

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 650 (Chair, Health and Government Operations
Committee)(By Request - Departmental - Military)
Health and Government Operations Education, Health, and Environmental Affairs

State Government - Emergency Management - Governor Declarations

This departmental bill (1) authorizes the Governor to issue an enhanced coordination order (ECO) of emergency services in preparation for a potential emergency and (2) expands the authority of the Governor to take specified actions after issuing an official proclamation of a state of emergency. The bill also consolidates, streamlines, and clarifies existing provisions relating to states of emergency and the Governor’s related powers.

Fiscal Summary

State Effect: Since it is assumed that the expanded authority provided by the bill is used in limited circumstances, State finances are not anticipated to be materially affected.

Local Effect: While local jurisdictions may benefit from the bill’s changes that enhance coordination of emergency management activities and services, the bill is not expected to materially affect local finances.

Small Business Effect: The Military Department has determined that this bill has minimal or no impact on small businesses (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary:

Enhanced Coordination Orders

If the Governor determines that there is a heightened risk of an emergency within all or part of the State, the Governor may call for an ECO of emergency services in preparation for a potential emergency.

An ECO continues until the Governor (1) finds that an emergency has developed or is impending and declares a state of emergency, as specified or (2) finds that the heightened risk of an emergency no longer exists and terminates the ECO by executive order or proclamation. An ECO may not continue for more than seven days unless the Governor renews the order. The General Assembly may terminate an ECO by joint resolution at any time. After the General Assembly terminates an ECO, the Governor must issue an executive order or proclamation terminating the ECO.

Each ECO must state (1) the Governor's reason to believe there is a heightened risk of emergency; (2) the area with a heightened risk of emergency; and (3) the effective date. In addition, each ECO must be (1) disseminated promptly by means calculated to publicize its contents and (2) filed promptly with specified State and local entities.

After the Governor declares an ECO, the Executive Director of the Maryland Emergency Management Agency (MEMA) must coordinate the activities of the State and local agencies included in the declaration in all actions that serve to prepare for the effects of the potential emergency.

An ECO by the Governor authorizes the State to (1) coordinate the movement or evacuation of individuals or vehicles into, in, or from the designated area; (2) coordinate the deployment of specified resources in anticipation of an emergency; (3) pre-position resources in the designated area; and (4) authorize the use of alternative care sites.

An ECO issued by the Governor is authority for (1) the activation of State compacts, laws, policies, programs, or regulations that require a declared state of emergency; (2) the deployment and use of resources to which the State or local emergency management plans apply; and (3) the use or distribution of supplies, equipment, materials, and facilities, as specified, to be made available in accordance with the bill or any other law that relates to emergencies.

An ECO has the same effect as a declaration of emergency for the purposes of the Emergency Management Assistance Compact (MEMAC), as specified.

States of Emergency, Generally

The bill modifies provisions regarding the designation by the Governor of the emergency area during a public emergency. Under the bill, during a state of emergency, the Governor must designate the emergency area where public safety is in danger or, on the Governor's reasonable determination, that public safety is in immediate danger by the Governor's own initiative or by the application to the Governor by (1) the senior elected official of governing body of a jurisdiction or (2) the Executive Director of MEMA. This is similar to existing provisions repealed by the bill.

A state of emergency may not continue for more than 30 days unless the Governor renews the state of emergency *through executive order or proclamation*. Each executive order or proclamation declaring or terminating a state of emergency must include, in addition to other items already required under current law, the effective date. In addition to existing requirements, each executive order or proclamation must also be filed promptly with the Secretary of State, unless prevented or impeded by the circumstances of the emergency.

An executive order or proclamation declaring a state of emergency is authority for the activation of State compacts, laws, programs, policies, or regulations that require a declared state of emergency.

Governor's Authority after Proclamation of a State of Emergency

The bill expands the authority of the Governor after issuing an official proclamation of a state of emergency in accordance with the bill. In addition to existing authority, the Governor may promulgate reasonable orders, rules, or regulations that the Governor considers necessary to protect life and property or calculated effectively to control and terminate the emergency in the emergency area, including orders, rules, or regulations to:

- compel use or disclosure of protected health information to appropriate State agencies;
- seize, take, or condemn private property, in which event the owner of the property must be compensated, if, and only to the extent that, the Governor determines that the property is needed for the protection of the public, including specified equipment, energy sources, food, clothing, materials, medicines, supplies, and facilities; and
- utilize all resources available to State government to address the emergency.

The Governor retains the authority to adopt orders, rules, or regulations to take various other actions, such as suspending laws and regulations, compelling evacuations, authorizing the use of private property, and providing for temporary housing. Before an order, rule, or regulation is promulgated pursuant to these provisions (as amended by the bill), the Governor must give reasonable notice of the order through the official website of the Governor in the area below the header of the homepage or through the Governor's social media accounts. The order, rule, or regulation terminates when the Governor issues an executive order or a proclamation that terminates the state of emergency.

States of Emergency Declared in Other States

The bill modifies and clarifies provisions relating to the Governor's authority in relation to requests for assistance from another state after that state has declared a state of emergency. If the Governor is petitioned for assistance by written request from the executive authority, or the executive authority's equivalent, of a state that has declared a state of emergency, the Governor may issue an executive order authorizing the use of resources or the suspension of the effect of any statute, rule, or regulation, as specified. The General Assembly may terminate an executive order under these provisions by joint resolution at any time. After the General Assembly terminates an executive order, the Governor must issue an executive order or proclamation that terminates the executive order. Each executive order issued pursuant to these provisions must (1) include the effective date and (2) be filed promptly with the Secretary of State. These provisions do not apply to requests placed through MEMAC.

Current Law:

Maryland Emergency Management Agency, Generally

MEMA, which is part of the Military Department, is responsible for coordinating the State response in any major emergency or disaster. This includes supporting local governments as needed or requested and coordinating assistance with the Federal Emergency Management Agency and other federal partners. MEMA manages many of the federal grants that fund a broad range of initiatives leading to enhanced protection from and responses to the full range of natural and man-made disasters that could threaten the State's citizens.

States of Emergency and Related Gubernatorial Powers

Under the Public Safety Article, the Governor has control of and is responsible for MEMA and is responsible for carrying out the provisions of the Maryland Emergency Management Agency Act. In the event of the threat or occurrence of an emergency, the Governor may

assume direct operational control over all or part of an emergency management function created or authorized by the Act.

Under Subtitle 3 of Title 14 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 must be broadly construed to carry out its purpose.

After proclaiming a state of emergency, the Governor may, as specified:

- suspend the effect of any statute, rule, or regulation of an agency of the State or a political subdivision;
- authorize the use of private property, in which case the owner of the property must be compensated for its use and for any damage to the property;
- provide for temporary housing;
- authorize the clearance and removal of debris and wreckage;
- direct and compel the evacuation of all or part of the population from a stricken or threatened area in the State;
- set evacuation routes and the modes of transportation to be used;
- direct the control of ingress to and egress from an emergency area, the movement of individuals in the area, and the occupancy of premises in the area;
- control traffic in the emergency area;
- designate specific zones in an emergency area in which the occupancy and use of buildings and vehicles may be controlled;
- control the movement of individuals or vehicles into, in, or from the designated zones;
- control places of amusement and assembly;
- control individuals on public streets;
- establish curfews;
- control the sale, transportation, and use of alcoholic beverages;
- control the possession, sale, carrying, and use of firearms and other weapons and ammunition;
- control the storage, use, and transportation of explosives or flammable materials or specified dangerous liquids; and
- authorize the use of alternate care sites.

Governor's Health Emergency Powers

The Governor also has various powers to issue orders relating to catastrophic health emergencies.

HIPAA Privacy in Emergency Situations

Under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), covered entities may not use or disclose protected health information except either as the privacy rule permits or as an individual authorizes in writing. Covered entities may disclose protected health information without an individual's authorization for such purposes as treatment, payment, health care operations, and public interest activities.

In November 2014, the U.S. Department of Health and Human Services issued a bulletin to address when patient information may be shared under the HIPAA Privacy Rule in an emergency. The HIPAA Privacy Rule, among other things, recognizes the legitimate need for public health authorities and others responsible for ensuring public health and safety to have access to protected health information that is necessary to carry out their public health mission. In addition, the HIPAA Privacy Rule authorizes health care providers to disclose needed protected health information without individual authorization to anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public, as consistent with applicable law and the provider's standards of ethical conduct.

Maryland Emergency Management Assistance Compact, Generally

MEMAC is a statewide program that provides for mutual aid between jurisdictions for emergency assistance. MEMAC provides for the procedures to request assistance and to resolve financial and liability issues for assistance given. All 23 counties within the State, Baltimore City, the City of Annapolis, and Ocean City belong to the compact.

MEMAC also provides for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment or personnel simulating performance of any aspect of the giving and receiving of aid by party jurisdictions during emergencies.

Background: The Military Department advises that ECOs are designed for situations where a full state of emergency is not appropriate or required. Through an ECO, the Governor could coordinate and pre-position resources, request intrastate and interstate mutual aid, and manage ingress to and egress from a heightened risk area. In addition, the Military Department reports that an ECO would enable the Governor to adequately prepare for a potential incident without the need to formally declare a state of emergency, which might alarm the public.

According to the Military Department, the bill's expansion of gubernatorial powers are intended to (1) eliminate confusion between the government and the private sector regarding protected health information during declared states of emergencies and (2) align Maryland law with the laws in several other states regarding the authority of the Governor to seize, take, or condemn private property. Finally, the Military Department advises that the consolidation of gubernatorial powers during a state of emergency conforms to national trends.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Institute for Emergency Medical Services Systems; Baltimore City; Montgomery and Prince George's counties; Maryland Association of Counties; cities of Annapolis and Bowie; Governor's Office; Secretary of State; Maryland Department of Health; U.S. Department of Health and Human Services; Department of State Police; Maryland Department of Transportation; Maryland State Archives; Military Department; Legislative Services; Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2020
rh/lgc Third Reader - March 16, 2020

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **State of Emergency – Declared by Governor**

BILL NUMBER: HB 650

PREPARED BY: Catherine Kelly

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS