



# San Bernardino County

## Legislation Text

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**File #: 3271, Agenda Item #: 104**

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### **REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION**

**November 17, 2020**

#### **FROM**

**MICHELLE D. BLAKEMORE, County Counsel**

#### **SUBJECT**

Discussion of Potential Lawsuit Against Governor Newsom's Exercise of Statutory Powers under the Emergency Services Act

#### **RECOMMENDATION(S)**

Discuss, consider action and provide direction, as appropriate, regarding Governor Newsom's March 4, 2020 declaration of emergency pursuant to the California Emergency Services Act (Cal. Gov. Code §8550 et. seq.) citing the threat of the COVID-19 pandemic and other State Public Health Orders and California Public Department of Public Health (CDPH) Guidance.

(Presenter: Michelle D. Blakemore, County Counsel, 387-5455)

#### **COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Promote the Countywide Vision.**

**Create, Maintain and Grow Jobs and Economic Value in the County.**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

#### **FINANCIAL IMPACT**

Discussion of the County's possible legal challenge to the Executive Orders, State Public Health Orders and CDPH Guidance issued by Governor Newsom regarding statewide Public Health Orders is non-financial in nature and will not require the use of additional Discretionary General Funding (Net County Cost).

#### **BACKGROUND INFORMATION**

The COVID-19 virus originated in Wuhan, China in late 2019 and began spreading, initially, within China and then to other countries. On January 30, 2020, the World Health Organization declared the outbreak to be a "public health emergency of international concern". This was followed on January 31, 2020 by the United States Human Services Secretary declaring a public health emergency. Cases internationally, within the US, and within California (as evidenced by the Governor's Proclamation) continue to rise despite the implementation of significant mitigation measures.

On March 4, 2020, Governor Newsom declared a State of Emergency pursuant to the California Emergency Services Act (Cal. Gov. Code §8550 et. seq.) citing the threat of the COVID-19 pandemic. As of November 17, 2020, (more than eight months later) the State of Emergency has not been terminated pursuant to applicable law.

On March 19, 2020, Governor Newsom signed Executive Order N-33-20 (the “Executive Order”) directing all residents “to immediately heed the current State public health directives,” including an order of the state public health officer dated March 19, 2020. The Executive Order and order of the state public health officer, “order [ed] all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sector”, as such critical infrastructure is outlined in guidance from the federal Cybersecurity & Infrastructure Security Agency.

On May 4, 2020, Governor Newsom issued Executive Order N-60-20 concerning second and third stages of California “four-stage framework . . . to allow Californians to gradually resume activities” (the “Governor’s Reopening Order”). The Governor’s Reopening Order directed the State Public Health Officer to “establish criteria and procedures . . . to determine whether and how particular local jurisdictions may implement public health measures that depart from the statewide directives . . .” specifically “measures less restrictive than any public health measures implemented on a statewide basis.”

On May 22, 2020, in accordance with direction from the California Department of Public Health (CDPH) and the Governor’s Reopening Order, the County submitted to CDPH its “COVID-19 Variance and Attestation Form; Variance to Stage 2 of the California Roadmap to Modify the Stay-At-Home Order” and its “Readiness and Reopening Plan” showing how the County could protect the public’s health and simultaneously support the economic viability of the region.

On August 28, 2020, Governor Newsom issued a new framework entitled “Blueprint for a Safer Economy” (“Blueprint”). The Blueprint originally and specifically, requires California’s counties to meet stated benchmarks in overall case rates and testing positivity rates in order to move into less restrictive tiers that would allow for a measured reopening of businesses, schools and other activities.

On September 30, 2020, Governor Newsom announced another adjustment to his Blueprint by requiring an equity metric to measure test positivity rates in disadvantaged neighborhoods and that counties submit a plan that defines disproportionately impacted populations, the percent of the COVID-19 cases that are in these populations and investment in testing, contact tracing, quarantine support, education and outreach in these areas. The equity metric is added to a county’s other metrics to adjust its overall measure against the State standard for moving from one tier to the next or back to a previous tier.

Under the Blueprint, Governor Newsom has allowed certain businesses and entertainment activities to open to varying degrees based upon the county tier system (1-4) assigned by the State. The guidance and businesses allowed to reopen are regularly changed by the State. Examples of businesses allowed to reopen include, but are not limited to: on September 9, 2020, the COVID-19 Industry Guidance: Outdoor Operations of Cardrooms, on October 20, 2020, the COVID-19 Industry Guidance: Museums, Galleries, Zoos, and Aquariums allows these businesses to reopen to varying degrees; and on October 20, 2020, COVID-19 Industry Guidance: Expanded Personal Care Services for nail salons, tattoo parlors, body waxing and similar services. However, the Governor’s Blueprint fails to allow the general reopening of businesses and continues to restrain the lives of the residents of this County and the implementation of the Blueprint appears to be random and without proper scientific basis. The Governor’s approach is “one-size-fits-all” and fails to consider the geographic differences and regional variations among and within the counties that results in lower case counts and virus spread.

## **PROCUREMENT**

Not applicable

## **REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Michelle D. Blakemore, County Counsel, 387-5455) on November 12, 2020; Finance (Carl Lofton, Administrative Analyst, 387-5404) on November 13, 2020; and

County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on November 13, 2020.