State of New York

DEC 31 2012

Department of State
Secretary of State

State of New York

Executive Chamber

No. 89

EXECUTIVE ORDER

DECLARING AN EMERGENCY IN ORDER TO APPOINT NEW JERSEY AND CONNECTICUT POLICE OFFICERS AS RAILROAD POLICE OFFICERS TO PROVIDE ENHANCED SECURITY ON COMMUTER TRAINS, BUSES AND FERRIES

WHEREAS, thousands of commuters travel between the states of New York, New Jersey and Connecticut via Mass Transit Systems that include interstate rail, bus and ferry systems accessible to the public, and an enhanced law enforcement presence on these conveyances is prudent to protect public safety; and

WHEREAS, terrorists have used explosive and other devices to attack public and private transportation systems, as demonstrated by the bombings in London in 2005 and in Madrid in 2004, and while there is no known confirmed threat to the New York metropolitan area, mass transit systems between New York, New Jersey and Connecticut are particularly high-risk targets; and

WHEREAS, the completed and attempted attacks in New York, including the arrest of Raess Alam Qazi in November 2012 for planning to carry out attacks at landmarks in New York; the plot against the PATH railway system by Assem Hammoud in 2006; the plot against New York City subways by Najibullah Zazi in 2009; the foiled plots of Faisal Shahzad and his co-conspirators in May 2010; the October 2012 foiled attempt by Quazi Mohammad Rezwanul Ahsan Nafis to detonate a 1,000 pound car bomb outside the Federal Reserve Bank of New York in Lower Manhattan; and the May 2011 arrest of Ahmed Ferhani and Mohamed Mamdouh for plotting to bomb New York City synagogues, during which Ferhani and Mamdouh discussed additional targets in New York City, including churches and the Empire State Building, demonstrate that terrorists continue to pose a persistent threat to the State of New York; and

WHEREAS, the holiday season, including New Year's Eve and Day is a time of heightened alert and risk of terrorist attack as terrorists typically consider significant, symbolic dates when planning attacks, with the objective of inflicting mass casualties and maximizing the economic and psychological damage to the United States, as evidenced by the 2009 Christmas Day plot to blow up a Detroit-bound airliner; the November 2010 plot to bomb a holiday tree lighting ceremony in Portland, Oregon, by a homegrown violent extremist; the December 2010 attack on a market filled with Christmas shoppers in Stockholm, Sweden, by a suicide bomber; and the December 2010 arrests in the United Kingdom of 12 individuals plotting to conduct attacks during the holiday season; and

WHEREAS, New York's sister states, the States of Connecticut and New Jersey, have agreed to deploy police officers from their states to provide increased security on commuter trains, buses and ferries going to and from New York State; and

WHEREAS, sworn members of the Connecticut State Police, sworn police officers of any county or municipality in the State of Connecticut, sworn members of the New Jersey State Police, and sworn police officers of any county or municipality in the State of New Jersey are restricted in their law enforcement authority once such a conveyance crosses the jurisdictional boundary between Connecticut and New York or between New Jersey and New York respectively; and

WHEREAS, New York, New Jersey and Connecticut are all members of the Emergency Management Assistance Compact ("EMAC"), which allows for mutual assistance and resource sharing among sister states; and

WHEREAS, EMAC provides that emergency forces from the sending state, while operating within the jurisdictional boundaries of the receiving state pursuant to the compact, shall have the same powers (except that of arrest, unless specifically authorized by the receiving state), duties, rights and privileges as are afforded forces of the receiving state in which they are performing emergency services; and

WHEREAS, to utilize the police resources provided by our sister states, we must confer police officer powers, including arrest powers, on such officers while they are within the geographic jurisdiction of New York State; and

WHEREAS, Section 88 of the Railroad Law authorizes the Superintendent of the State Police to appoint any person as a railroad police officer only under prescribed circumstances and subject to certain limitations; and

WHEREAS, if such circumstances and limitations were applied to sworn police officers from our sister states who are serving as railroad police officers from December 31, 2012, through January 1, 2013, such application would prevent, hinder and delay action necessary to respond to a terrorist attack or a threat thereof; and

WHEREAS, Executive Law § 29-a authorizes the suspension, alteration and modification of statutes, local laws, ordinances, orders, rules or regulations, or parts thereof, if compliance with such provisions would prevent, hinder or delay action necessary to cope with a disaster emergency and the inclusion of any other terms and conditions;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that a disaster may be imminent, and to which the affected local governments are unable to respond adequately without assistance. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, I hereby declare a State Disaster Emergency effective December 31, 2012; and

FURTHER, pursuant to the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend and modify specific provisions of any statute, local law, ordinance, order, rule or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such provisions would prevent, hinder or delay action necessary to cope with the disaster, I hereby temporarily suspend and modify, for the period from 12:01 AM on December 31, 2012 until 12:01 AM on January 2, 2013, the following laws for purposes of appointment of sworn members of the Connecticut State Police, sworn police officers of any county or municipality in the State of Connecticut, sworn members of the New Jersey State Police, and sworn police officers of any county or municipality in the State of New Jersey as Railroad Police;

Subdivision 1 of Section 88 of the Railroad Law insofar as it requires the Superintendent of the State Police to appoint railroad police officers only upon the application of a corporation, express company, or steamboat company, and is modified to the extent necessary to allow the Governor to appoint sworn members

of the Connecticut State Police, sworn police officers of any county or municipality in the State of Connecticut, sworn members of the New Jersey State Police, and sworn police officers of any county or municipality in the State of New Jersey as railroad police officers, and to include all rail and bus facilities and property owned, operated or in the custody or control of the Port Authority of New York and New Jersey or its subsidiaries, the Metropolitan Transit Authority or its subsidiaries, New Jersey Transit or its subsidiaries, and ferries certified to carry passengers to and from New York State;

Subdivisions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16 and 17 of Section 88 of the Railroad Law as necessary to effectuate this Order; and

FURTHER, this Order shall take effect at 12:01 AM on December 31, 2012 and shall remain in effect until 12:01 AM on January 2, 2013.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this thirty-first day of December in the year two thousand twelve.

BY THE GOVERNOR

Secretary to the Governor