

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

1. Bill Number: SB5077

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: Stanley

3. Committee: General Laws and Technology

4. Title: Emergency laws; powers and duties of Governor.

5. Summary: This bill prohibits an emergency executive order from closing any business, or any category of business or industry, either temporarily or permanently, unless (i) an order of quarantine or an order of isolation concerning a communicable disease of public health threat has been issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 (Application of article; determination of exceptional circumstances; regulations; duties of the State Health Commissioner not be delegated) and (ii) the State Health Commissioner or his legal representative, as soon as practicable following the issuance of any such order, has filed a petition seeking an ex parte court review and confirmation of the legality of the exercise of such authority.

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.

This 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 in the event of natural disasters to the convening of the next regular session of the General Assembly but allows that the same or a similar rule, regulation, or order may be issued again after the adjournment of that regular session of the General Assembly, if not contrary to law.

6. Budget Amendment Necessary: No

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

8. Fiscal Implications: This bill limits Governor's powers to close any business, or any category of business or industry, either temporarily or permanently, during a communicable disease public health threat. This provision is not expected to have a fiscal impact on state agencies.

Pursuant to § 44-146.17 (pertains to the powers and duties of the Governor under the Emergency Services and Disaster Law), 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.

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. 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 a public health emergency.

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. FEMA guidelines provide that it will reimburse eligible expenses for procurements made in accordance with the provisions of each state's procurement policies.

According to the Virginia Department of Emergency Management (VDEM), to comply with the provisions of this bill and to ensure that Virginia will continue to be reimbursed for FEMA eligible expenses, procurement policies would have to revert back to non-emergency procurement rules after an Executive Order expires.

9. Specific Agency or Political Subdivisions Affected: Virginia Department of Emergency Management

10. Technical Amendment Necessary: None

11. Other Comments: None