STATE OF NEW YORK

1117

2023-2024 Regular Sessions

IN SENATE

January 10, 2023

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

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

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

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

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

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

a. no suspension shall be made for a period in excess of thirty days, provided, however, that upon reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for **any**

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

LBD03772-01-3

specified county or counties for an additional [~~periods~~] period not to exceed [~~thirty~~] fifteen days [~~each~~]. At the end of such period, all suspensions shall terminate and be of no further force or effect unless the legislature, by concurrent resolution, authorizes an extension by the governor for a specified county or counties, for a period not to exceed an additional thirty days; provided that the legislature may authorize multiple extensions if it deems necessary;

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

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

d. the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such statute, local law, ordinance, order, rule or regulation suspended, and may include other terms and conditions;

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

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

3. Such suspensions 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.

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

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

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

c. If the governor denies a request to terminate any declaration of a state disaster emergency or any related executive order, the chief executive officer of the county or the mayor may seek a judicial review of the governor's decision pursuant to a special proceeding commenced in supreme court in the affected county or city. The governor shall have the burden to establish, with clear and convincing evidence, within five days after service on the governor and attorney general of the petition seeking judicial review, the need for a continuation of such state disaster emergency and any related executive orders for such county or city and that such executive orders are narrowly tailored to meet the disaster emergency and comply with the restrictions and limitations contained in this chapter, including, amongst other things, involving the minimum deviation from any provision that was suspended and avoiding

needless adverse effects. The supreme court shall render a decision within fifteen days after service on the governor and attorney general of the petition seeking judicial review.

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

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