



S7919 – Fact Sheet

Please find below an overview of the issues regarding S7919 passed on March 2, 2020 regarding the Coronavirus.

General History:

In the wake of World War Two, and with the rise of the Soviet Union as a nuclear power, in 1951, the New York State Legislature enacted the New York State Defense Emergency Act (Title 26, Section 9101 – 9190 of the Unconsolidated Law) to allow a unified state response to an attack (and more specifically a nuclear attack) on the state of New York. This statute granted broad powers to the Governor to respond to such an emergency, provide for continuity of government, provide for civil defense, shelter, emergency services, mobilization of state and local governmental services, as well as financial services.

In 1978, this statute was expanded to add Article 2-B of the executive law (State and Local Natural and Man Made Disaster Preparedness: Sections 20 – 29k), to provide a broad definition of what disaster would enable a state emergency response, and further define gubernatorial powers in such an emergency, and prescribe preparedness activities of state and local governments. After September 11, 2001, and then again in 2010 (with the elevation of the state office of homeland security into a state division) this statute was again amended and expanded to provide further response and preparedness authorizations and goals, primarily through DHSES.

S7919:

- **Governor’s Justification:**

In the advent of the first confirmed case of the Coronavirus in New York (a health care worker who had contracted the disease in Iran and who was permitted to return to her home in New York City) the governor contended that the current broad powers conveyed to him under the unconsolidated law and executive law, to deal with a natural or man made emergency, were insufficient to address this new viral threat. To successfully combat this threat, the governor asserted, that he needed new, expanded and specific legal authority to address a potential pandemic.

- **Provisions of the Proposed Law:** To award this new, expanded and specific legal authority, the governor submitted, together with a message of necessity, S.7919, which would amend section 20 of the executive law to do the following:

1. Expands the Definition of “Disaster”

a. Impending Threat: This first expansion of the term disaster would redefine “Disaster” to include not just an “occurrence” or “imminent threat” but also now an “impending” or “urgent” threat. This is a very significant expansion since an occurrence is an event that has already happened, and an “imminent threat” is a serious threat that credible intelligence has determined has an extremely high likelihood of occurring in the very immediate future. An “impending threat”, however, has no such level of certainty. It may or may never happen, and only implies that it “could happen” with such assessment in the sole determination of the governor.

b. Disease Outbreak: Presently, a disaster includes an “epidemic”. This bill would add a “Disease Outbreak”, which is a broader definition in that such is a much earlier stage of a viral infestation than an “epidemic”. As health officials do believe that an earlier action does improve the effectiveness of the emergency response, this amendment is probably the only part of the bill that was necessary.

c. No Focus on the Coronavirus: This bill did not in anyway focus on the Coronavirus response, but merely expanded the current, emergency response statute to include a response to the Coronavirus. Accordingly, all the expansion powers of this bill would also apply in the event of any other natural or man made disaster. These would include the following:

“fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, epidemic, air contamination, terrorism, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacteriological release, water contamination, bridge failure or bridge collapse”

As a result, the governor, upon passage and signing of this bill, could now use these extraordinary, expanded, emergency powers when a neighborhood suffers from “blight” or when a house in New York has been infested with rats or bugs, or when a river has been contaminated from seasonal runoff, or simply when an area has suffered a storm.

2. Expands the Scope of the Governor's Legal Authority

- a. Suspension of Law:** Presently, pursuant to current law, the governor may temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency.

This bill would dramatically expand this power to authorize the temporary suspension of any such law, not just a provision of such. This expansion is more than just a broadening from provision to the entire statute. The reason the "provision" language was originally included was to assure that any such suspension was related to the emergency. Now that such qualifier has been removed from law, the governor's suspension order could presumably include the suspension of statutes that have no or nearly no relevance to the disaster. (And this governor has shown a propensity to broadly interpret his suspension powers even before S.7919, when during Hurricane Sandy he used his emergency powers under section 20 to broadly expand voting rights across the state).

Moreover, S.7919, would also go even further to reduce the relevance required for suspension, by expressly expanding this suspension power from current law, which requires that the statute suspended must "prevent, hinder, or delay action necessary to cope with the disaster", to now only requiring that such suspension need only be "necessary to assist or aid in coping with such disaster".

Additionally, it should also be noted that current law presently establishes a "reasonableness" requirement on executive action during an emergency response under section 20. Such prohibits any executive action that "does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort."

S.7919, however, further, dramatically reduces even this limitation, by limiting these relevance to the disaster restrictions, providing now that such executive action is only prohibited where it "is not in the interest of the health or welfare of the public and which is not reasonably necessary to aid the disaster effort."

- b. Governor Directives:** Perhaps the most significant expansion of gubernatorial powers under this bill, however, is its authorization, for the first time ever, to allow him to issue affirmative "directives" that have the force of law, by means of executive order.

Whereas the previous emergency disaster response statutes have authorized the executive to suspend certain provisions of current law that "prevent, hinder, or delay action necessary to cope with the disaster", S.7919 would now authorize the governor to act as the legislature, on his own, to draft new laws, by means of executive order.

Due to the removal of the "relevance" qualifiers as outlined above, this bill, this means that the governor could use these provisions upon the declaration of an emergency, to write any new law, whether relevant to the disaster or not, that he wishes to have enacted, regardless of whether or not the elected legislature of the state of New York supports it.

3. The Ability of the Legislature to Repeal

A great deal was mentioned on the floor debate for S.7919 about the addition of the legislature's ability to repeal, by joint resolution of the Senate and Assembly, any executive order (directive or suspension of law) issued in accordance with the provisions of this new law. Whereas this is an abbreviated process from a traditional repeal of any statute (which would either require either the governor's signature or an override), the legislature, under the state constitution, always retains the right to enact, repeal and amend statutes, as the branch of government in which the state's legislative power vests.

4. Duration

Under current law, any executive order issued by the governor in accordance with his disaster emergency response powers, has a legal duration of 30 days. Section 20 provides, however, that such executive order, and any suspension or directive of law contained therein, may be renewed, for innumerable times, for 30 additional days, for as long as the executive chooses.

S.7919 would take effect immediately, and would remain in effect until April 30, 2021, whereupon it would expire and be deemed repealed.