

# STATE OF NEW YORK

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5357

2021-2022 Regular Sessions

## IN SENATE

March 2, 2021

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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:

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  
15 the approval and distribution of multiple vaccines in recent months.  
16 With increased knowledge including the means of transmission, prevention  
17 and treatment of the COVID-19 outbreak and additional time to reflect,  
18 the legislature finds and declares that the governor is adequately  
19 equipped with his previously existing emergency powers and with the  
20 authorization to continue existing directive extension and modification  
21 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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1 that it is time to restore the pre-pandemic balance of power of the  
2 governor and legislature, and to continue to move forward with the  
3 response and recovery while maintaining the authority of public-health  
4 focused directives taken by the Governor, with reasonable limitations,  
5 during the possibly waning days of the pandemic.

6 § 2. 1. As used in this section, "public health directive related to  
7 managing the COVID-19 pandemic", means a directive certified in the sole  
8 discretion of the commissioner of health to address the spread and/or  
9 reduction of the COVID-19 virus, facilitate vaccine distribution or  
10 administration, or require the use of face coverings. Such certifi-  
11 cation shall include a detailed explanation of how such directive will  
12 address the spread and/or reduction of the COVID-19 virus, facilitate  
13 vaccine distribution or administration, or require the use of face  
14 coverings and shall also be contained within the notice required to be  
15 made by the governor pursuant to paragraphs a and b of subdivision 2 of  
16 this section.

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

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

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

48 c. No later than 5 days prior to the extension or modification of a  
49 directive only explicitly affecting specific municipalities, the gover-  
50 nor shall notify including via electronic means the relevant executive  
51 leaders of such municipalities and such municipal legislature of his or  
52 her intent to extend or modify any such directive, and shall include  
53 therewith the certification required by subdivision 1 of this section to  
54 describe the need for extension or modification of such directive and  
55 the specific threat to the public health or safety that requires the  
56 extension or modification. If the governor certifies that the extension

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

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

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

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

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

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

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

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

46 (ii) the subject category or area affected;

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

48 (iv) the order's expiration date;

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

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

54 (b) Such website shall be updated upon the issuance of every suspen-  
55 sion or directive pursuant to this act.

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

5 § 4. Section 4 of chapter 23 of the laws of 2020 amending the execu-  
6 tive law relating to issuing by the governor of any directive necessary  
7 to respond to a state disaster emergency, is amended to read as follows:

8 § 4. This act shall take effect immediately and [~~sections one and~~  
9 ~~section~~ two of this act shall expire and be deemed repealed [~~April 30,~~  
10 ~~2021~~] immediately, provided however, any directive issued pursuant to  
11 this chapter in effect at the time of such repeal shall be permitted to  
12 continue for 30 days from the date of such repeal, unless further  
13 extended as provided in section 2 of the chapter of the laws of 2021  
14 amending the executive law relating to the termination of certain execu-  
15 tive powers; to amend chapter 23 of the laws of 2020 amending the execu-  
16 tive law relating to issuing by the governor of any directive necessary  
17 to respond to a state disaster emergency, in relation to the effective-  
18 ness thereof; and providing for the repeal of certain provisions upon  
19 expiration thereof. Nothing contained herein shall be construed to  
20 diminish or repeal any statutory or regulatory authority to exercise  
21 emergency powers that existed prior to the enactment of this act.

22 § 5. Section 28 of the executive law is amended by adding a new subdi-  
23 vision 5 to read as follows:

24 5. The legislature may terminate at any time a state disaster emergen-  
25 cy issued under this section by concurrent resolution.

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

32 § 7. This act shall take effect immediately, provided that, section  
33 two of this act shall expire and be deemed repealed upon the termination  
34 of the state of emergency declared pursuant to executive order 202 of  
35 2020.