



MINISTERIAL BRIEF

By

THE HON. K.N. WILSON

MINISTER OF HEALTH

PUBLIC HEALTH AMENDMENT (NO. 2) ACT 2020

19th June 2020

Mr. Speaker, I am pleased to invite this Honourable House to consider the Bill entitled Public Health Amendment (No.2) Act 2020.

Mr. Speaker, this Bill would amend the Public Health Act 1949 to permit the Governor, where the Minister responsible for Health after consulting the Chief Medical Officer has determined that a communicable disease of the first or second category poses a severe threat to public health in Bermuda, to make Regulations that provided for the prevention, control or suppression of the communicable disease. Such regulations may include restrictions on movement and a curfew.

Mr. Speaker, for the information of Honourable Members and the public, these categories of communicable diseases are set out in Part V

(section 66) of the Public Health Act. Communicable diseases of the first category include Covid19 whilst communicable diseases of the second category include things like chickenpox, German measles and influenza.

Mr. Speaker, Honourable Members will be aware that as part of the ongoing global pandemic and our local response to it, we have issued Closure Notices under the Public Health 1949, made Regulations specific to the COVID-19 pandemic and noted the need to properly mandate public health supervision, active monitoring and isolation as well as enforcement in support of these provisions.

Mr. Speaker, Honourable Members and the public will also recall that as part of the wider public health response to the pandemic, firstly Cabinet had authorised the Premier to invite His Excellency the Governor to impose a curfew under the Summary Offences Act 1926 and thereafter to declare a state of emergency such that he could thereafter impose a 24-hour shelter in place pursuant to Regulations made under the Emergency Powers Act 1963. Those Regulations were extended through 2nd May 2020 by Resolution passed by both Houses of the Legislature on 17th April 2020. Since that time, further regulations were made to manage the gradual reopening of Bermuda and will remain in effect through 30th June 2020.

Mr. Speaker, the use of the constitutional power to declare a state of emergency and to apply provisions of the Emergency Powers Act is more suited to meeting the challenges of civil unrest in society. Their use in the current pandemic had proven an inelegant means by which to restrict the movement of people and manage the spread of the COVID-19 virus, especially in light of the duration limitations applicable to the relevant powers that did not reflect the need for ongoing flexibility based on public health advice and best practice.

Therefore, **Mr. Speaker**, without prejudice to the emergency powers available under the Constitution and the Emergency Powers Act 1963, Cabinet was invited to consider amendments to the Public Health Act 1949 to permit the Governor to make necessary regulations to address public health situations such as pandemics. The Bill before the House today creates the necessary regime without the requirement to rely on powers under a state of emergency.

Mr. Speaker, I would invite Honourable Members to take note that the test to be applied for making regulations is similar to that applied in support of the Minister of Health's authority to make closure orders under the Act. Pursuant to section 88 of the principal Act, the Minister responsible for Health must determine that a communicable disease of

the first or second category existed or in that the opinion of the CMO there was an immediate risk of an outbreak of the said disease.

Honourable Members will also no doubt note that pursuant to section 172 of the Act, the negative resolution procedure applies to regulations made under the Act.

Mr. Speaker, I can advise the House that in Committee I shall move an amendment to the Bill adding a new subsection 5 to the proposed section 107B, so that for the avoidance of doubt, it specifically provides that “any such provision of law” referred to in subsection (4) includes any provision of the Human Rights Act 1981. (See section 30B(1)(a) of the Human Rights Act 1981.)

Mr. Speaker, as I commend this Bill to the House for the consideration of Honourable Members, I must observe that in spite of the limitations and less than nimble legislative tools we have had at our disposal, the Government, the various enforcement agencies and other public service stakeholders have managed well since the declaration of a global pandemic in March. The Bill before the House will improve our ability to meet the demands of any change in the Island’s public health situation.

Thank you, Mr. Speaker.