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## **S7919 – Fact Sheet**

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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.

# STATE OF NEW YORK

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7919

## IN SENATE

March 2, 2020

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Introduced by Sen. STEWART-COUSINS -- (at request of the Governor) --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Rules

AN ACT to amend the executive law, in relation to issuing by the gover-  
nor of any directive necessary to respond to a state disaster emergen-  
cy; making an appropriation therefor; and providing for the repeal of  
certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Paragraph a of subdivision 2 of section 20 of the executive  
2 law, as amended by section 1 of part B of chapter 56 of the laws of  
3 2010, is amended to read follows:

4 a. "disaster" means occurrence or imminent, impending or urgent threat  
5 of wide spread or severe damage, injury, or loss of life or property  
6 resulting from any natural or man-made causes, including, but not limit-  
7 ed to, fire, flood, earthquake, hurricane, tornado, high water, land-  
8 slide, mudslide, wind, storm, wave action, volcanic activity, epidemic,  
9 disease outbreak, air contamination, terrorism, cyber event, blight,  
10 drought, infestation, explosion, radiological accident, nuclear, chemi-  
11 cal, biological, or bacteriological release, water contamination, bridge  
12 failure or bridge collapse.

13 § 2. Section 29-a of the executive law, as added by chapter 640 of the  
14 laws of 1978, subdivision 1 as amended by section 7 of part G of chapter  
15 55 of the laws of 2012, is amended to read as follows:

16 § 29-a. Suspension of other laws. 1. Subject to the state constitu-  
17 tion, the federal constitution and federal statutes and regulations, the  
18 governor may by executive order temporarily suspend [specific provisions  
19 of] any statute, local law, ordinance, or orders, rules or regulations,  
20 or parts thereof, of any agency during a state disaster emergency, if  
21 compliance with such provisions would prevent, hinder, or delay action  
22 necessary to cope with the disaster or if necessary to assist or aid in  
23 coping with such disaster. The governor, by executive order, may issue  
24 any directive during a state disaster emergency declared in the follow-  
25 ing instances: fire, flood, earthquake, hurricane, tornado, high water,

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 landslide, mudslide, wind, storm, wave action, volcanic activity,  
2 epidemic, disease outbreak, air contamination, terrorism, cyber event,  
3 blight, drought, infestation, explosion, radiological accident, nuclear,  
4 chemical, biological, or bacteriological release, water contamination,  
5 bridge failure or bridge collapse. Any such directive must be necessary  
6 to cope with the disaster and may provide for procedures reasonably  
7 necessary to enforce such directive.

8 2. Suspensions pursuant to subdivision one of this section shall be  
9 subject to the following standards and limits, which shall apply to any  
10 directive where specifically indicated:

11 a. no suspension or directive shall be made for a period in excess of  
12 thirty days, provided, however, that upon reconsideration of all of the  
13 relevant facts and circumstances, the governor may extend the suspension  
14 for additional periods not to exceed thirty days each;

15 b. no suspension or directive shall be made which [does not safeguard  
16 the] is not in the interest of the health [and] or welfare of the public  
17 and which is not reasonably necessary to aid the disaster effort;

18 c. any such suspension order shall specify the statute, local law,  
19 ordinance, order, rule or regulation or part thereof to be suspended and  
20 the terms and conditions of the suspension;

21 d. the order may provide for such suspension only under particular  
22 circumstances, and may provide for the alteration or modification of the  
23 requirements of such statute, local law, ordinance, order, rule or regu-  
24 lation suspended, and may include other terms and conditions;

25 e. any such suspension order or directive shall provide for the mini-  
26 mum deviation from the requirements of the statute, local law, ordi-  
27 nance, order, rule or regulation suspended consistent with the goals of  
28 the disaster action deemed necessary; and

29 f. when practicable, specialists shall be assigned to assist with the  
30 related emergency actions to avoid needless adverse effects resulting  
31 from such suspension.

32 3. Such suspensions or directives shall be effective from the time and  
33 in the manner prescribed in such orders and shall be published as soon  
34 as practicable in the state bulletin.

35 4. The legislature may terminate by concurrent resolution executive  
36 orders issued under this section at any time.

37 § 3. The sum of forty million dollars (\$40,000,000) is hereby appro-  
38 priated for transfer by the governor to the general, special revenue,  
39 capital projects, proprietary or fiduciary funds of any agency, depart-  
40 ment, or authority for services and expenses related to the outbreak of  
41 coronavirus disease 2019 (COVID-19). Such funds shall be used for  
42 purposes including, but not limited to, additional personnel, equipment  
43 and supplies, travel costs, and trainings. A portion of these funds may  
44 be made available as state aid to municipalities for services and  
45 expenses related to the outbreak of coronavirus disease 2019 (COVID-19).  
46 Such funds shall be available for payment of financial assistance here-  
47 tofore accrued or hereafter to accrue. Any disbursements from this  
48 appropriation shall be distributed pursuant to a plan approved by the  
49 director of the budget.

50 § 4. This act shall take effect immediately and sections one and two  
51 of this act shall expire and be deemed repealed April 30, 2021.