

SENATE, No. 3866

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 1, 2021

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Provides for termination of public health emergency declared by Governor to address COVID-19 pandemic, except certain executive orders, directives, and powers will remain in effect temporarily.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning emergency health powers and supplementing
2 Title 26 of the Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. All executive orders issued by the Governor prior to the
8 effective date of this act, P.L. , c. (C.) (pending before the
9 Legislature at this bill), that relied on the existence of the public
10 health emergency declared by the Governor in Executive Order No.
11 103 of 2020, as extended, shall expire 30 days following the effective
12 date of this act, with the exception of the executive orders listed in
13 this section that shall remain in effect until January 1, 2022. The
14 Governor shall have the ability to revoke or modify the executive
15 orders listed in this section prior to January 1, 2022.

16 (1) Executive Order No. 106 (2020)

17 (2) Executive Order No. 111 (2020)

18 (3) Executive Order No. 112 (2020)

19 (4) Executive Order No. 123 (2020)

20 (5) Executive Order No. 127 (2020)

21 (6) Executive Order No. 150 (2020)

22 (7) Executive Order No. 159 (2020)

23 (8) Executive Order No. 170 (2020)

24 (9) Executive Order No. 178 (2020)

25 (10) Executive Order No. 207 (2020)

26 (11) Executive Order No. 229 (2021)

27 (12) Executive Order No. 233 (2021)

28 (13) Executive Order No. 237 (2021)

29 (14) The most recent executive order containing general
30 coronavirus disease 2019 (COVID-19) mitigation measures
31 regarding face coverings, social distancing, and gatherings prior to
32 the effective date of this act, and this executive order shall not be
33 more restrictive than the recommendations provided in the federal
34 Centers for Disease Control and Prevention guidelines on social
35 distancing and face coverings in response to the coronavirus disease
36 2019 (COVID-19) pandemic, unless a substantial increase in
37 hospitalizations, substantially increased spot positivity, or rate of
38 transmission above 1 necessitates a modification that would be more
39 restrictive.

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41 2. Notwithstanding the provision of section 1 of this act, P.L. ,
42 c. (C.) (pending before the Legislature at this bill), allowing
43 Executive Order No. 112 of 2020 to remain in place until January 1,
44 2022, any civil or criminal immunity related to the COVID-19
45 response bestowed by either Executive Order No. 112 of 2020,
46 P.L.2020, c.18, or Department of Health Executive Directive No. 20-
47 006 (Revised) as issued December 16, 2020 upon health care
48 professionals, health care facilities, health care systems, modular

1 field treatment facilities, and any other sites designated by the
2 Commissioner of the Department of Health for temporary use in
3 connection with the State's COVID-19 response, including hotels
4 and student dormitories, shall last until September 1, 2021, and then
5 expire on that date. Conduct occurring prior to September 1, 2021
6 by health care professionals, health care facilities, or health care
7 systems shall retain the civil or criminal immunity provided by
8 Executive Order No. 112 of 2020, P.L.2020, c.18, or Department of
9 Health Executive Directive No. 20-006 (Revised) as issued
10 December 16, 2020. The civil immunity bestowed upon health care
11 professionals in connection with the State's COVID-19 response by
12 P.L.2020, c.18 shall continue beyond September 1, 2021 only for
13 individuals specifically engaged in vaccinations or testing related to
14 COVID-19.

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16 3. a. Following the termination of the public health emergency
17 declared by the Governor in Executive Order No. 103 of 2020, as
18 extended, the force and effect of any administrative order, directive,
19 or waiver issued by the head of a State agency that relied on the
20 existence of the public health emergency declared by the Governor
21 in Executive Order No. 103 of 2020, as extended, shall expire on
22 January 11, 2022. Such administrative order, directive, or waiver
23 may be continued and may be modified by the head of a State agency,
24 unless such administrative order, directive, or waiver is explicitly
25 revoked, until January 11, 2022.

26 b. Notwithstanding subsection a. of this section, the Governor
27 shall notify the Legislature by January 1, 2022 if the Governor
28 determines that it is necessary or appropriate to continue for an
29 additional 90 days beyond January 11, 2022 any administrative order,
30 directive, or waiver issued by the head of a State agency that relied
31 on the existence of the public health emergency declared by the
32 Governor in Executive Order No. 103 of 2020, as extended. The
33 administrative orders, directives, or waivers shall be extended for an
34 additional 90 days if each House of the Legislature passes a
35 concurrent resolution to continue any such administrative order,
36 directive, or waiver. Any administrative order, directive, or waiver
37 as to which the Governor does not provide notification to the
38 Legislature or as to which both Houses of the Legislature do not pass
39 a concurrent resolution to continue shall expire on January 11, 2022.

40 c. Notwithstanding subsection a. of this section, the provisions of
41 any administrative order, directive, or waiver issued by the
42 Department of Health that relied on the existence of the public health
43 emergency declared by the Governor in Executive Order No. 103 of
44 2020, as extended, governing staffing ratios, overtime, shifts, and
45 vacation time shall remain in force and effect until September 1,
46 2021, at which time all such provisions of administrative orders,
47 directives, and waivers governing staffing ratios, overtime, shifts,
48 and vacation time shall be superceded by relevant provisions of laws,

1 regulations, or collective bargaining agreements in effect on that
2 date.

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4 4. The termination of the public health emergency declared by
5 the Governor in Executive Order No. 103 of 2020, as extended, shall
6 in no way diminish, limit, or impair the powers of the Governor or
7 the head of a State agency pursuant to the provisions of the civilian
8 defense and disaster control act P.L.1942, c.251 (C.App.A:9-33 et
9 seq.). The state of emergency declared in Executive Order No. 103
10 of 2020, as extended, pursuant to P.L.1942, c.251 (C.App.A:9-33 et
11 seq.) shall remain in effect until terminated by the Governor.

12 While the state of emergency declared in Executive Order No. 103
13 of 2020 shall remain in effect, the deadlines in paragraph (1) of
14 subsection i. of section 6 of P.L.2001, c.404 (C.47:1A-5) shall apply
15 to any request made under the open public records act after the
16 effective date of this act, with the exception of requests made for
17 records related to the COVID-19 response, which shall continue to
18 be governed by paragraph (2) of subsection i. of section 6 of
19 P.L.2001, c.404 (C.47:1A-5).

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21 5. Following the termination of the public health emergency
22 declared by the Governor in Executive Order No. 103 of 2020, as
23 extended, the Governor, Commissioner of Health, and the head of
24 any other State agency may issue orders, directives, and waivers
25 pursuant to P.L.2005, c.222 (C.26:13-1 et seq.) related to (1)
26 vaccination distribution, administration, and management, (2)
27 COVID-19 testing, (3) health resource and personnel allocation, (4)
28 data collection, retention, sharing, and access, (5) coordination of
29 local health departments, and (6) implementation of any applicable
30 recommendations of the Centers for Disease Control and Prevention
31 to prevent or limit the transmission of COVID-19, including in
32 specific settings.

33 The authority granted by this section shall last until January 11,
34 2022, unless the Governor notifies the Legislature by January 1, 2022
35 that the authority granted by this section is necessary to combat the
36 continuing threat posed by COVID-19 and should last for another 90
37 days. In the event of such notification, the Legislature shall have the
38 authority to pass a concurrent resolution to concur with the
39 Governor's notice. If such a concurrent resolution passes both
40 Houses of the Legislature, then the authority granted by this section
41 shall continue for an additional 90 days. If such a concurrent
42 resolution does not pass both Houses of the Legislature, then the
43 authority granted by this section shall expire on January 11, 2022.

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45 6. This act shall take effect immediately.

STATEMENT

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Under this bill, all executive orders issued by the Governor prior to the effective date of this bill that relied on the existence of the public health emergency declared by the Governor in Executive Order No. 103 of 2020, as extended, will expire 30 days following the effective date of this bill, with the exception of the executive orders listed below that will remain in effect until January 1, 2022. The Governor will have the ability to revoke or modify the following executive orders prior to January 1, 2022.

- Executive Order No. 106 (2020)
- Executive Order No. 111 (2020)
- Executive Order No. 112 (2020)
- Executive Order No. 123 (2020)
- Executive Order No. 127 (2020)
- Executive Order No. 150 (2020)
- Executive Order No. 159 (2020)
- Executive Order No. 170 (2020)
- Executive Order No. 178 (2020)
- Executive Order No. 207 (2020)
- Executive Order No. 229 (2021)
- Executive Order No. 233 (2021)
- Executive Order No. 237 (2021)

The most recent executive order containing general COVID-19 mitigation measures regarding face coverings, social distancing, and gatherings prior to the effective date of this bill and the executive order cannot be more restrictive than the recommendations provided in the federal Centers for Disease Control and Prevention guidelines on social distancing and face coverings in response to the COVID-19 pandemic, unless a substantial increase in hospitalizations, substantially increased spot positivity, or rate of transmission above 1 necessitates a modification that would be more restrictive.

Notwithstanding the provision allowing Executive Order No. 112 of 2020 to remain in place until January 1, 2022, any civil or criminal immunity related to the COVID-19 response bestowed by either Executive Order No. 112 of 2020, P.L.2020, c.18, or Department of Health Executive Directive No. 20-006 of 2020 upon health care professionals, health care facilities, health care systems, modular field treatment facilities, and any other sites designated by the Commissioner of the Department of Health for temporary use in connection with the State’s COVID-19 response, including hotels and student dormitories, will last until September 1, 2021, and then expire on that date. Conduct occurring prior to September 1, 2021 by health care professional, health care facilities, or health care systems will retain the civil or criminal immunity provided by Executive Order No. 112 of 2020, P.L.2020, c.18, or Department of Health Executive Directive No. 20-006 of 2020. Under the bill, the civil immunity bestowed upon health care professionals in

1 connection with the State's COVID-19 response by P.L.2020, c.18
2 would continue beyond September 1, 2021 only for individuals
3 specifically engaged in vaccinations or testing related to COVID-19.

4 Following the termination of the public health emergency declared
5 by the Governor in Executive Order No. 103 of 2020, as extended,
6 the force and effect of any administrative order, directive, or waiver
7 issued by the head of a State agency that relied on the existence of
8 public health emergency declared by the Governor in Executive
9 Order No. 103 of 2020, as extended, would expire on January 11,
10 2022. Under the bill, such administrative orders, directive, or waiver
11 may be continued and may be modified by the head of a State agency,
12 unless such administrative order, directive, or waiver is explicitly
13 revoked, until January 11, 2022.

14 The bill provides that the Governor must notify the Legislature by
15 January 1, 2022 if the Governor determines that it is necessary or
16 appropriate to continue for an additional 90 days beyond January 11,
17 2022 any administrative order, directive, or waiver issued by the head
18 of a State agency that relied on the existence of the public health
19 emergency declared by the Governor in Executive Order No. 103 of
20 2020, as extended. The administrative order, directive, or waiver
21 would be extended for an additional 90 days if each House of the
22 Legislature passes a concurrent resolution to continue any such
23 administrative orders, directives, or waivers. Any administrative
24 orders, directives, or waivers as to which the Governor does not
25 provide notification to the Legislature or as to which both Houses of
26 the Legislature do not pass a concurrent resolution to continue would
27 expire on January 11, 2022.

28 Under the bill, the provision of any administrative order, directive,
29 or waiver issued by the Department of Health that relied on the
30 existence of the public health emergency declared by the Governor
31 in Executive Order No. 103 of 2020, as extended, governing staffing
32 ratios, overtime, shifts, and vacation time shall remain in force and
33 effect until September 1, 2021, at which time all such provisions of
34 administrative orders, directives, and waivers governing staffing
35 ratios, overtime, shifts, and vacation time will be superceded by
36 relevant provisions of laws, regulations, or collective bargaining
37 agreements in effect on that date.

38 The bill specifies that the termination of the public health
39 emergency declared by the Governor in Executive Order No. 103 of
40 2020, as extended, will in no way diminish, limit, or impair the
41 powers of the Governor or the head of a State agency pursuant to the
42 provisions of the civilian defense and disaster control act P.L.1942,
43 c.251 (C.App.A:9-33 et seq.). The state of emergency declared in
44 Executive Order No. 103 of 2020 pursuant to that law will remain in
45 effect until terminated by the Governor.

1 However, while the state of emergency declared in Executive
2 Order No. 103 of 2020 remains in effect, the deadlines in paragraph
3 (1) of subsection i. of section 6 of P.L.2001, c.404 (C.47:1A-5) will
4 apply to any requests made under the open public records act after
5 the effective date of this bill, with the exception of requests made for
6 records related to the COVID-19 response, which will still be
7 governed by paragraph (2) of subsection i. of section 6 of P.L.2001,
8 c.404 (C.47:1A-5).

9 Following the termination of the public health emergency declared
10 by the Governor in Executive Order No. 103 of 2020, as extended,
11 the Governor, Commissioner of Health, and the head of any other
12 State agency may issue orders, directives, and waivers pursuant to
13 the emergency health powers law, P.L.2005, c.222 (C.26:13-1 et
14 seq.), related to (1) vaccination distribution, administration, and
15 management, (2) COVID-19 testing, (3) health resource and
16 personnel allocation, (4) data collection, retention, sharing, and
17 access, (5) coordination of local health departments, and (6)
18 implementation of any applicable recommendations of the Centers
19 for Disease Control and Prevention to prevent or limit the
20 transmission of COVID-19, including in specific settings. The
21 authority granted above will last until January 11, 2022, unless the
22 Governor notifies the Legislature by January 1, 2022 that the
23 authority granted is necessary to combat the continuing threat posed
24 by COVID-19 and should last for another 90 days. In the event of
25 such notification, the Legislature will have the authority to pass a
26 concurrent resolution to concur with the Governor. If such a
27 concurrent resolution passes both Houses of the Legislature, then the
28 authority granted will continue for an additional 90 days. If such a
29 concurrent resolution does not pass both Houses of the Legislature,
30 then the authority granted would expire on January 11, 2022.