

STATE OF NEW YORK

8466

IN SENATE

June 3, 2020

Introduced by Sen. BORRELLO -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to repeal section 2 of chapter 23 of the laws of 2020, amending the executive law relating to issuing by the governor of any directive necessary to respond to a state disaster emergency; and to amend the executive law, in relation to restoring the legislative checks and balances to any emergency declaration that exceeds forty-five days and ensures judicial due proceeds rights for any action that impairs fundamental constitutional rights

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2 of chapter 23 of the laws of 2020, amending the
2 executive law relating to issuing by the governor of any directive
3 necessary to respond to a state disaster emergency, is REPEALED.

4 § 2. Section 29-a of the executive law, as added by chapter 640 of the
5 laws of 1978, subdivision 1 as amended by section 7 of part G of chapter
6 55 of the laws of 2012, is amended to read as follows:

7 § 29-a. Suspension of other laws. 1. a. Subject to the state constitu-
8 tion, the federal constitution and federal statutes and regulations, the
9 governor may by executive order temporarily suspend specific provisions
10 of any statute, local law, ordinance, or orders, rules or regulations,
11 or parts thereof, of any agency during a state disaster emergency, if
12 compliance with such provisions would prevent, hinder, or delay action
13 necessary to cope with the disaster.

14 b. Every order directing the temporary suspension of any statute,
15 local law, ordinance, or order, rule or regulation, shall specify the
16 individual county or counties to be affected by such order and shall
17 provide a detailed explanation and rationale that states with particu-
18 larity the facts, circumstances, demographics, and conditions of each
19 such county that justifies the issuance of such an order related to such
20 county.

21 2. Suspensions pursuant to subdivision one of this section shall be
22 subject to the following standards and limits:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 a. no suspension shall be made for a period in excess of thirty days,
2 provided, however, that upon reconsideration of all of the relevant
3 facts and circumstances, the governor may extend the suspension for any
4 specified county or counties for an additional [periods] period not to
5 exceed [thirty] fifteen days [each]. At the end of such period, all
6 suspensions shall terminate and be of no further force or effect unless
7 the legislature, by concurrent resolution, authorizes an extension by
8 the governor for a specified county or counties, for a period not to
9 exceed an additional thirty days; provided that the legislature may
10 authorize multiple extensions if it deems necessary;

11 b. no suspension shall be made which does not safeguard the health and
12 welfare of the public and which is not reasonably necessary to the
13 disaster effort;

14 c. any such suspension order shall specify the statute, local law,
15 ordinance, order, rule or regulation or part thereof to be suspended and
16 the terms and conditions of the suspension;

17 d. the order may provide for such suspension only under particular
18 circumstances, and may provide for the alteration or modification of the
19 requirements of such statute, local law, ordinance, order, rule or regu-
20 lation suspended, and may include other terms and conditions;

21 e. any such suspension order shall provide for the minimum deviation
22 from the requirements of the statute, local law, ordinance, order, rule
23 or regulation suspended consistent with the disaster action deemed
24 necessary; and

25 f. when practicable, specialists shall be assigned to assist with the
26 related emergency actions to avoid needless adverse effects resulting
27 from such suspension.

28 3. Such suspensions shall be effective from the time and in the manner
29 prescribed in such orders and shall be published as soon as practicable
30 in the state bulletin.

31 4. The legislature may terminate by concurrent resolution executive
32 orders issued under this section at any time.

33 5. a. Any chief executive of a county except a county wholly contained
34 within a city, or the mayor of any city with more than a million resi-
35 dents, may upon fifteen days notice request the governor to terminate
36 any declaration of a state disaster emergency or any related executive
37 order affecting such political subdivision.

38 b. If the governor denies such request, the governor shall within such
39 fifteen day period provide to the chief executive officer of the county
40 or mayor a detailed written explanation and rationale that states with
41 particularity the circumstances, demographics, and conditions of such
42 county or city that justifies the continuance of such an order related
43 to such political subdivision. If the governor fails to respond within
44 such fifteen-day period, the state disaster emergency and all related
45 executive orders shall cease and be of no further force or effect as
46 applied to the requesting county or city.

47 c. If the governor denies a request to terminate any declaration of a
48 state disaster emergency or any related executive order, the chief exec-
49 utive officer of the county or the mayor may seek a judicial review of
50 the governor's decision pursuant to a special proceeding commenced in
51 supreme court in the affected county or city. The governor shall have
52 the burden to establish, with clear and convincing evidence, within five
53 days after service on the governor and attorney general of the petition
54 seeking judicial review, the need for a continuation of such state
55 disaster emergency and any related executive orders for such county or
56 city and that such executive orders are narrowly tailored to meet the

1 disaster emergency and comply with the restrictions and limitations
2 contained in this chapter, including, amongst other things, involving
3 the minimum deviation from any provision that was suspended and avoiding
4 needless adverse effects. The supreme court shall render a decision
5 within fifteen days after service on the governor and attorney general
6 of the petition seeking judicial review.

7 6. Every executive order that impairs the right to freely practice
8 religion or worship, to peaceably assemble, to free speech, to free
9 press, or to liberty or property; impairs equal treatment under the law;
10 impairs the validity of an existing contract; or otherwise impairs any
11 right granted by the New York state constitution or the United States
12 Constitution shall, within the executive order itself, provide for a
13 process by which a person or entity may seek review of the applicability
14 and constitutionality thereof. Such review shall include, at a minimum,
15 the right to a prompt impartial administrative hearing and decision and
16 the right to appeal the final determination of such hearing to the
17 supreme court in the county in which such person or entity is located.

18 § 3. This act shall take effect on the thirtieth day after it shall
19 have become a law.