

STATE OF NEW YORK

1749

2021-2022 Regular Sessions

IN SENATE

January 14, 2021

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 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; and 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

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3 necessary to respond to a state disaster emergency, is REPEALED.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 larly the facts, circumstances, demographics, and conditions of each

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

LBD04723-01-1

1 such county that justifies the issuance of such an order related to such
2 county.

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

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

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

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

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

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

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

32 3. Such suspensions shall be effective from the time and in the manner
33 prescribed in such orders and shall be published as soon as practicable
34 in the state bulletin.

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

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

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

51 c. If the governor denies a request to terminate any declaration of a
52 state disaster emergency or any related executive order, the chief exec-
53 utive officer of the county or the mayor may seek a judicial review of
54 the governor's decision pursuant to a special proceeding commenced in
55 supreme court in the affected county or city. The governor shall have
56 the burden to establish, with clear and convincing evidence, within five

1 days after service on the governor and attorney general of the petition
2 seeking judicial review, the need for a continuation of such state
3 disaster emergency and any related executive orders for such county or
4 city and that such executive orders are narrowly tailored to meet the
5 disaster emergency and comply with the restrictions and limitations
6 contained in this chapter, including, amongst other things, involving
7 the minimum deviation from any provision that was suspended and avoiding
8 needless adverse effects. The supreme court shall render a decision
9 within fifteen days after service on the governor and attorney general
10 of the petition seeking judicial review.

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

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