



Senate Fiscal Agency
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House Bill 4448 (Substitute H-1 as passed by the House)
Sponsor: Representative Steven Johnson
House Committee: Oversight
Senate Committee: Oversight

Date Completed: 5-18-21

CONTENT

The bill would amend the Emergency Management Act (EMA) to prohibit an executive order, proclamation, or directive issued under the EMA from extending any response time or otherwise limiting the scope of a public body's duties under the Freedom of Information Act (FOIA), subject to an exemption.

The EMA states that the Governor is responsible for coping with dangers to the State or to the people of Michigan presented by a disaster or emergency. The Governor may issue executive orders, proclamations, and directives having the force and effect of law to implement the Act. Except as otherwise provided, an executive order, proclamation, or directive may be amended or rescinded by the Governor.

The Governor must, by executive order or proclamation, declare a state of disaster if he or she finds a disaster has occurred or the threat of a disaster exists. The state of disaster continues until the Governor finds that the threat or danger has passed, the disaster has been dealt with to the extent that disaster conditions no longer exist, or until the declared state of disaster has been in effect for 28 days. After 28 days, the Governor must issue an executive order or proclamation declaring the state of disaster terminated, unless a request by the Governor for an extension of the state of disaster for a specific number of days is approved by resolution of both houses of the Legislature. An executive order or proclamation issued pursuant to the above provisions must indicate the nature of the disaster, the area or areas threatened, the conditions causing the disaster, and the conditions permitting the termination of the state of disaster.

Under the bill, however, an executive order, proclamation, or directive issued under the EMA could not extend any response time or otherwise limit the scope of a public body's duties under FOIA unless the public body established, by clear and convincing evidence, a physical inability to comply with those duties as a direct result of the declared state or disaster or emergency.

MCL 30.403

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill could have a negative fiscal impact on the State and affected local governments, though any impact would likely be minimal. Affected agencies and governments would experience increased costs compared to a counterfactual in which FOIA rules were relaxed.

The fiscal impact on any agency or government in any instance would depend on the nature of the disaster and whether the disaster physically prohibited the agency or government from complying with FOIA requests.

Fiscal Analyst: Ryan Bergan
Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.