

STATE OF NEW YORK

5967

2021-2022 Regular Sessions

IN ASSEMBLY

March 2, 2021

Introduced by M. of A. HEASTIE, ZEBROWSKI, PEOPLES-STOKES, WEINSTEIN, GOTTFRIED, NOLAN, GLICK, AUBRY, GALEF, CAHILL, DINOWITZ, CYMBROWITZ, CUSICK, LAVINE, BENEDETTO, HEVESI, L. ROSENTHAL, STIRPE, THIELE, BRAUNSTEIN, WEPRIN, BRONSON, QUART, ROZIC, FAHY, BARRETT, PICHARDO, BICHOTTE HERMELYN, SIMON, JOYNER, WOERNER, BARRON, JEAN-PIERRE, HYNDMAN, HUNTER, WALLACE, DICKENS, CARROLL, VANEL, TAYLOR, GRIFFIN, FRONTUS, CRUZ, JACOBSON, KELLES, ANDERSON, LUNSFORD, ZINERMAN, BURGOS, J. D. RIVERA, SILLITTI -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the termination of certain executive powers; to amend 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, in relation to the effectiveness thereof; and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. Legislative intent. Chapter 23 of the laws of 2020 was
2 adopted during uncertain times, during the beginning of the national
3 awareness of the COVID-19 virus and its first detection in New York.
4 Responding to the virus was declared a public health emergency by the US
5 Centers for Disease Control and there was the threat of widespread tran-
6 smission in the United States. At the time it was not known that New
7 York State would become one of the epicenters of the pandemic, how long
8 the pandemic would last, or the toll that it would take on the people of
9 the state. In the face of uncertain and unprecedented times, the legis-
10 lature enacted chapter twenty-three in order to take action to combat an
11 unknown and unprecedented problem, and in case the governor needed addi-
12 tional powers to deal with the quickly evolving situation. Much has
13 been learned about the COVID-19 virus in the last year. The legislature
14 finds that there has been progress in the fight against the virus with

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

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1 the approval and distribution of multiple vaccines in recent months.
2 With increased knowledge including the means of transmission, prevention
3 and treatment of the COVID-19 outbreak and additional time to reflect,
4 the legislature finds and declares that the governor is adequately
5 equipped with his previously existing emergency powers and with the
6 authorization to continue existing directive extension and modification
7 powers to deal with the situation. The legislature therefore declares
8 that it is time to restore the pre-pandemic balance of power of the
9 governor and legislature, and to continue to move forward with the
10 response and recovery while maintaining the authority of public-health
11 focused directives taken by the Governor, with reasonable limitations,
12 during the possibly waning days of the pandemic.

13 § 2. 1. As used in this section, "public health directive related to
14 managing the COVID-19 pandemic", means a directive certified in the sole
15 discretion of the commissioner of health to address the spread and/or
16 reduction of the COVID-19 virus, facilitate vaccine distribution or
17 administration, or require the use of face coverings. Such certif-
18 ication shall include a detailed explanation of how such directive will
19 address the spread and/or reduction of the COVID-19 virus, facilitate
20 vaccine distribution or administration, or require the use of face
21 coverings and shall also be contained within the notice required to be
22 made by the governor pursuant to paragraphs a and b of subdivision 2 of
23 this section.

24 2. Any directive previously issued pursuant to chapter 23 of the laws
25 of 2020 in effect at the time of the repeal of such chapter shall be
26 permitted to continue for 30 days from the effective date of this chap-
27 ter notwithstanding the repeal of chapter 23 of the laws of 2020 and
28 following the expiration of such 30 day period, any extensions or
29 modifications of such directives shall be subject to the following
30 provisions:

31 a. The governor may extend or modify any directive, by executive
32 order, that has been issued and remains in effect on the effective date
33 of this act for additional 30 day increments in a manner provided for in
34 this section, provided that the purpose of extending or modifying the
35 directive is to issue a public health directive related to managing the
36 COVID-19 pandemic.

37 b. No later than 5 days prior to the extension or modification of such
38 a directive, the governor shall notify including via electronic means
39 the relevant committee chairs in the assembly and senate and the speaker
40 of the assembly and temporary president of the senate of his or her
41 intent to extend or modify any directive, and shall include therewith
42 the certification required by subdivision 1 of this section, to describe
43 the need for extension or modification of such directive and the threat
44 to the public health or safety that requires the extension or modifica-
45 tion. If the governor certifies that the extension or modification of
46 such a directive is necessary to address any exigent circumstances that
47 address an imminent threat to public health or safety, he or she shall
48 provide such certification required by the commissioner of health as
49 provided in subdivision 1 of this section as soon as possible, but in
50 any event, prior to the issuance of an extension or modification of such
51 a directive. The governor shall provide an opportunity to comment on
52 any such directive by the relevant committee chairs, which comments may
53 be received after the issuance of the directive and shall not affect the
54 validity thereof.

55 c. No later than 5 days prior to the extension or modification of a
56 directive only explicitly affecting specific municipalities, the gover-

1 nor shall notify including via electronic means the relevant executive
2 leaders of such municipalities and such municipal legislature of his or
3 her intent to extend or modify any such directive, and shall include
4 therewith the certification required by subdivision 1 of this section to
5 describe the need for extension or modification of such directive and
6 the specific threat to the public health or safety that requires the
7 extension or modification. If the governor certifies that the extension
8 or modification of such a directive is necessary to address any exigent
9 circumstances that address an imminent threat to the public health or
10 safety, he or she shall provide such certification required by the
11 commissioner of health as provided in subdivision 1 of this section, as
12 soon as possible but in any event, prior to the issuance of an extension
13 or modification of such a directive. The governor shall provide an
14 opportunity to comment on any such directive by such executive leaders
15 and legislatures, which comments may be received after the issuance of
16 the directive and shall not affect the validity thereof.

17 d. No directive shall be modified pursuant to this section unless such
18 modification is solely for the purpose of altering the numeric amount or
19 percentage of individuals, businesses, vaccination locations or provid-
20 ers or administrators, or other entities impacted by a directive, or
21 placing additional restrictions or reducing existing restrictions
22 related to testing, quarantine, social distancing, air quality or
23 filtration, or mask requirements, for any entity located in the state,
24 including but not limited to modification of individuals eligible for
25 vaccination or modification of limits on the seating capacity of a busi-
26 ness to operate during a state of emergency.

27 e. No directive shall be extended or modified to the extent that such
28 directive prohibits the adoption by any municipality of this state a
29 local executive order within such municipality's existing power except
30 where such an order conflicts with any executive order issued by the
31 state.

32 f. No directive may be extended or modified more than once unless the
33 governor has responded, including electronically, to any comments
34 provided by the chairs of any relevant committee or relevant municipal
35 entities pursuant to this section which have been received within 5 days
36 of the time required for such notice pursuant to paragraph b of this
37 subdivision, and which may be attested to in the notice by the governor
38 to the relevant chairs and the leaders as provided in paragraph b of
39 this subdivision, which shall be deemed sufficient for purposes of the
40 effectiveness of such directive.

41 g. The legislature may terminate by concurrent resolution executive
42 orders issued under this section at any time.

43 h. Directives shall be effective from the time and in the manner
44 prescribed in such orders and shall be published as soon as practicable
45 in the state bulletin and as provided in this section.

46 § 3. (a) Within 15 days of the effective date of this section all
47 current suspensions and directives authorized pursuant to executive
48 orders 202 and 205 of 2020 and this act shall be posted on the website
49 for the office of the governor in a searchable format, and shall
50 include, but not be limited to:

51 (i) the disaster emergency that such suspension and directives pertain
52 to;

53 (ii) the subject category or area affected;

54 (iii) a summary of the provisions suspended or modified;

55 (iv) the order's expiration date;

56 (v) the entity responsible for enforcing such provisions; and

(vi) in the case of a directive extended or modified pursuant to the provisions of this act, the need for extension or modification of such directive and the threat to the public health or safety that requires the extension or modification.

(b) Such website shall be updated upon the issuance of every suspension or directive pursuant to this act.

(c) Every thirty days, such website shall also be updated with responses to written comments or information requests from relevant committee chairs or municipal government entities received pursuant to the provisions of this act.

§ 4. Section 4 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, is amended to read as follows:

§ 4. This act shall take effect immediately and ~~[sections one and section two of this act shall expire and be deemed repealed [April 30, 2021]~~ immediately, provided however, any directive issued pursuant to this chapter in effect at the time of such repeal shall be permitted to continue for 30 days from the date of such repeal, unless further extended as provided in section 2 of the chapter of the laws of 2021 amending the executive law relating to the termination of certain executive powers; to amend 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, in relation to the effectiveness thereof; and providing for the repeal of certain provisions upon expiration thereof. Nothing contained herein shall be construed to diminish or repeal any statutory or regulatory authority to exercise emergency powers that existed prior to the enactment of this act.

§ 5. Section 28 of the executive law is amended by adding a new subdivision 5 to read as follows:

5. The legislature may terminate at any time a state disaster emergency issued under this section by concurrent resolution.

§ 6. Severability. If any provision of this act, or the application thereof to any person or circumstances, is held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications of this act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

§ 7. This act shall take effect immediately, provided that, section two of this act shall expire and be deemed repealed upon the termination of the state of emergency declared pursuant to executive order 202 of 2020.