AMENDMENTS TO HOUSE RESOLUTION NO. 836

Sponsor: REPRESENTATIVE CUTLER

Printer's No. 3828

Amend Resolution, page 1, lines 1 through 15; page 2, lines 1 through 3; by striking out all of said lines on said pages and inserting

Terminating in part the March 6, 2020, Proclamation of Disaster Emergency issued under the hand and Seal of the Governor, Thomas Westerman Wolf.

WHEREAS, A novel coronavirus, known as COVID-19, entered the United States in late January 2020 and has spread through the states, including this Commonwealth; and

WHEREAS, On March 6, 2020, Governor Thomas Westerman Wolf issued a Proclamation of Disaster Emergency, published at 50 Pa.B. 1644 (March 21, 2020), citing a threat of imminent disaster that was projected to be of such a magnitude and severity as to necessitate extraordinary measures to protect the health, safety and life of this Commonwealth's citizens; and

WHEREAS, Since the issuance of the Proclamation of Disaster Emergency, the Governor and his administration have issued executive orders intended to mitigate the spread of COVID-19, directly resulting in severe disruption to the Commonwealth and its political subdivisions and which have and continue to produce critical and in some cases irreversible short-term and long-term negative economic consequences; and

WHEREAS, Under the provisions of the Commonwealth's Emergency Management Code, specifically 35 Pa.C.S. § 7101 et seq., the General Assembly authorized the Governor to make a temporary proclamation or declaration of a disaster emergency by executive order for a period not to exceed 90 days if the health, safety or welfare of the citizens of this Commonwealth is threatened; and

WHEREAS, On March 19, 2020, the Governor proclaimed by executive order that certain business operations (termed non-life-sustaining) would be immediately closed for an indefinite period of time while other business operations (termed life-sustaining) could remain open to the public provided that the business operation adhered to "social distancing practices and other mitigation measures defined by the Centers for Disease Control and Prevention to protect workers and patrons"; and
WHEREAS, Since the Governor's March 19, 2020, business closure order, those business operations in this Commonwealth that were forced to close have experienced significant loss, massive layoffs, catastrophic economic injury and other unsustainable damage, some of which will never financially recover or reopen as a direct result; and

WHEREAS, Since the Governor's March 19, 2020, business closure order, more than 1.8 million Pennsylvanians have filed for unemployment benefits, or 27% of the workforce, rivaling the unemployment experienced during the Great Depression; and

WHEREAS, In an effort to more effectively manage the mitigation of the spread of COVID-19 while safely permitting critical businesses to reopen and allowing citizens to work, the General Assembly passed Senate Bill No. 613, Printer's No. 1636, which provided for a COVID-19 Emergency Mitigation Plan for Businesses, that required the Governor to develop a business mitigation plan for this Commonwealth following the Federal guidance provided by the Centers for Disease Control and Prevention and conforming to the March 28, 2020, Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, as published by the United States Cybersecurity and Infrastructure Security Agency (CISA); and

WHEREAS, On April 20, 2020, the Governor vetoed Senate Bill No. 613, Printer's No. 1636, positing in his veto message that, "Reopening tens of thousands of businesses too early will only increase the spread of the virus, place more lives at risk, increase the death tolls, and extend the length of economic hardships created by the pandemic"; and

WHEREAS, In response to the severe and deteriorating negative economic consequences of the Governor's March 19, 2020, business closure order on businesses and workers in this Commonwealth, the General Assembly passed House Bill No. 2388, Printer's No. 3719, which required the Secretary of Community and Economic Development to immediately issue waivers for the following business operations: vehicle dealers, lawn and garden centers, cosmetology salons and barber shops, messenger services, animal grooming services and manufacturing operations; and required the business operations to adhere to social distancing practices and other mitigation measures defined by the Centers for Disease Control and Prevention and orders issued by the Secretary of Health; and

WHEREAS, On May 19, 2020, the Governor vetoed House Bill No. 2388, Printer's No. 3719, positing in his veto message that, "This legislation is an infringement on the authority and responsibility of the executive and violates the separation of powers which is critical to the proper functioning of our democracy"; and

WHEREAS, In continuing efforts to address the severe and unmitigated negative economic consequences to citizens seeking to purchase or sell a home in this Commonwealth, and in an
effort to prevent homelessness, the General Assembly also passed
House Bill No. 2412, Printer's No. 3720, which required the
Secretary of Community and Economic Development to immediately
issue a waiver to the Governor's March 19, 2020, business
closure order to permit providers of real estate services,
including legal services, residential and commercial real estate
services and settlement services, to conduct business; and
required the business operations to adhere to social distancing
practices and other mitigation measures defined by the Centers
for Disease Control and Prevention and orders issued by the
Secretary of Health; and

WHEREAS, On May 19, 2020, the Governor vetoed House Bill No.
2412, Printer's No. 3720, positing in his veto message that,
"This legislation is an infringement on the authority and
responsibility of the executive and violates the separation of
powers which is critical to the proper functioning of our
democracy"; and

WHEREAS, On May 19, 2020, the Governor vetoed Senate Bill No.
327, Printer's No. 1700, positing in his veto message that,
"This prohibition is a legislative infringement on executive
rule-making authority and violates the separation of powers
which is critical to the proper functioning of our democracy"; and

WHEREAS, In response to the unprecedented and well-documented
economic harms being experienced by this Commonwealth's citizens
and businesses, each chamber of the General Assembly has passed
other legislation substantially similar to Senate Bill No. 613,
House Bill No. 2388, House Bill No. 2412 and Senate Bill No.
327, to require the Secretary of Community and Economic
Development to issue waivers to the Governor's March 19, 2020,
business closure order for residential and commercial
construction, restaurant operations, outdoor events and curbside
retail services and required the business operations to adhere
to social distancing practices and other mitigation measures
defined by the Centers for Disease Control and Prevention and
orders issued by the Secretary of Health; and
WHEREAS, It is evident, notwithstanding bipartisan support
for these legislative efforts, and with apparent disregard to
the ongoing economic harm being experienced in this Commonwealth
by millions of citizens and businesses, that the Governor, by
and through his use of the temporary emergency powers under 35
Pa.C.S. § 7101 et seq., has demonstrated that he will not
cooperatively manage the COVID-19 crisis to the benefit of all
Pennsylvanians; and
WHEREAS, Since the issuance of the March 6, 2020,
Proclamation of Disaster Emergency, the documented cases of
COVID-19 have peaked and have continuously declined; and
WHEREAS, Based on data provided by the Department of Health,
the most immediate and direct threat posed by the COVID-19 virus
is to older citizens and those individuals with preexisting
health conditions, a fact which was referenced in the seventh
clause of the March 6, 2020, Proclamation of Disaster Emergency
that has now been proven; and
WHEREAS, 35 Pa.C.S. § 7301(c) provides broad contemporaneous
authority, without preconditions, to the General Assembly to
terminate all or part of a state of emergency by concurrent
resolution at any time; and
WHEREAS, On April 13, 2020, the Pennsylvania Supreme Court in
Friends of Danny DeVito v. Wolf (No. 68 MM 2020, 2020 WL
1847100), affirmed the General Assembly's authority to terminate
a state of emergency, writing that, "As a counterbalance to the
exercise of the broad powers granted to the Governor, the
Emergency Code provides that the General Assembly by concurrent
resolution may terminate a state of disaster emergency at any
time"; and
WHEREAS, The Court, in reviewing the takings without
compensation claims raised by businesses subject to the
Governor's March 19, 2020, business closure order in Friends of
Danny DeVito v. Wolf, also specifically affirmed that the
Emergency Code, "provides the General Assembly with the ability
to terminate the order at any time. 35 Pa.C.S. § 7301(c)"
therefore be it
RESOLVED (the Senate concurring), That the General Assembly,
in consideration of the orders issued by the Governor to
mitigate the spread of COVID-19 and the effect the orders have
had on the public health and the Commonwealth's economy, hereby
terminate in part the Proclamation of Disaster Emergency issued
on March 6, 2020, to the extent the Proclamation and the orders
issued pursuant to the Proclamation regulate the conduct of
business operations deemed non-life-sustaining differently than
the conduct of business operations deemed life-sustaining under
the March 19, 2020, business closure order as amended; and be it
further
RESOLVED, That upon adoption of this concurrent resolution by both chambers of the General Assembly, the Chief Clerk of the House of Representatives shall do all of the following:

(1) Transmit a copy of this resolution to the Secretary of the Commonwealth as an official action of the General Assembly under the authority provided under 35 Pa.C.S. § 7301(c) to terminate all or part of a state of emergency.

(2) Transmit a copy of this resolution to the Director of the Pennsylvania Emergency Management Agency.

(3) Transmit this resolution to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin under 45 Pa.C.S. § 725(a)(4).

(4) Provide public notice of adoption of this resolution by publishing a summary of it in newspapers of general circulation in this Commonwealth within five days of adoption by the House of Representatives and the Senate.