by this bill could affect the state's ability to receive federal disaster recovery funds if gaps in emergency orders occur. This will require the use of state funds to meet recovery needs. This amount has not been estimated.

Office of the Governor. The Governor's Office of Legal Counsel will have an increase in expenditures for a legal assistant to address an increase in legal actions under the bill. Additional expenditures for legal services from the Department of Law will be addressed through the annual budget process.

Legislature. If the Governor convenes a special session to extend an emergency order, state General Fund expenditures will increase. Funds for special sessions are included annually in legislative appropriations, so no appropriation is required.

Judicial Department, Trial Courts. Although judicial review of emergency orders is available under current law, this bill significantly expedites the time needed for court review. The courts are already required to hear a number of cases on expedited time frames. The addition of cases challenging emergency orders under this bill may require an increase in appropriations for the trial courts. If additional resources are required, these will be requested through the annual budget process.

Department of Public Health and Environment. This bill will increase workload for agency staff to support efforts to move an emergency order through the legislative process, or to defend the order in court. This workload can be accomplished within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$18,914 in FY 2020-21 and \$42,701 in both FY 2021-22 and FY 2022-23.

Local Government

There will be an increase in workload and expenditures for local governments from cases brought to challenge local emergency orders under the bill. Alternately, the bill may reduce local government workload by shifting the responsibility for issuance of some emergency orders to the Governor.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

The bill requires the following General Fund appropriations:

- Department of Public Safety - \$52,741 and 0.6 FTE for FY 2020-21, and \$95,930 and 1.5 FTE for FY 2021-22; and
- Office of the Governor - \$21,250 and 0.2 FTE for FY 2020-21, and \$36,796 and 0.5 FTE for FY 2021-22.

State and Local Government Contacts

Counties	Governor
Information Technology	Judicial
Law	Legislative Council Staff
Local Affairs	Municipalities
Personnel	Public Health and Environment
Public Safety	