

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Joint Resolution 2 (Delegate Cox)

Rules and Executive Nominations

Resolution to End the State of Emergency

This joint resolution resolves that the Governor's state of emergency, which began on March 5, 2020, and has continued through many and varied orders, is terminated and expresses the intent of the General Assembly to order the Governor to cease issuing renewals of the state of emergency.

Fiscal Summary

State Effect: The joint resolution likely has a significant effect on State finances and operations, but any such effects cannot be adequately quantified or anticipated, as discussed below.

Local Effect: The joint resolution likely has a significant effect on local finances and operations.

Small Business Effect: Meaningful.

Analysis

Current Law: The emergency powers of the Governor are generally set forth under Title 14 of the Public Safety Article.

Maryland Emergency Management Act

Title 14, Subtitle 1 of the Public Safety Article (Maryland Emergency Management 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 the Governor (1) 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.

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.

Governor's Health Emergency Powers

Title 14, Subtitle 3A of the Public Safety Article authorizes the Governor to issue a proclamation declaring the existence of a catastrophic health emergency. "Catastrophic health emergency" means a situation in which extensive loss of life or serious disability is threatened imminently because of exposure to a deadly agent, including a viral agent capable of causing extensive loss of life or serious disability.

The Governor must rescind the proclamation whenever the Governor determines that the catastrophic health emergency no longer exists. Unless renewed, the proclamation expires

30 days after issuance. The Governor may renew the proclamation for successive periods of up to 30 days if he or she determines that a catastrophic health emergency continues to exist.

After proclaiming a catastrophic health emergency, the Governor may order the Secretary of Health or other designated official to:

- seize immediately anything needed to respond to the medical consequences of the catastrophic health emergency;
- work collaboratively, to the extent feasible, with health care providers to designate and gain access to a facility needed to respond to the catastrophic health emergency; and
- control, restrict, or regulate the use, sale, dispensing, distribution, or transportation of anything needed to respond to the medical consequences of the catastrophic health emergency by (1) rationing or using quotas; (2) creating and distributing stockpiles; (3) prohibiting shipments; (4) setting prices; or (5) taking other appropriate actions.

If medically necessary and reasonable to treat, prevent, or reduce the spread of the disease or outbreak believed to have been caused by the exposure to a deadly agent, the Governor may order the Secretary of Health or other designated official to:

- require individuals to submit to medical examination or testing;
- require individuals to submit to vaccination or medical treatment unless the vaccination or treatment likely will cause serious harm to the individual;
- establish places of treatment, isolation, and quarantine; or
- require individuals to go and remain in places of isolation or quarantine until the Secretary of Health or other designated official determines that the individuals no longer pose a substantial risk of transmitting the disease or condition to the public.

In addition, the Governor may order the evacuation, closing, or decontamination of any facility. If necessary and reasonable to save lives or prevent exposure to a deadly agent, the Governor may order individuals to remain indoors or refrain from congregating.

A person who knowingly and willfully fails to comply with an order, requirement, or directive related to a catastrophic health emergency is guilty of a misdemeanor and subject to imprisonment for up to one-year and/or a fine of up to \$5,000.

COVID-19 State of Emergency and Catastrophic Health Emergency

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 has been renewed several times, most recently on [January 21, 2021](#). The renewal noted that the spread of COVID-19 in the State continues to pose an immediate threat to all Marylanders of extensive loss of life or serious disability; the emergency conditions, state of emergency, and catastrophic health emergency continue to exist; and continued emergency response by the State is needed to maintain and further progress through the Maryland Strong: Roadmap for Recovery, including expanding COVID-19 testing capacity, maintaining adequate patient surge capacity, supplying sufficient personal protective equipment, executing a robust contact tracing operation, and preparing for the deployment and administration of COVID-19 vaccines.

Federal Public Health Emergency

The Secretary of the U.S. Department of Health and Human Services (HHS) may, under § 319 of the federal Public Health Service Act, determine that a disease or disorder presents a public health emergency (PHE) or that a PHE, including significant outbreaks of infectious disease or bioterrorist attacks, otherwise exists. The declaration lasts for the duration of the emergency or 90 days but may be extended by the Secretary. The Secretary of HHS determined that a PHE exists nationwide on January 27, 2020. This declaration has been renewed several times, most recently [January 21, 2021](#).

Recent Legislative Action

Chapter 39 of 2021 (known as the RELIEF Act) provides income tax relief to certain taxpayers, economic impact payments to certain taxpayers, and other forms of more immediate assistance to local governments, businesses, and employers. The Act authorizes the Governor to transfer, in fiscal 2021, and spend a total of \$306.0 million from the State's Rainy Day Fund to provide additional financial assistance targeted primarily to individuals, businesses, and nonprofit organizations as well as additional funding for specified State agencies and specified local governments. The Act also provides temporary relief to employers with regards to unemployment insurance (UI) benefits, including modifying the calculation and timing of contributions and reimbursement payments to the Unemployment Insurance Trust Fund (UITF).

State Fiscal Effect:

General Impact

The current state of emergency allows for certain public and social restrictions to control the spread of COVID-19 and for the waiver of specified statutory and regulatory requirements in light of the pandemic. At the State level, if the state of emergency is terminated, numerous executive orders would cease, including those:

- requiring the wearing of face coverings;
- governing the businesses, organizations, establishments, and facilities that may be open (and at what capacity);
- imposing COVID-19 travel orders, including requiring quarantine and testing of persons entering Maryland;
- extending all State licenses, permits, registrations, and other authorizations (including driver's licenses, vehicle registrations, and professional licenses) that expired during the state of emergency and which will expire on the 30th day after the date on which the state of emergency is terminated; and
- prohibiting Maryland courts from ordering the eviction of any tenant who can show that their failure to pay rent or breach of lease was the result of COVID-19 because of lost or reduced employment due to the COVID-19 emergency (which serves an affirmative defense in an eviction proceeding).

As a result, terminating the state of emergency likely has wide-ranging implications on State finances – both revenues and expenditures – that cannot be quantified at this time.

Maryland Department of Health

The Maryland Department of Health (MDH) advises that termination of the state of emergency would limit the State's ability to respond to and control the spread of COVID-19. In particular, it will remove the Secretary of Health's authority to permit certain activities, such as expanded telehealth provisions, out-of-state licensed health care workers performing health care tasks in Maryland, and expanded scopes of practice for certain licensed health care workers. MDH further notes that, if the state of emergency is ended, it is likely that the virus will spread more rapidly. To the extent that the spread of the virus is exacerbated, MDH expenditures increase by an indeterminate but significant amount in order to increase its outbreak response accordingly.

Potential Impact on Unemployment Insurance Tax Calculations

The typical process for determining an employer's benefit ratio – one of two inputs into an employer's UI taxes – involves a lookback period over the three immediately preceding fiscal years. For calendar 2021 taxes, the period would normally be fiscal 2018 through 2020, which includes the first four months of UI claims due to COVID-19.

In December 2020, the Governor signed an executive order that freezes employer benefit ratios at their 2020 tax levels by using fiscal 2017 through 2019 as the lookback period. The executive order remains in effect until after the termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders. The RELIEF Act continues this general effect of holding employers harmless for pandemic claims but only for tax year determinations made beginning July 1, 2021 (*i.e.*, for tax year 2022 and later).

It is unclear whether the immediate expiration of the state of emergency, prior to any 2021 employer UI taxes being paid, would result in a recalculation of employer benefit ratios for the 2021 tax year. A Maryland Department of Labor consultant report estimated the effect of excluding pandemic history at approximately \$109 million in the first year of doing so; under the RELIEF Act, small employers may defer payment of UI taxes until January 1, 2022. Future year tax determinations are covered by the RELIEF Act. UITF expenditures are unaffected.

Local Fiscal Effect: Terminating the state of emergency also likely has wide-ranging implications on local finances.

At the local level, any specific orders issued by county executives or public health officers in individual jurisdictions would no longer be in effect. Such orders vary by jurisdiction, but they currently include requiring face coverings in public; limiting capacity at religious facilities, restaurants and food service establishments, personal services and retail establishments, indoor social gatherings, indoor organized sports, fitness centers, gaming facilities, indoor theaters, outdoor entertainment and sporting venues, and other venues; suspension of alcohol sales at specific times of day; limitations on indoor dining to a specified length of time; and waiving of local fees (such as food service establishment license fees).

To the extent that the spread of the virus is exacerbated as a result of these orders ending, local expenditures increase by an indeterminate but significant amount in order to increase outbreak response accordingly.

Small Business Effect: Small businesses benefit significantly from removal of specified restrictions and other limitations on operations, sales, and capacity.

Additional Comments: For additional information on COVID-19 in Maryland, please see the **Appendix – COVID-19**.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Budget and Management; Maryland Association of County Health Officers; Maryland Department of Health; Governor's Office; Department of Legislative Services

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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).