STATE OF NEW YORK

5357

2021-2022 Regular Sessions

IN SENATE

March 2, 2021

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

Section 1. Legislative intent. Chapter 23 of the laws of 2020 was adopted during uncertain times, during the beginning of the national awareness of the COVID-19 virus and its first detection in New York. Responding to the virus was declared a public health emergency by the US Centers for Disease Control and there was the threat of widespread transmission in the United States. At the time it was not known that New York State would become one of the epicenters of the pandemic, how long the pandemic would last, or the toll that it would take on the people of the state. In the face of uncertain and unprecedented times, the legislature enacted chapter twenty-three in order to take action to combat an unknown and unprecedented problem, and in case the governor needed additional powers to deal with the quickly evolving situation. Much has been learned about the COVID-19 virus in the last year. The legislature finds that there has been progress in the fight against the virus with the approval and distribution of multiple vaccines in recent months. With increased knowledge including the means of transmission, prevention and treatment of the COVID-19 outbreak and additional time to reflect, the legislature finds and declares that the governor is adequately equipped with his previously existing emergency powers and with the authorization to continue existing directive extension and modification powers to deal with the situation. The legislature therefore declares

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

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that it is time to restore the pre-pandemic balance of power of the governor and legislature, and to continue to move forward with the response and recovery while maintaining the authority of public-health focused directives taken by the Governor, with reasonable limitations, during the possibly waning days of the pandemic.

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

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

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

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

c. No later than 5 days prior to the extension or modification of a directive only explicitly affecting specific municipalities, the governor shall notify including via electronic means the relevant executive leaders of such municipalities and such municipal legislature of his or her intent to extend or modify any such directive, and shall include therewith the certification required by subdivision 1 of this section to describe the need for extension or modification of such directive and the specific threat to the public health or safety that requires the extension or modification. If the governor certifies that the extension

or modification of such a directive is necessary to address any exigent circumstances that address an imminent threat to the public health or safety, he or she shall provide such certification required by the commissioner of health as provided in subdivision 1 of this section, as soon as possible but in any event, prior to the issuance of an extension or modification of such a directive. The governor shall provide an opportunity to comment on any such directive by such executive leaders and legislatures, which comments may be received after the issuance of the directive and shall not affect the validity thereof.

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

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

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

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

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

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

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

(ii) the subject category or area affected;

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

(iv) the order's expiration date;

(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.