

## Department of Planning and Budget 2022 Fiscal Impact Statement

**1. Bill Number:** HB777

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

**2. Patron:** LaRock

**3. Committee:** Committee Referral Pending

**4. Title:** Emergency Services and Disaster Law; Commissioner of Health; emergency orders and regulations.

**5. Summary:** Provides that neither the Board of Health nor the Commissioner of Health shall make any emergency order or regulation unless, on the basis of the evidence available to the Board, (i) such order or regulation is necessary to suppress a nuisance dangerous to the public health or a communicable, contagious, or infectious disease or other danger to the public life and health; (ii) no alternatives to the proposed order or regulation that are reasonable in light of the impact on quality of life and economic well-being exist; and (iii) the provisions of such order or regulation are narrowly tailored to address the nuisance dangerous to the public health or a communicable, contagious, or infectious disease or other danger to the public life and health. The bill also provides that the Governor shall not issue any emergency rule, regulation, or order unless, on the basis of the evidence available to the Governor, (a) such rule, regulation, or order is necessary to address a compelling circumstance; (b) no alternatives to the proposed rule, regulation, or order that are reasonable in light of the impact on quality of life and economic well-being exist; and (c) the provisions of such rule, regulation, or order are narrowly tailored to address the compelling circumstance.

The bill provides that any order that limits the number of individuals who may gather together in person, in public or private, or categorizes individuals on the basis of their relationship to or association with such individuals and limits the categories of individuals with whom an individual who is not known or reasonably suspected to have been exposed to or infected with a communicable disease of public health threat may associate is presumed to negatively impact quality of life and economic well-being.

The bill also limits the duration of any emergency rule, regulation, or order to 15 days; provides for one extension of such rule, regulation, or order; and provides that any person who violates such rule, regulation, or order shall be subject to a civil penalty of no more than \$100 per violation. Under current law, any person who violates the provisions of an executive order is subject to a Class 1 misdemeanor.

**6. Budget Amendment Necessary:** See item 8.

**7. Fiscal Impact Estimates:** See item 8.

- 8. Fiscal Implications:** The fiscal impact the provisions of this bill would have on the Commonwealth cannot be determined

Virginia Department of Health

The provisions of the bill add the requirement that the board must conduct at least one public hearing on the proposed order or regulation. VDH would implement the public hearing requirement by contracting with a court reporter in order to prepare a transcript of the proceedings. VDH estimates that a typical expense for that service would range from \$292 to \$1,675. This estimate is based on the cost of court reporter services incurred by the VDH Office of Licensure and Certification, which uses court reporters to prepare transcripts of Informal Fact Finding Conferences (IFFCs) conducted as part of the Certificate of Public Need (COPN) Program. For COPN IFFCs over the past year the transcripts have ranged from \$292 - \$1,675, with an average of \$776

Additionally the bill creates an intermediate revenue impact to the Literary Fund because it is not possible to estimate the number of or the value of the penalties that might be assessed against a future executive order.

Virginia Department of Emergency Management

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.

#### Civil and criminal penalties

Under current law, violation of an Executive Order is punishable as a civil penalty of not more than \$500 or as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect. This bill reduces the civil penalty to \$100 and caps the amount any person can be assessed for violations of the same Executive Order to \$1,000. Such fines are paid into the Literary Fund. Reducing the amount of fines assessed for violations could reduce the amount of revenue deposited into the Literary Fund.

This bill removes the Class 1 misdemeanor penalty for violations of an Executive Order. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both. Therefore, the provisions of this bill may have the effect of fewer people being sentenced to jail. However, there is not enough information available to reliably estimate the impact on jail bed space needs as a result of this proposal. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

**9. Specific Agency or Political Subdivisions Affected:** The Virginia Department of Health, the Virginia Department of Emergency Management, Local and Regional Jails.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.