



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: Legislative Leadership
From: Luke Martland, Director and Chief Counsel; BetsyAnn Wrask, Legislative Counsel
Date: March 16, 2020
Subject: The Governor's powers pursuant to an emergency declaration

On Friday, March 13, 2020, Governor Scott declared a state of emergency, to remain in effect until April 15, 2020, in response to COVID-19. See, Exec. Order 01-20. A number of questions have been raised concerning the Governor's authority to declare a state of emergency and his powers once such a state has been declared. This memorandum will attempt to answer these questions and is also intended as a general resource document for the members and staff of the General Assembly.

I. The Governor's authority to declare a state of emergency and his or her powers once a state of emergency is declared

Pursuant to 20 V.S.A. chapter 1, the Governor has "general direction and control of the emergency management agency [Vermont Emergency Management, which is part of the Department of Public Safety] and shall be responsible for the carrying out of the provisions of this chapter." 20 V.S.A. § 8(a). Pursuant to 20 V.S.A. § 9 "...in the event of an all-hazards event in or directed upon the United States or Canada that causes or may cause substantial damage or injury to persons or property within the bounds of the State in any manner, the Governor may proclaim a state of emergency within the entire State or any portion or portions of the State." An "all-hazards event" includes incidents such as natural disasters, civil insurrection, terrorist attacks, and a "health or disease-related emergency." 20 V.S.A. § 2(1).

Once the Governor has declared a state of emergency, he is authorized to exercise certain powers "for as long as the Governor determines the emergency to exist." 20 V.S.A. § 9. These powers are set forth in 20 V.S.A. §§ 8, 9, and 11 and range from the specific, such as setting maximum rates of speed and controlling traffic, to the more general, such as authority to utilize any of the property, services, and resources of the State to carry out emergency actions.

In relation to addressing COVID-19, specifically enumerated powers include the authority to "employ such measures and give such directions to the State or local boards of health as may be reasonably necessary for the purpose of securing compliance with the

provisions of this chapter,” to order evacuation of persons within all or a portion of the State, and to seize property, including supplies and medicines. 20 V.S.A. §§ 9(4) and (9), 11(3).

In addition, the Governor is broadly authorized to use the services and facilities of existing officers and agencies of the State and its towns, 20 V.S.A. § 9(5), and to “perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population,” 20 V.S.A. § 11(6). Finally, if a national state of emergency has been declared, which President Trump did on Friday, March 13, 2020, the Governor is authorized to cooperate with federal departments and agencies as long as those actions are not inconsistent with the Constitution and laws of the State. 20 V.S.A. § 9(8).

II. Specific questions concerning the state of emergency

A number of specific questions have been raised concerning Governor Scott’s declaration of a state of emergency, including the following:

1. Was it within Gov. Scott’s authority to declare a state of emergency? Yes. The COVID-19 pandemic seems to fall within the definition of an “all-hazards event” as a health-related emergency pursuant to 20 V.S.A. § 2(1).
2. Can Gov. Scott order that schools be closed? Yes. Although there is no specific provision in 20 V.S.A. § 9 or § 11 concerning closing schools, such an action would appear to fall within the “catch-all” provision in 20 V.S.A. § 11(6) or perhaps within the authority of the Governor to order the “evacuation” of persons from an area. 20 V.S.A. § 9(9). In addition, the Commissioner of Health has authority to order the closing of schools, restaurants, churches, and other places of assemblage. 18 V.S.A. § 126(d)(6).
3. Can Gov. Scott order that in-state travel be restricted or that individuals be quarantined? It would appear so under his authority to regulate traffic, order evacuations, and take any other actions he deems necessary. In addition, if the federal government is ordering travel restrictions or quarantines, the Governor is authorized to cooperate with federal agencies in carrying out those efforts. 20 V.S.A. § 9(8). The Commissioner of Health also has explicit authority under 18 V.S.A. § 1004a to “quarantine a person diagnosed with or suspected of having a disease dangerous to the public health.” See, 18 V.S.A. § 126(d)(5).
4. Can Gov. Scott order the suspension or waiver of an Executive Branch rule or policy? Yes. Pursuant to 20 V.S.A. § 8(b)(1), he has the authority as head of emergency management to “make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this chapter.”
5. Can Gov. Scott bypass the General Assembly and impose laws on his own? No. Pursuant to the Vermont Constitution, only the General Assembly can pass a bill

amending or repealing an existing law or creating a new law. Vt. Const. Chap. II, §§ 2, 6, and 11. As to the State budget, only the General Assembly can raise revenue or appropriate funds. Vt. Const. Chap. II § 6; Chap. II § 20 (Governor “may draw upon the Treasury for such sums as may be appropriated by the General Assembly”); Hunter v. State, 177 Vt. 339, 347 (2004) (“[O]nly the Legislature has the power to appropriate funds for the support of governmental programs.”). Therefore, the Governor cannot implement statutes on his own or bypass the General Assembly to impose a budget on his own.¹

6. Can Gov. Scott suspend the application of a law? As noted above, pursuant to 20 V.S.A. § 8(b)(1) the Governor has the authority to amend or rescind an Executive Branch rule or policy. However, we are not aware of any law that specifically authorizes the Governor to suspend the application of statute in time of emergency. 20 V.S.A. § 9(8) provides that when Vermont is included in a national emergency, the Governor may cooperate with the federal government and other states, but also indicates that this must be done in a manner that is consistent with both Vermont’s constitutional and statutory law, thereby implying that the Governor cannot suspend or waive a Vermont statute.² The Vermont Constitution provides that the authority to suspend laws “or the execution of laws” is to only be exercised by the Legislature “or by authority derived from it, to be exercised in such particular cases as . . . the Legislature shall provide for.” Vt. Const. Ch. I, Art. 15. It could be argued that, pursuant to this language, the Legislature could enact a statute that authorizes the Governor to suspend the application of certain laws. Of course, the General Assembly could achieve the

¹ Although the Governor does not have the authority to appropriate funds, 32 V.S.A. § 706 provides the Governor with limited authority to transfer balances of appropriations of up to \$50,000. Our office, and JFO, can provide a more detailed response on budget-related issues as needed.

² 20 V.S.A. § 8(b)(4) also has language concerning cooperation with federal agencies and states that the Governor, in his position of being responsible for emergency management, may “cooperate with the president and the heads of the armed forces, and the homeland security agency of the United States, and with the officers and agencies of other states in matters pertaining to the emergency management of the state and nation, to take any measures not inconsistent with the constitution of this state, which the governor may deem proper to carry into effect any request for the president and the appropriate federal officers and agencies, for any action looking to emergency management, including the direction or control of mobilization of emergency management and homeland security forces, tests and exercises, warnings and signals for drills or emergencies, shutting off water mains, gas mains, electric power connections and the suspension of all other utility services, the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to drills or attack, public meetings or gatherings, and the evacuation and reception of the civilian population.” Therefore, this provision states that the Governor must act in a manner consistent with the Vermont Constitution, but it does not mention statutory law. Although we do not know if this was intentional, this provision appears limited to when the federal government needs to mobilize emergency management resources in extreme circumstances (before, during, and after drills or attack, public gatherings, and evacuating and receiving civilians). In addition, as noted above, there is no statute that we are aware of that explicitly grants the Governor authority to suspend the application of a law in times of emergency (or any other time). Furthermore, 20 V.S.A. § 9(8) indicates that any State cooperation with federal authorities once a federal emergency has been declared, as has happened in this case, must be consistent with both Vermont’s Constitution and statutes.

same result by simply passing a bill that directly repeals or temporarily suspends or waives the application of a law or laws.

Please let us know if there are any other specific questions that we can answer, or any other issue that you would like us to research.