

President Obama's National Infrastructure Advisory Council Cites NYC-Pillsbury Effort as Model for Nationwide Disaster Planning

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NEW YORK, Sept. 9 /PRNewswire--A report released by President Obama's National Infrastructure Advisory Council (NIAC) cites the systematic legal analysis used by the City of New York, with guidance from national law firm Pillsbury, as a model for Federal, State and local governments - especially major metropolitan areas - to adopt nationwide in their disaster planning.

NIAC, which was created by Presidential Executive Order immediately following the 9/11 attacks, "provides the President with advice on the security of the 18 Critical Infrastructure and Key Resource (CIKR) sectors and their information systems. These CIKR sectors span the U.S. economy," the NIAC report notes.

That report, "Frameworks for Dealing with Disasters and Related Interdependencies," took more than a year to compile. It reviewed and assessed numerous models for effectively managing catastrophic events.

In praising the NYC-Pillsbury program, the report "advocates widespread application of an approach used by the City of New York to develop comprehensive catalogs of statutory and regulatory impediments to CIKR recovery within their jurisdiction, along with the accompanying necessary action for each relevant authority."

In this pathbreaking work for the City of New York, Pillsbury has worked directly with the City's Office of Emergency Management and Corporation Counsel's office since January 2007. "We have systematically analyzed the City's plans for responding to major disasters to ensure that the City has the legal authority it needs to protect its residents and visitors in the event of a catastrophe," said New York litigation partner Ken Taber, leader of Pillsbury's multidisciplinary Emergency Response & Liability Management team. "We are gratified that the NIAC is now recommending our approach be institutionalized nationwide."

The NIAC report specifically recommends that: "Department of Homeland Security should institutionalize processes and provide funding as needed to systematically develop and maintain at the Federal, State and local (especially major metropolitan) government levels, catalogs of specific laws and regulations that may need to be suspended or modified during different disaster scenarios ... Similar to the effort that has been undertaken by the City of New York, the NIAC

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identified the following four key elements to this process: 1. Identify relevant disaster scenarios (e.g., hurricanes, earthquakes, pandemics, and chemical, biological, or radiological accidents or attacks) and compile existing response plans for each. 2. Determine for each element of the government entity's planned responses whether: a. the planned actions comply with all applicable Federal, State and local laws and regulations, and b. pose any meaningful risk of hindering CIKR/community recovery or incur liability. 3. Catalog all instances where the government entity's planned action is not authorized. For each of these instances determine whether the applicable laws or regulations can be modified, suspended, or waived and then draft appropriate emergency orders to be used during a disaster for inclusion in the disaster response plan. 4. If a law or regulation cannot be modified, suspended, or waived, or if a planned response poses a meaningful risk of hindered CIKR/community recovery or potential governmental liability, planners should assess appropriate modifications to the operational strategy to develop a work-around. Government at all levels also should seek to identify all statutory and regulatory requirements affecting CIKR operators for which no timely legal waiver process presently exists, and should take steps to afford a potential waiver of those requirements when circumstances warrant following the occurrence of a disaster."

"This is exactly what Pillsbury has done for the City of New York," Taber said. "We have also examined how to optimally conduct such crucial actions in a disaster as public communications, the taking or use of private property, personal injuries associated with pre- and post-disaster actions, regulatory non-compliance and any discriminatory impact of acts or omissions, such as prioritizing the distribution of scarce vaccines."

Taber added that states and local governments need to know the answers to these questions now, because there simply won't be time to carefully think them through during a large-scale emergency.

"It's not surprising that New York City has served as a leader, and role model, when it comes to disaster planning," Taber said. "Pillsbury is honored that the Bloomberg Administration has looked to us as a partner in this effort."

Pillsbury has also forged disaster planning alliances with Protiviti, Inc., LMI Government Consulting and the American Red Cross of Greater New York, to develop a customized methodology that effectively assesses disaster-related liability exposure and enables crisis management and business continuity operational plans to be properly aligned with risk management and legal objectives.

To view the complete NIAC report, go to http://www.dhs.gov/files/committees/editorial_0353.shtm.

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Pillsbury is a full-service law firm with market-leading strengths in the energy, financial services, real estate and technology sectors. With a presence in the world's major financial and technology centers, Pillsbury counsels clients on all aspects of global business and litigation. We work in multidisciplinary teams that allow us to anticipate trends and bring a 360-degree perspective to complex business and legal issues--helping clients to take greater advantage of new opportunities and better mitigate risk. This collaborative work style helps produce the results our clients seek.

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