

Governor Cuomo Executive Order 168: Declaring a Disaster Emergency in the Five Boroughs of New York City and the Counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester that Incorporate the MTA Region in the State of New York

WHEREAS, the Metropolitan Transportation Authority (MTA) is North America's largest transportation network, servicing a population of 15.3 million people in the 5,000-square-mile area fanning out from New York City through Long Island, southeastern New York State and Connecticut;

WHEREAS, the Long Island Rail Road is the busiest commuter railroad in North America, carrying an average of 301,000 customers each weekday on 735 daily trains;

WHEREAS, more than five million customers use the MTA's rail and subway system every day, its highest ridership in history, many of whom have no other means of affordable and safe transportation to meet their daily needs;

WHEREAS, consistent, efficient and safe mass transportation into and out of the City of New York is necessary for the sustained viability of New York State's economy and the protection and livelihood of the State's residents and visitors;

WHEREAS, there have been increasingly constant and continuing failures of the tracks, signals, switches and other transportation infrastructure throughout the system including at Pennsylvania Station located in the County of New York (Penn Station) that have resulted in various subway derailments, extensive track outages, and substantial service disruptions impacting the health and safety of hundreds of thousands of riders;

WHEREAS, these failures include three subway derailments - the A train at West 128th St on June 27, 2017; an Amtrak train at Penn Station on March 24, 2017; and a NJ Transit train at Penn Station on April 3, 2017 - and other incidents such as: the F train being stuck between the West 4th Street and Broadway-Lafayette stations without air conditioning or power for over an hour on June 5, 2017; a NJ Transit train being stuck in a tunnel for 3 hours on April 15, 2017 without power or air conditioning, a water condition on January 9, 2017 on the F line at West 4th Street; signal switch trouble on January 24, 2017 on the D line at 59th Street-Columbus Circle; a broken rail on March 6, 2017 on the N line at Queensboro Plaza; a home signal problem on April 24, 2017 on the D line at Dekalb Ave; a power problem on May 30, 2017 on the E line at Queens Plaza; a track circuit failure on June 9, 2017 on the C line at Jay St.-Metro Tech; signal trouble on June 20, 2017 on the D line at 34th St. Herald Square; and other similar derailments and related infrastructure issues;

Reinvent Albany Comment: Section 28 of Article 2-B of the Executive Law requires a description of the disaster in the executive order.

WHEREAS, the continuing failures of the tracks, signals, switches and other transportation infrastructure throughout the MTA's rail and subway system, overcapacity for the last fifty years, and failures at Penn Station, have had a vast and deleterious impact on the health, safety, and livelihood of commuters, tourists, resident New Yorkers, as well as business and commerce in the Metropolitan Commuter Transportation District (MCTD), which is the recognized economic engine of the State of New York, and thereby have adversely affected the New York State economy;

WHEREAS, in order to address failures at Penn Station, the National Railroad Passenger Corporation (Amtrak), the owner of Penn Station, plans a series of repairs to the tracks, signal, switches and other transportation infrastructure at Penn Station (the Amtrak Repair Program), which is scheduled to proceed from July 2017 through August 2017 and will involve various track outages and service disruptions;

WHEREAS, the track outages and service disruption necessary to implement the Amtrak Repair Program and other repairs necessary to fix tracks, signals, switches and other transportation infrastructure throughout the MTA's rail and subway system are necessary to protect the public, health and safety and will result in further deleterious impact on commuters, tourists, other New Yorkers, as well as business and commerce in the MCTD and thereby on the New York State economy, and will also worsen the transportation disaster emergency that currently exists due to the condition of Penn Station and the MTA's rail and subway system as a whole; and,

Reinvent Albany Comment: According to Executive Law, Article 2-B, Section 20, disaster "means occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made causes, including, but not limited to, 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."

WHEREAS, significant and immediate action must be taken by the MTA and its subsidiaries and affiliates to assist in the repair of the tracks, signals, switches and other transportation infrastructure and in the mediation of such track outages and service disruptions due to this disaster emergency;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by Sections 28 and 29-a of Article 2-B of the Executive Law to temporarily suspend specific provisions of any statute, local law, ordinance, orders, rules, or regulations, or parts thereof, of any agency during a State emergency, if compliance with such provisions would prevent, hinder or delay action necessary to cope with the disaster, hereby declare a State-wide disaster emergency and temporarily suspend, for the period from the date of this Executive Order until further notice, the following laws:

Reinvent Albany Comment: Section 29-A limits the suspension of law to 30 days but it can be renewed. The Executive Order suspends law until further notice. Section 28 allows for the suspension of law for up to 6 months, also with renewal.

Section 1266 of the Public Authorities Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency

Reinvent Albany Comment: Enumerates special powers of the MTA like collecting tolls and fees, issuing bonds, constructing, operating and repairing transportation facilities, and leasing railroad cars among other powers.

Section 1209 of the Public Authorities Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Relates to contracts of the NYC Transit Authority. Provides for competitive bidding except in certain circumstances and emergencies and for certain products like omnibuses. Where competitive bidding is not required, alternative procedures for procurement are laid out. Requires sealed bids and publication of procurement opportunities when competitive bidding is done.

Section 1265-a of the Public Authorities Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Relates to contracts of the MTA. Provides procedures for awarding contracts to the lowest responsible bidder after obtaining sealed bids. Requires publication of procurement opportunities. Provides exceptions to competitive bidding and lays out alternative procedures.

Section 1265-b of the Public Authorities Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Establishes a MTA small business mentoring program which provides small businesses accepted into the program the opportunity to compete for and implement selected small dollar MTA contracts with an authority-provided mentor (an experienced firm).

Section 2878 of the Public Authorities Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Prohibits collusion by vendors in bidding for contracts, and requires vendors to certify under penalty of perjury they did not collude in, for example, establishing prices in the bid.

Section 2879 of the Public Authorities Law and any guidelines issued pursuant thereto so far as they apply to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Requires public authorities to establish procurement guidelines detailing procurement policies and procedures. Guidelines are required to include provisions related to competitive bidding, awarding MWBE contracts, creating opportunities for NYS companies to receive subcontracting work in contracts awarded to foreign businesses, and reporting data on contracts awarded.

Section 2879-a of the Public Authorities Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Provides for comptroller pre-audit review of contracts of \$1 million or more as selected by the comptroller if paid for by state funds or the procurement is not competitively bid.

Section 2880 of the Public Authorities Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Requires authorities adopt a prompt payment policy laying out the procedures for paying vendors for contractual work.

Section 139-d of the State Finance Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Prohibits collusion by vendors in bidding for contracts, and requires vendors to certify under penalty of perjury they did not collude in, for example, establishing prices in the bid.

Section 139-i of the State Finance Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Provides for procedures which give NYS businesses opportunities to subcontract when a contract is awarded to a foreign business.

Section 139-j of the State Finance Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Establishes a restricted period during which vendors and lobbyists can only communicate with designated agency

representatives after a solicitation has been issued for a response intended to result in a procurement contract.

Section 139-k of the State Finance Law so far as it applies to contracts, leases, licenses, permits or any other written agreements that may be entered into for purposes of mitigating such disaster emergency;

Reinvent Albany Comment: Requires offerers seeking government contracts to disclose instances in which they were found to be non-responsible during the last four years, and to consider such information in awarding a contract. Failure to disclose can result in an agency terminating a contract.

Article 8 of the Environmental Conservation Law and all applicable rules and regulations implemented thereto, including, without limitation, 6 NYCRR Part 617;

Reinvent Albany Comment: Establishes the SEQRA (State Environmental Quality Review Act) which requires agencies to do an environmental impact statement when taking an action with significant impact on the environment, and balance environmental impacts with economic and social factors.

Any rules, regulations or guidelines established pursuant to, in conformity with, or for purposes of implementing any of the aforementioned provisions of law; and,

Any other provision of any New York State statute, local law, ordinance, orders, rules or regulations, or parts thereof, that may apply to contracts, leases, licenses, permits, program or operational plans, or any other written agreements that may be entered into for purposes of mitigating such disaster emergency.

Reinvent Albany Comment: Expands the executive order to include any rules, regulations or guidelines emanating from the previously suspended laws.

Expands the executive order to seemingly include any state or local law, executive orders or rules beyond those named in the executive order impacting the area of contracts, leases, licenses, permits program or operational plans, or written agreements entered into to mitigate the disaster. Executive Law 2-B, section 29-a(2)(c) states, "any such suspension order shall specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension;"