

## Department of Planning and Budget 2021 Fiscal Impact Statement

1. **Bill Number:** HB2251

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

2. **Patron:** LaRock

3. **Committee:** Health, Welfare and Institutions

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

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:** No.

7. **Fiscal Impact Estimates:** Indeterminate, see item 8.

- 8. Fiscal Implications:** The total fiscal impact this bill would have on the Commonwealth cannot be determined, however, it is expected to be minimal.

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 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 the average being \$776.

Virginia Criminal Sentencing Commission:

Under current law, executive orders, including those declaring a state of emergency and directing evacuation, have the force and effect of law and the violation thereof is punishable as a Class 1 misdemeanor. This bill eliminates the current penalty and assesses a civil penalty of no more than \$100.

The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor 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 varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

According to data provided by the Virginia Criminal Sentencing Commission (VCSC), between FY 2015 and FY 2020, there were no instances of convictions for violating a Governor's emergency executive order under § 44-146.17. Therefore, it is expected that any savings associated with this portion of eliminating the Class 1 misdemeanor penalty would be minimal.

Typically, revenue collected from civil fines is deposited into the Literary Fund. However, it is not possible to estimate either the number of times the civil penalty may be assessed or the amount of each penalty that may be assessed under this legislation. Therefore, the impact of this bill cannot be determined.

Virginia Department of Emergency Management:

The Virginia Department of Emergency Management has stated that this bill would not have a fiscal impact on their agency.

- 9. Specific Agency or Political Subdivisions Affected:** The Virginia Department of Health and the Virginia Criminal Sentencing Commission.

- 10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.