

Proposal expands ‘emergency powers’

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By Steve Peoples

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PROVIDENCE — State leaders want to change Rhode Island law to expand their emergency powers during a “state of fiscal crisis.”

The legislation, backed by both Governor Carcieri and House Finance Committee Chairman Steven M. Costantino, would allow state departments to bypass regulations requiring public notification of proposed cuts to programs like state subsidized health care, welfare benefits and long-term care for the elderly and disabled.

The move, according to the governor’s office, is necessary to escape bureaucratic delays associated with rule changes that now require a 30-day public comment period, notification to those who may be affected, and public hearings.

“The state rulemaking process is fairly long and involved. It often takes two to three months before a state department can actually implement changes to the law made by the legislature,” said the governor’s spokesman, Jeff Neal. “We’re dealing with the biggest budget problem since the credit union crisis of the early 1990s. Solving this problem is going to require dramatic action.”

State officials have just four months to close a current-year deficit estimated at \$151 million. The governor has released a host of cost-cutting proposals to close the current gap and a larger hole of \$384 million projected for the coming fiscal year.

Opponents say that House Bill 7549 represents a dangerous expansion of government power.

“This is a roadmap for arbitrary and off-the-cuff decision-making,” said Steven Brown, executive director of the Rhode Island Affiliate of the American Civil Liberties Union. “Passage of this bill would essentially create government by executive fiat.”

The legislation would add a “fiscal crisis” exemption to the state’s Administrative Procedures Act, which outlines actions over a 30-day period state agencies must take before implementing new policies. The act already exempts state departments from standard rules if “an imminent peril to the public health, safety, or welfare requires adoption of a rule upon less than 30 days’ notice, and states in writing its reasons for that finding.”

The proposed one-page law does not define what constitutes a “fiscal crisis.” It states simply, “Any rules or regulations necessary or advisable...to address a current or

impending state fiscal crisis shall be effective immediately as an emergency rule upon the filing ... with the secretary of state and state agencies.”

Brown said that the legislation could have sweeping effects.

“An agency could unilaterally adopt rules suspending state programs, reducing benefits, changing benefits criteria or otherwise affecting state residents in potentially dramatic ways merely by internally determining that it was ‘advisable to do so’ in order to address the state’s financial situation,” Brown wrote in an analysis. “The agency would not have to explain why it deemed this emergency action ‘advisable’ (much less necessary), and might not even have to take steps to make the emergency action known to affected persons.”

Linda Katz, policy director for the Poverty Institute at Rhode Island College, fears that the bill is too broad.

“This is the first time I’ve ever seen an amendment to the entire APA to say there’s a blanket exemption to be able to do emergency rulemaking. And this proposal is so vague that it’s hard to know what it’s going to apply to,” she said.

The governor’s office could not say which program cuts might be subject to emergency rule, but that they would likely be focused in the Department of Human Services. Responding to Katz’ criticism, Neal said that the General Assembly, as it debates the legislation, is “free to make the necessary adjustments to ensure clarity.”

The House Finance Committee will review the bill in the near future, according to House spokesman Larry Berman. Costantino co-sponsored the legislation with Rep. Carol A. Mumford, R-Scituate, because of the state’s “severe budget problems,” Berman said.

“This [bill] would allow them under certain circumstances to expedite some of these things that they need to get the savings, to achieve the savings in this year’s budget and next year’s budget, because they need to move those things along rather quickly,” Berman said.

But Brown fears that moving quickly could lead to problems, especially as public officials make “decisions based on the best interest of the bottom line. And that’s not necessarily the same as the best interest of the public they’re designed to serve.”

Neal dismissed criticism that program cuts wouldn’t be properly vetted if the 30-day public comment period were eliminated.

“The public vetting process occurs when the changes in the law go through the General Assembly. If for instance, the General Assembly adopts the governor’s plan to reform Medicaid, that plan will also require some rule changes. The larger question of Medicaid reform will have been debated publicly and approved by the legislature,” Neal said.

Katz, of the Poverty Institute, wasn't convinced.

"It's really quite frightening," she said of the prospect of emergency rule. "It's not the way to run a business. And it's not the way to run government. People are going to be really hurt and not know what's coming at them."

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