

**Department of Planning and Budget**  
**2020 Special Session I - Fiscal Impact Statement**

**1. Bill Number:** HB5007

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

**2. Patron:** Cole, M.L.

**3. Committee:** Public Safety

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

**5. Summary:** Under current law, executive orders, including those declaring a state of emergency and directing evacuation, have the force and effect of law. Violations of executive orders are punishable as Class 1 misdemeanors. This bill removes the Class 1 misdemeanor punishment and provides that any person who violates any such order is subject to a civil penalty of no more than \$100 per violation, which is payable to the Literary Fund. The bill stipulates that in no case would any person be assessed a total of more than \$1,000 in penalties for violations of the same executive order.

Additionally, except for emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, current 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.

Under the provision of this bill, executive orders declaring a state of emergency, and any other executive orders pertaining to such emergency, would not have any effect beyond 30 days after the date of issuance, unless the General Assembly takes action to grant the Governor additional authority to extend such an order.

**6. Budget Amendment Necessary:** No

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

**8. Fiscal Implications:** Currently, a violation of an executive order is punishable as a Class 1 misdemeanor, which carries a possible sentence of up to 12 months in jail. The proposed legislation eliminates the Class 1 misdemeanor. Under this bill, any person who violates an executive order is subject to a civil penalty of no more than \$100 per violation if the executive order declares that its violation shall have such force and effect. Penalties would be paid into the Literary Fund. But in no case is a violator to be assessed a total of more than \$1,000 in penalties for violating the same executive order.

This bill potentially would reduce the number of people sentenced to jail and increase the amount of fines deposited into the Literary Fund for future related offenses. It is not possible to estimate how many or the value of the penalties that might be assessed against a future executive order versus the number of people who might otherwise be charged with a misdemeanor for violating future executive orders. Consequently it is not possible to estimate the amount of fines that may be collected and deposited into the Literary Fund or the potential jail sentences that would be avoided.

If jail populations are reduced as a result of this bill, it is not known if the result would be true savings or cost avoidance. The Commonwealth currently pays localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality; however, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

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, at 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.

Most Executive Orders are in effect only for thirty days, unless amended or rescinded by further executive order. However, there are events that may require emergency response beyond thirty days, such as public health emergency.

According to the Virginia Department of Emergency Management (VDEM), 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 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 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