

AMENDMENTS TO HOUSE RESOLUTION NO. 836

Sponsor: REPRESENTATIVE CUTLER

Printer's No. 3828

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

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

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

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

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

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

30 WHEREAS, On March 19, 2020, the Governor proclaimed by
31 executive order that certain business operations (termed non-
32 life-sustaining) would be immediately closed for an indefinite
33 period of time while other business operations (termed life-
34 sustaining) could remain open to the public provided that the
35 business operation adhered to "social distancing practices and
36 other mitigation measures defined by the Centers for Disease
37 Control and Prevention to protect workers and patrons"; and

1 WHEREAS, Since the Governor's March 19, 2020, business
2 closure order, those business operations in this Commonwealth
3 that were forced to close have experienced significant loss,
4 massive layoffs, catastrophic economic injury and other
5 unsustainable damage, some of which will never financially
6 recover or reopen as a direct result; and

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

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

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

30 WHEREAS, In response to the severe and deteriorating negative
31 economic consequences of the Governor's March 19, 2020, business
32 closure order on businesses and workers in this Commonwealth,
33 the General Assembly passed House Bill No. 2388, Printer's No.
34 3719, which required the Secretary of Community and Economic
35 Development to immediately issue waivers for the following
36 business operations: vehicle dealers, lawn and garden centers,
37 cosmetology salons and barber shops, messenger services, animal
38 grooming services and manufacturing operations; and required the
39 business operations to adhere to social distancing practices and
40 other mitigation measures defined by the Centers for Disease
41 Control and Prevention and orders issued by the Secretary of
42 Health; and

43 WHEREAS, On May 19, 2020, the Governor vetoed House Bill No.
44 2388, Printer's No. 3719, positing in his veto message that,
45 "This legislation is an infringement on the authority and
46 responsibility of the executive and violates the separation of
47 powers which is critical to the proper functioning of our
48 democracy"; and

49 WHEREAS, In continuing efforts to address the severe and
50 unmitigated negative economic consequences to citizens seeking
51 to purchase or sell a home in this Commonwealth, and in an

1 effort to prevent homelessness, the General Assembly also passed
2 House Bill No. 2412, Printer's No. 3720, which required the
3 Secretary of Community and Economic Development to immediately
4 issue a waiver to the Governor's March 19, 2020, business
5 closure order to permit providers of real estate services,
6 including legal services, residential and commercial real estate
7 services and settlement services, to conduct business; and
8 required the business operations to adhere to social distancing
9 practices and other mitigation measures defined by the Centers
10 for Disease Control and Prevention and orders issued by the
11 Secretary of Health; and

12 WHEREAS, On May 19, 2020, the Governor vetoed House Bill No.
13 2412, Printer's No. 3720, positing in his veto message that,
14 "This legislation is an infringement on the authority and
15 responsibility of the executive and violates the separation of
16 powers which is critical to the proper functioning of our
17 democracy"; and

18 WHEREAS, As a result of the disparate impact that the COVID-
19 19 virus is having among the Commonwealth's counties, where some
20 counties experienced few cases of COVID-19 and others
21 experienced wider spread of the virus, the General Assembly
22 passed Senate Bill No. 327, Printer's No. 1700, which, among
23 other COVID-19 provisions, established the COVID-19 County
24 Emergency Mitigation Plan for Businesses; and

25 WHEREAS, The COVID-19 County Emergency Mitigation Plan for
26 Businesses authorized the governing body of a county, in
27 consultation with its county emergency management agency, county
28 health department, county health officer or any other
29 appropriate health or emergency management official, to develop
30 and implement a countywide plan to mitigate the spread of COVID-
31 19 for businesses within the county; and required the business
32 mitigation plan for the county follow the Federal guidance
33 provided by the Centers for Disease Control and Prevention and
34 conform to the March 28, 2020, Advisory Memorandum on
35 Identification of Essential Critical Infrastructure Workers
36 During COVID-19 Response, as published by CISA; and

37 WHEREAS, On May 19, 2020, the Governor vetoed Senate Bill No.
38 327, Printer's No. 1700, positing in his veto message that,
39 "This prohibition is a legislative infringement on executive
40 rule-making authority and violates the separation of powers
41 which is critical to the proper functioning of our democracy";
42 and

43 WHEREAS, In response to the unprecedented and well-documented
44 economic harms being experienced by this Commonwealth's citizens
45 and businesses, each chamber of the General Assembly has passed
46 other legislation substantially similar to Senate Bill No. 613,
47 House Bill No. 2388, House Bill No. 2412 and Senate Bill No.
48 327, to require the Secretary of Community and Economic
49 Development to issue waivers to the Governor's March 19, 2020,
50 business closure order for residential and commercial
51 construction, restaurant operations, outdoor events and curbside

1 retail services and required the business operations to adhere
2 to social distancing practices and other mitigation measures
3 defined by the Centers for Disease Control and Prevention and
4 orders issued by the Secretary of Health; and

5 WHEREAS, It is evident, notwithstanding bipartisan support
6 for these legislative efforts, and with apparent disregard to
7 the ongoing economic harm being experienced in this Commonwealth
8 by millions of citizens and businesses, that the Governor, by
9 and through his use of the temporary emergency powers under 35
10 Pa.C.S. § 7101 et seq., has demonstrated that he will not
11 cooperatively manage the COVID-19 crisis to the benefit of all
12 Pennsylvanians; and

13 WHEREAS, Since the issuance of the March 6, 2020,
14 Proclamation of Disaster Emergency, the documented cases of
15 COVID-19 have peaked and have continuously declined; and

16 WHEREAS, Based on data provided by the Department of Health,
17 the most immediate and direct threat posed by the COVID-19 virus
18 is to older citizens and those individuals with preexisting
19 health conditions, a fact which was referenced in the seventh
20 clause of the March 6, 2020, Proclamation of Disaster Emergency
21 that has now been proven; and

22 WHEREAS, 35 Pa.C.S. § 7301(c) provides broad contemporaneous
23 authority, without preconditions, to the General Assembly to
24 terminate all or part of a state of emergency by concurrent
25 resolution at any time; and

26 WHEREAS, On April 13, 2020, the Pennsylvania Supreme Court in
27 *Friends of Danny DeVito v. Wolf* (No. 68 MM 2020, 2020 WL
28 1847100), affirmed the General Assembly's authority to terminate
29 a state of emergency, writing that, "As a counterbalance to the
30 exercise of the broad powers granted to the Governor, the
31 Emergency Code provides that the General Assembly by concurrent
32 resolution may terminate a state of disaster emergency at any
33 time"; and

34 WHEREAS, The Court, in reviewing the takings without
35 compensation claims raised by businesses subject to the
36 Governor's March 19, 2020, business closure order in *Friends of*
37 *Danny DeVito v. Wolf*, also specifically affirmed that the
38 Emergency Code, "provides the General Assembly with the ability
39 to terminate the order at any time. 35 Pa.C.S. § 7301(c)";
40 therefore be it

41 RESOLVED (the Senate concurring), That the General Assembly,
42 in consideration of the orders issued by the Governor to
43 mitigate the spread of COVID-19 and the effect the orders have
44 had on the public health and the Commonwealth's economy, hereby
45 terminate in part the Proclamation of Disaster Emergency issued
46 on March 6, 2020, to the extent the Proclamation and the orders
47 issued pursuant to the Proclamation regulate the conduct of
48 business operations deemed non-life-sustaining differently than
49 the conduct of business operations deemed life-sustaining under
50 the March 19, 2020, business closure order as amended; and be it
51 further

1 RESOLVED, That upon adoption of this concurrent resolution by
2 both chambers of the General Assembly, the Chief Clerk of the
3 House of Representatives shall do all of the following:

4 (1) Transmit a copy of this resolution to the Secretary
5 of the Commonwealth as an official action of the General
6 Assembly under the authority provided under 35 Pa.C.S. §
7 7301(c) to terminate all or part of a state of emergency.

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

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

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