

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

Senate Bill 235

(The President, *et al.*) (Administration)

Education, Health, and Environmental Affairs

Commerce and Government Matters

Governor's Emergency Powers

This emergency Administration bill enables the Governor to immediately assume emergency powers in the event of a threat or occurrence of any enemy attack, act of terrorism, or public health catastrophe. State and local law enforcement officers and health officers must execute and enforce orders, rules, and regulations made by the Governor in response to these emergency situations. The Governor's ability to delegate emergency management powers is expanded. The Secretary of Health and Mental Hygiene is granted additional authority to take actions to prevent diseases that endanger public health.

A person who violates the Governor's orders, rules, and regulations is guilty of a misdemeanor and is subject to imprisonment for a period not to exceed six months or a fine not to exceed \$1,000, or both. For a willful violation, a person is guilty of a misdemeanor and is subject to imprisonment for a period not to exceed one year or a fine not to exceed \$5,000, or both.

Fiscal Summary

State Effect: Expanding the Governor's authority in the event of an emergency should not result in additional State expenditures. Penalties and jail terms arising from the bill's provisions are expected to be minimal and would not significantly affect State finances.

Local Effect: None.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Current Law: The Governor may assume direct operational control over all or any part of an emergency management function in the event of an emergency beyond local control. Local officials remain in charge of a local emergency situation unless a determination is made by the Governor that the emergency is beyond local control. Upon declaring a State of Emergency, the Governor assumes direct operational control over the emergency situation. The Governor's emergency powers include temporarily waiving State laws that may interfere with emergency response operations. Pursuant to this bill, in the event of a threat or occurrence of any enemy attack, act of terrorism, or public health catastrophe, the Governor would not have to wait for the emergency situation to be beyond local control before assuming direct operational control over the emergency situation.

The Governor can only delegate powers involving emergency management functions to the Adjutant General or the Director of the Emergency Management Agency. Pursuant to this bill, the Governor would have the flexibility to delegate powers to other individuals employed in the executive department of the State government or employed as a Secretary of a principal department or as the head of an independent State agency. For example, in the event of a public health catastrophe, the Governor would be able to delegate certain emergency powers to the Secretary of Health and Mental Hygiene.

Emergency management organizations established under the Maryland Emergency Management Agency Act must execute and enforce orders, rules, and regulations made by the Governor during an emergency. These organizations include the Maryland Emergency Management Agency and local emergency management agencies. State and local law enforcement agencies and health departments were not established under the Emergency Management Agency Act and do not have to execute and enforce the Governor's orders. Pursuant to this bill, in the event of a threat or occurrence of any enemy attack, act of terrorism, or public health catastrophe, State and local law enforcement officers and health officers must comply with the Governor's orders. This would ensure a unified and coordinated response to these emergency situations.

The Secretary of Health and Mental Hygiene has the authority to take action to prevent the introduction and spread of infectious or contagious diseases in the State. Pursuant to this bill, the Secretary is authorized to take actions involving other diseases that endanger public health.

The Governor's emergency powers are specified in Article 16A and Article 41 of the Annotated Code of Maryland. A person who violates the Governor's orders, rules, and regulations promulgated under Article 41 is guilty of a misdemeanor and is subject to imprisonment for a period not to exceed six months or a fine not to exceed \$1,000, or both. Article 16A does not include a penalty provision for persons violating the

Governor's orders that are promulgated under that article. Pursuant to this bill, penalty provisions are provided for persons violating an order promulgated under Article 16A.

Background: In an effort to prepare a legislative response to terrorism and related topics, the Governor, Speaker of the House, and President of the Senate appointed a joint task force to study the State's laws in this area and make recommendations for changes. The task force consists of three senators, three delegates, and four representatives from the Executive Branch. This is one of a package of bills recommended by the task force. Moreover, the Governor has listed homeland defense, including defenses against bio-terrorism, as one of his budget priorities for fiscal 2003.

The Maryland Emergency Management Agency (MEMA) operates under the Military Department and is responsible for coordinating the State response to any major emergency or disaster. MEMA operates in collaboration with local governments, State agencies, the federal government, and private and volunteer organizations. The proposed fiscal 2003 State budget includes \$7.2 million for MEMA, of which \$1.9 million is State funds and \$5.3 million is federal funds.

The Governor has invoked emergency powers under Article 16A and Article 41 several times in recent years, primarily in response to flooding, hurricanes, winter storms, and drought conditions. In September 2001, the Governor assumed emergency powers as a result of the terrorist attacks in Virginia, Pennsylvania, and New York. **Exhibit 1** lists recent occurrences when a State of Emergency was declared.

Exhibit 1 State of Emergency Declarations

December 10, 1998	Drought Declaration for Allegany County
January 15, 1999	Winter Storm Emergency in Baltimore, Carroll, Harford, Howard, Montgomery, and Prince George's Counties
July 29, 1999	Statewide Drought Declaration
August 4, 1999	Mandatory Drought Restrictions
September 2, 1999	Renewed Drought Declaration
September 15, 1999 – October 7, 1999	Declaration of State of Emergency - Hurricane Floyd
January 25-27, 2000	Winter Storm Emergency

March 20-22, 2000	Declaration of State of Emergency in Baltimore County - Hostage Situation
September 11-13, 2001	Declaration of State of Emergency - Terrorist Attacks
September 24, 2000 – October 5, 2001	Declaration of State of Emergency in Howard and Prince George’s Counties – Tornadoes

Additional Information

Prior Introductions: None.

Cross File: HB 303 (The Speaker, *et al.*) (Administration) - Commerce and Government Matters.

Information Source(s): Prince George’s County, Kent County, Worcester County, Military Department, Department of State Police, Department of Health and Mental Hygiene, Maryland Emergency Management Agency, Department of Legislative Services

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