

Massachusetts Senator Pamela P. Resor
State House room 410
Boston MA 02133
1 August 2003

Reference: **Massachusetts Senate bill S.597, the Massachusetts Emergency Health Powers Act**, introduced by Sen. Richard Moore.

Dear Senator Resor:

S.597 is the Massachusetts version of the Emergency Health Powers Act model legislation that was prepared chiefly by the Center for Disease Control. We have examined the text of the second draft of this model and the text of S.597, which follows closely the text of the model, and find that we have both specific and general reservations about S.597. We discuss these reservations below and ask you to consider carefully the provisions and very need for the bill if or when it comes up for consideration.

As preamble, we point out that S.597 gives the Governor remarkably broad and general powers, independent to all those he now has, to act in response to any major public health emergency. Thus, the Governor would be able, in principle, to evoke the powers of the bill in response to an atomic explosion, the malicious dissemination of a chemical toxin or infectious biological vector, a natural epidemic, or a major industrial accident.

Our concerns focus chiefly on the following aspects of the bill:

1. Section 6 delineates the powers afforded the Governor and the conditions and mechanism under which he might evoke Emergency Health Powers. We are concerned that the power and discretion of the Governor would be essentially absolute and unconstrained, notwithstanding the fact that he is obliged to consult with the Council and public health and safety authorities prior to evoking said Powers. The Governor is not constrained to take the advice of such authorities and no judicial or legislative checks are provided to temper his actions. Once the Powers are evoked, we enter a draconian world in which prior state laws and regulations are suspended, the National Guard and Army Reserves could be mobilized, and a state practically of martial law applies. You do as you are told without recourse or suffer a fine, quarantine or isolation. Quarantine is not limited to individuals and could be extended to communities and geographic areas. After 90 days, continuation of the Emergency requires the concurrence of the Legislature, but prior to that time the Governor can act, direct and spend virtually without constraint.

We suggest that it may be unwise to confer such great power on the Governor, given what can be expected to be his poor knowledge of public health and his likely instinct to act politically. It seems more prudent to constrain the Governor to respond to advice and requests from public health and safety authorities, that are well informed about the details of the situation and can make reasonable judgments about appropriate actions. Thus, the Governor might better serve by using the power of office to coordinate and accomplish what, in the judgment of others, needs to be done. In particular, it is important at the outset of a public health problem to distinguish between an emergency that could be handled under existing laws and capabilities and a truly large and intractable one that might require unprecedented action. Without limitations on the Governor's power, there is the chance that the Governor might work at cross purpose to the experts. For example, the Governor under S.597 could continue a State of Emergency and ignore advice from authorities that it ought to be lifted. Other potential conflicts can be easily imagined.

2. Under Section 11, compensation will be refused for any facilities or materials that the Public Health Authority closes, evacuates, decontaminates or destroys when there is reason to believe that the said things endanger the public health. We fail to see the need or justice for this sweeping provision and believe that reasonable compensation ought to be provided in due course. One can expect in nearly every case that dangerous facilities and material would pass into this category through circumstances over which the owners had little or no control. Surely the state ought to provide compensation and support innocent owners.

There are also other provisions in S.597 that strike some people as unnecessarily arbitrary or harsh.

3. S.597 calls for establishing a Public Health Authority that is expected to play a central role under the Governor in preparing for and ultimately managing emergency health situations. But it has virtually nothing to say about what new facilities, organizations, training and personnel will be required to prepare for and cope with the great variety of possible public health emergencies that might arise, and about their initial and continuing costs. It is clear that Emergency Health Powers afforded the Governor would mean little without also having in place a well trained and organized structure to deal with major emergency health situations. Such (probably large) new facilities would cost money. How much?

Consideration of S.597 ought to include a detailed analysis of costs and fiscal consequences of establishing additional rapid reaction health forces of a kind commensurate with the needs and intentions of the bill.

4. Finally, S.597 may not be necessary. Although we have not done sufficient legal research to recite chapter and verse, the Governor clearly already has considerable power to respond to all kinds of state emergencies and to organize hospitals and health and safety personnel to prepare for and respond to emergencies. To the extent that these existing powers might not be quite adequate to deal with truly huge emergencies, it would be wise to deal specifically with those deficiencies and not provide a broad, new layer of redundant authority as proposed in S.597.

We therefore suggest that consideration of S.597 ought to involve a review of all existing emergency powers and authority possessed by the Governor. Is S.597 really necessary?

In conclusion, we view S.597 as a bill that would grant great and perhaps excessive powers to the Governor and impose substantial continuing costs on the state in order to prepare for and respond to public health emergencies of kinds that can be expected to arise very rarely, if ever. It contains at least a few objectionable provisions and is, as an entity, of questionable necessity in Massachusetts. The Sudbury Democratic Town Committee does not insist at this time that you reject S.597 out of hand. Rather, we advise you of our objections and ask that you consider the bill's merits, overall need and potential costs carefully before taking any legislative action.

Please keep us informed of the progress of S.597 and your opinion of it.

Respectfully,

The Sudbury Democratic Town Committee, Beverly Guild, Chairperson.