

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

1. Bill Number: HB5023

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

2. Patron: Byron

3. Committee: Committee Referral Pending

4. Title: Public health emergency; emergency orders and regulations; limitations

5. Summary: Provides that any emergency order or regulation adopted by the Board of Health shall be valid for no more than 45 days and that such order may be extended by the Board for a subsequent period of 45 days, provided that the Board provides notice and receives public comment on the order or regulation proposed to be extended, but that in no case shall such emergency order or regulation be valid for more than 18 months from the effective date of the initial order or regulation. The bill also provides that in any case in which the Commissioner of Health exercises the authority of the Board to enact an emergency order or regulation, such order or regulation shall be valid for no more than 45 days from the effective date of the order or regulation unless the Board adopts an order or regulation to such effect.

The bill also limits the duration of an emergency temporary standard adopted by the Safety and Health Codes Board to 45 days and provides for an extension of such emergency temporary standard for a subsequent period of 45 days, provided that the Board provides notice and receives public comment on the emergency temporary standard proposed to be extended. However, no emergency temporary order shall be valid for a period of more than six months.

The bill also limits the duration of any executive order issued by the Governor pursuant to his powers under the Emergency Services and Disaster Law to no more than 45 days from the date of issuance and provides that if the General Assembly does not take any action on the rule, regulation, or order within the 45 days during which the rule, regulation, or order is effective, the Governor shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Indeterminate.

8. Fiscal Implications: The total fiscal impact this bill would have on the Commonwealth cannot be determined. Currently, the Board meets quarterly and at all other times the Commissioner of Health is vested with the full authority of the Board. Prior to the COVID-19 pandemic, the Board met in person in Richmond. Board members are reimbursed for the travel, lodging and meal expenses. The total cost of the most recent in person meeting

(December 2019) was \$1,532.98 (Hotel \$435.08, Food \$394.96, and Travel/Per Diem \$712.94).

The fiscal implications of this bill are, in part, dependent upon when and if the Board of Health (the Board) resumes in-person meetings in Richmond and if the required meeting had to be held separate from the regular quarterly meeting. If the Board was required to meet every 45 days at a time that was not a regular scheduled meeting and was able to meet in person to extend various emergency orders that have been issued, VDH would incur estimated expenses of \$1,532 every 45 days for a period not to exceed 18 months.

Since June 2020, the Board has met virtually via Webex due to the COVID-19 pandemic. Those virtual meetings have not required reimbursement for any travel, lodging or meal expenses. If the Board continues to meet virtually these expenses would be avoided.

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 anywhere 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.

9. Specific Agency or Political Subdivisions Affected: The Virginia Department of Health.

10. Technical Amendment Necessary: No.

11. Other Comments: None.