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:

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 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
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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 certif-
11 ication 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.