

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 780

(Senator Pinsky)

Education, Health, and Environmental Affairs
and Budget and TaxationAppropriations and Health and
Government Operations

**States of Emergency – Emergency Procurement and Budget Amendments –
Notice and Authorization**

This bill requires the Governor or the head of a unit, when authorizing an emergency procurement during a declared state of emergency, to provide specified notice to the Legislative Policy Committee (LPC) within 72 hours of the execution of the contract or the expenditure of funds. LPC may request that the Office of Legislative Audits (OLA) conduct an audit of an emergency procurement contract authorized during a declared state of emergency. The bill also requires the Governor to provide specified notice to LPC and, if applicable, the Administrative, Executive, and Legislative Review (AELR) Committee, within 72 hours after suspending the effect of a statute or rule or regulation during a declared state of emergency as authorized under State law. Finally, the bill authorizes any federal, special, or higher education fund appropriation to be increased by budget amendment upon a specified declaration by the Board of Public Works (BPW). The Governor may not suspend the bill's provisions under any law that grants the Governor authority to suspend the effect of any statute during a state of emergency.

Fiscal Summary

State Effect: The operations of multiple State agencies are affected, potentially significantly, as early as FY 2022. It is assumed, however, that State finances are not materially affected, as discussed below.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Notice provided to LPC of an emergency procurement authorized during a state of emergency must include (1) the name, business address, and, if applicable, website address of the vendor and the dollar value of the contract; (2) a description of how the funds are to be used; and (3) an explanation of the reasons the procurement is necessary to prepare for or address the emergency. If requested by LPC, the Governor or head of the unit must provide a copy of the contract to LPC.

Within 72 hours after suspending the effect of a statute or rule or regulation, the Governor must provide written notice to LPC that (1) identifies the statute or rule or regulation being suspended and (2) explains the reasons that suspending the statute or rule or regulation is necessary to address the emergency. When the Governor suspends the effect of a regulation, the notice must also be provided to the AELR Committee.

The bill further amends statute to specify that, notwithstanding any other provision of law, any federal, special, or higher education fund appropriation may be increased by budget amendment if BPW declares that the budget amendment is essential to maintaining public safety, health, or welfare, including protecting the environment or the economic welfare of the State.

Current Law:

Maryland Emergency Management Agency Act

Title 14, Subtitle 1 of the Public Safety Article (Maryland Emergency Management Agency Act) requires the Governor to declare a state of emergency by executive order or proclamation if he or she finds that an emergency has developed or is impending due to any cause. The state of emergency continues until (1) the Governor finds that the threat or danger has passed or the emergency has been dealt with to the extent that emergency conditions no longer exist and (2) terminates the state of emergency by executive order or proclamation. A state of emergency may not continue for longer than 30 days unless renewed by the Governor. The General Assembly may terminate a state of emergency at any time by joint resolution.

After declaring a state of emergency, the Governor may take specified actions if he or she finds them necessary in order to protect the public health, welfare, or safety. Among other things, the Governor may suspend the effect of any statute or rule or regulation of an agency of the State or a political subdivision. Similarly, if a state of emergency is declared in another state, and the Governor receives a written request for assistance from the executive authority of that state, the Governor may, among other things, suspend the effect of any statute or rule or regulation of an agency of the State or, with the consent of the appropriate

executive authority, of a political subdivision, if the Governor finds that the suspension is necessary to aid the other state with its emergency management functions.

Section 14-106 of the Public Safety Article specifies other various powers of the Governor in performing his or her duties under the Act. Among other things, the Governor may issue orders, rules, and regulations necessary and desirable to carry out the Act and may authorize the procurement of supplies and equipment to prepare for an emergency.

Governor's Emergency Powers

Under Title 14, Subtitle 3 of the Public Safety Article (Governor's Emergency Powers), the General Assembly recognizes the Governor's broad authority in the exercise of the police power of the State to provide adequate control over persons and conditions during impending or actual public emergencies. The subtitle's provisions must be broadly construed to carry out its purpose.

Section 14-303 of the Public Safety Article authorizes the Governor to proclaim a state of emergency and designate the emergency area during a public emergency in the State. After proclaiming a state of emergency, and in accordance with specified public notice requirements, the Governor may promulgate reasonable orders, rules, or regulations that he or she considers necessary to protect life and property or calculated effectively to control and terminate the public emergency in the emergency area, as specified. An order, rule, or regulation promulgated under this provision (1) takes effect from the time and in the manner specified in the order, rule, or regulation; (2) may be amended or rescinded, in the same manner as the original order, by the Governor at any time during the state of emergency; and (3) terminates when the Governor declares that the state of emergency no longer exists.

Emergency Procurement

For procurements of at least \$50,000, and subject to specified exceptions, a procurement officer may, with the approval of the head of the unit, make an emergency procurement to avoid or mitigate serious damage to public health, safety, or welfare. Emergency procurements may use any method considered to be appropriate; however, the procurement officer must obtain as much competition as possible under the circumstances and limit the emergency procurement to the procurement of only those items, both in type and quantity, necessary to avoid or mitigate serious damage to public health, safety, or welfare. Emergency procurements are not subject to prior approval by BPW, but agencies must notify BPW of each emergency procurement within 45 days of contract award. The notification must include a justification for the use of the emergency procurement method.

Expenditure of Unanticipated Funds by Budget Amendment

Section 7-217 of the State Finance and Procurement Article authorizes the expenditure of special or federal funds that are not estimated or included in the State budget, or that exceed the estimate in the State budget, by an approved budget amendment. Such funds may be expended for (1) the specific purpose to which the money is dedicated by State law or act of Congress or (2) if the money is not dedicated to a specific purpose, with the approval of the Governor and as authorized in an approved budget amendment, for necessary current operations.

In addition, language in the annual budget bill expressly authorizes revenues in excess of special or federal fund appropriations in the budget bill to be made available by approved budget amendment. Budget amendments that increase a special, federal, or higher education fund appropriation by \$100,000 or more are generally subject to legislative review. For example, Section 27 of the fiscal 2021 budget bill specifies that such amendments may not be approved by the Governor until (1) the amendment has been submitted to the Department of Legislative Services and (2) the budget committees or LPC have considered the amendment, or 45 days have elapsed from the date of submission. Specified budget amendments are excluded from the legislative review requirement, including budget amendments solely for the purpose of appropriating federal disaster relief funds.

However, notwithstanding the above provisions, language in the annual budget bill generally authorizes any federal, special, or higher education fund appropriation to be increased by budget amendment upon a declaration by BPW that the amendment is essential to maintaining public safety, health, or welfare, including protecting the environment or the economic welfare of the State.

COVID-19 Emergency

In March 2020, the Governor declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration, which has been renewed several times (most recently March 18, 2021), initiated a series of executive actions, including moving the Maryland Emergency Management Agency to its highest activation level, activating the National Guard, and closing all public schools.

Additionally, the federal government has enacted several pieces of emergency legislation to address the COVID-19 pandemic. The State has received a significant amount of federal aid in response to the COVID-19 pandemic through the federal Coronavirus Aid, Relief, and Economic Security Act; Families First Coronavirus Response Act; Consolidated Appropriations Act of 2021; and the American Rescue Plan Act of 2021.

For more information regarding Maryland's response to COVID-19 and the earlier federal funding for Maryland to address COVID-19, see the **Appendix – COVID-19**.

State Fiscal Effect: The bill requires the Governor or the head of unit, when authorizing an emergency procurement during a declared state of emergency, to provide specified notice to LPC within 72 hours of the execution of the contract or the expenditure of funds. It is assumed that State agencies can meet the bill's notice requirement with existing budgeted resources, as the requirement only applies during declared states of emergency. Most states of emergency are episodic and brief; the current prolonged state of emergency is an anomaly.

However, to the extent that an ongoing emergency requires a significant number of emergency procurements, the requirement may result in significant operational disruptions for State procurement offices that may affect their ability to conduct ongoing emergency procurements. Additionally, State agency operations may be affected to the extent that emergency procurement contracts executed during a state of emergency are subject to audit by OLA, especially if those audits are conducted during an ongoing emergency. Nonetheless, additional permanent staff are not warranted to address the bill's requirements; as noted above, the bill applies only during declared states of emergency. Moreover, in most cases, contractual staff cannot be hired and trained sufficiently quickly to assist agencies in responding to a declared state of emergency.

It is assumed that, in most cases, LPC will request audits of only a limited number of affected contracts and that OLA, therefore, can conduct audits of emergency procurement contracts as requested by LPC with existing budgeted resources. However, in the event of a prolonged emergency that results in a significant number of emergency procurements (like the current COVID-19 emergency), if LPC requests that OLA audit a significant number of procurement contracts, OLA may need to temporarily reallocate resources from other, regular audits in order to fulfill such requests.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1003 (Delegate Lierman) - Appropriations and Health and Government Operations.

Information Source(s): Governor's Office; Department of General Services; Maryland Department of Health; Department of Human Services; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History:
rh/mcr

First Reader - March 3, 2021

Third Reader - March 22, 2021

Revised - Amendment(s) - March 22, 2021

Revised - Updated Information - March 22, 2021

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Appendix – COVID-19

In December 2019, a novel strain of coronavirus known as severe acute respiratory syndrome coronavirus 2 emerged in Wuhan, China. Coronavirus disease (COVID-19) is an infectious disease caused by this virus. As the number of cases spread globally by March 2020, the World Health Organization declared COVID-19 a pandemic.

Testing, Cases, and Deaths in Maryland

Maryland's first three confirmed cases of COVID-19 were recorded on March 6, 2020, with the first two deaths occurring March 16, 2020. As of January 27, 2021, Maryland reported a total of 346,559 confirmed cases, 31,468 individuals ever hospitalized, and 6,821 confirmed deaths. The jurisdictions with the highest number of cases have been Prince George's, Montgomery, and Baltimore counties and Baltimore City. Statewide, 8.4% of cases (28,954) and 45.9% of COVID-19 deaths (3,130) occurred in congregate living settings (*i.e.*, nursing homes, assisted living, and group homes). Updated data on COVID-19 in Maryland is available on the Maryland Department of Health (MDH) dashboard: <https://coronavirus.maryland.gov>.

Vaccines

In December 2020, the U.S. Food and Drug Administration approved both Pfizer-BioNTech and Moderna's COVID-19 vaccines for emergency use. Due to limited quantities, distribution began with priority groups as determined by states. Maryland began distribution in January 2021 with Phase 1A, which includes health care workers, residents and staff of nursing homes, first responders, public safety, corrections staff, and front-line Judiciary staff. Phase 1B began January 18, 2021, and includes residents of assisted living facilities and other congregate settings, adults age 75 and older, staff of K-12 schools and child care facilities, high-risk incarcerated individuals, and those involved in continuity of government. As of January 27, 2020, the State is in Phase 1C, which includes adults aged 65 and older, additional public safety and public health workers, and essential workers in food/agriculture, manufacturing, public transit, and the postal service. Phase 2 will include individuals aged 16 to 64 at increased risk of severe illness, incarcerated adults, and remaining essential workers. Phase 3 will include the general public. As of January 27, 2021, 852,625 doses of the vaccine have been distributed, and 419,579 doses have been administered (363,282 first doses and 56,297 second doses). Updated data is available on the MDH dashboard: coronavirus.maryland.gov/#Vaccine.

Declaration of a State of Emergency and Initial Executive Orders

On March 5, 2020, Governor Lawrence J. Hogan, Jr. declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration, which has been renewed several times (most recently January 21, 2021), initiated a series of executive actions, including moving the Maryland Emergency Management Agency to its highest activation level, activating the National Guard, and closing all public schools. The Governor then ordered the closure of in-house dining at bars and restaurants and banned mass gatherings of more than 50 people. This action was followed by a more extensive stay-at-home order on March 30, 2020, requiring closure of all nonessential businesses. This order remained in effect until May 15, 2020.

Emergency Legislation

Chapters 13 and 14 of 2020 (the COVID-19 Public Health Emergency Protection Act of 2020) authorized the Governor, for the duration of the emergency, to take actions relating to health insurance, Medicaid, retailer profits, employer actions, and personnel at State health care facilities as a result of the state of emergency and catastrophic health emergency. The Acts also authorize the Secretary of Labor to determine certain individuals eligible for unemployment insurance (UI) benefits due to COVID-19. The Acts terminate April 30, 2021.

Subsequent Executive Orders and Advisories

Since March 2020, the Governor has issued numerous executive orders relating to COVID-19, including (1) closing Maryland ports and harbors to passenger vessels; (2) expanding child care access; (3) expanding the scope of practice for health care practitioners, activating the Maryland Responds Medical Reserve Corps, controlling and restricting elective medical procedures, closing adult day care centers, and providing additional health care regulatory flexibility; (4) augmenting emergency medical services; (5) prohibiting price gouging; (6) fast tracking lab testing processes; (7) authorizing expanded telehealth services; (8) delegating authority to local health officials to control and close unsafe facilities; (9) extending certain licenses, permits, and registrations; (10) authorizing remote notarizations; (11) prohibiting evictions of tenants suffering substantial loss of income due to COVID-19, additionally prohibiting certain repossessions, restricting initiation of residential mortgage foreclosures, and prohibiting commercial evictions; (12) regulating certain businesses and facilities and generally requiring the use of face coverings; (13) establishing alternate health care sites and authorizing regulation of patient care space in health care facilities; and (14) implementing alternative correctional detention and supervision.

Federal Legislation Regarding COVID-19

Five federal emergency bills have been enacted to address the COVID-19 pandemic:

- the **Coronavirus Preparedness and Response Supplemental Appropriations Act**, which provided \$8.3 billion in emergency funds for federal agencies (including \$950 million through the U.S. Centers for Disease Control and Prevention for state and local response);
- the **Families First Coronavirus Response Act**, which addressed emergency family and medical leave and paid sick leave, specified insurance coverage of COVID-19 testing, and provided additional funding for nutrition assistance programs and unemployment benefits;
- the **Coronavirus Aid, Relief, and Economic Security (CARES) Act**, which included a Coronavirus Relief Fund for state and local governments; an Education Stabilization Fund for states, school districts, and institutions of higher education; a Disaster Relief Fund for state and local governments; additional funding for public health agencies to prevent, prepare for, and respond to COVID-19; funding for transit systems; an expansion and extension of eligibility for UI benefits, and additional temporary unemployment compensation of \$600 per week; \$349 billion for the establishment of the Paycheck Protection Program (PPP); a \$500 billion lending fund for businesses, cities, and states; and Economic Impact Payments to American households of up to \$1,200 per adult and \$500 per child;
- the **Paycheck Protection Program and Health Care Enhancement Act**, which provided an additional \$310 billion to PPP, \$75 billion for health care providers, \$60 billion for small business disaster loans, and \$25 billion for increased testing capacity; and
- the **Consolidated Appropriations Act, 2021, and Other Extensions Act**, which included \$908 billion in relief, including another \$284 billion for PPP, \$82 billion for schools, \$45 billion for transportation, \$25 billion in emergency assistance to renters, \$20 billion for vaccine distribution, \$13 billion for a major expansion in Supplemental Nutrition Assistance benefits, \$13 billion for agriculture and rural programs, \$10 billion for child care assistance, extended federal unemployment benefits of up to \$300 per week, extended the federal moratorium on evictions through January 31, 2021, and provided a second stimulus payment of up to \$600 per person.

Federal Funding for Maryland to Address COVID-19

The CARES Act and the Families First Coronavirus Response Act provided Maryland with a significant amount of federal aid. More than \$6 billion in assistance has been made available to the State and local governments, including an enhanced federal matching rate for Medicaid. More than \$900 million was directly provided to local governments. The largest and most flexible portion of CARES Act funding is the Coronavirus Relief Fund, which totals \$2.3 billion, \$691 million of which was allocated directly to Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties.

CARES Act funding also included \$800 million for the Disaster Recovery Fund; \$696 million for transit grants; \$575 million in enhanced Medicaid matching funds (through December 2020); \$239 million in CDC grants; \$108 million for airports; \$74 million for community development block grants; \$50 million for homelessness assistance; \$46 million for grants for local education agencies and higher education institutions; \$46 million for child care and development block grants; \$36 million for public housing and rental assistance grants; \$24 million for community health centers; \$20 million for senior nutrition; \$19 million for energy assistance; \$18 million for justice assistance grants; \$17 million for administration of the UI program; \$14 million for community service block grants; \$13 million for emergency food assistance; \$8 million for Head Start; \$8 million for the Women, Infants, and Children program; and \$7 million for election security.

The Consolidated Appropriations Act is estimated to provide Maryland with \$1.2 billion for education (including \$869 million for K-12 education, \$306 million for higher education, and \$57.7 million for the Governor's Fund); \$1.1 billion for transportation (including \$830.3 million for transit in the Washington, DC area, \$149.3 million for highways, \$76.2 million for transit in Baltimore, \$22.5 million for airports, and \$9.1 million for rural area grants); more than \$475 million for health (including \$335.6 million for testing, \$75.3 million for vaccines, \$32.6 million for mental health assistance, and \$31.9 million for substance use assistance); \$402.4 million for rental assistance; and \$140.6 million for human services (including \$130.4 million for child care).