



**Reinvent
Albany.**

October 2022

Empire State of Emergency:

The overuse of Governor's emergency powers
invites the abuse of power and corruption

OPEN, ACCOUNTABLE, EFFECTIVE GOVERNMENT

www.reinventalbany.org

377 Broadway, 9th Floor,
New York, NY 10013

Introduction and Summary

Since taking office in August 2021, Governor Kathy Hochul has issued or continued disaster declarations for ten separate emergencies, including two related to COVID-19. In total, the disaster declarations issued or continued by Governor Kathy Hochul have suspended dozens of sections of law. (See the [Appendix](#) for a full list.)

The Governor's emergency declarations have suspended numerous safeguards that the State Legislature has put in place to:

- ensure competitive bidding on state contracts (State Finance Law);
- prevent corruption and collusion by state vendors (State Finance Law's Comptroller review/approval provisions); and
- protect the environment (the State Environmental Quality Review Act), among other important laws.

Under State Finance Law, the Comptroller oversees state contracts to make sure taxpayers are getting the best deal possible, and to prevent waste, fraud and abuse of state funds.

While the Comptroller's review was recently suspended, the state paid [nearly twice the price as California for home COVID tests](#) from a small firm, Digital Gadgets, whose owner and family donated at least \$300,000 to Governor Hochul's campaign, as reported by the Times Union. This middleman bought tests and resold them to New York State without a contract or any typical vetting of the vendor, which includes ensuring they are not a front for organized crime or previously banned from soliciting contracts. Using purchase orders, New York paid Digital Gadgets \$637 million in multiple payments over three months that were not reviewed by the Comptroller's Office.

Former Governor Cuomo also issued a number of disaster declarations, including a June 2017 emergency order for the Metropolitan Transportation Authority, which was renewed for a total of *four years* – the longest emergency declaration in recent memory. This order suspended [environmental and anti-corruption safeguards](#), and [led to a number of questionable MTA expenditures](#).

The Legislature and Governor should act to prevent future potential abuses by enacting legislation to limit the governor's emergency powers and restore Comptroller review. Specifically:

- 1. The Legislature should pass a bill like its [2021 rollback of the governor's COVID-19 powers](#) to require:**
 - a. Notification to the Legislature, affected local governments, and the State Comptroller at least five days prior to the extension and/or modification of the order, including the opportunity for comment; and
 - b. Any comments received must be responded to by the Governor's office.
- 2. All emergency orders and their extensions should be online in a searchable format.** The Governor can do this administratively, or it can be required by the Legislature, modeled off of the Legislature's 2021 roll-back of COVID-19 powers to require:

- a. A listing of specific laws that have been suspended or modified, with justifications and certifications from the relevant agencies.
 - b. A listing of all comments received by any relevant government bodies, including a response by the Governor's Office to the comment.
- 3. Emergency declarations lasting more than one year should be required to be approved by majority vote of each house of the Legislature.** Under current law, the Legislature can pass a resolution to *overturn* an executive order or emergency declaration, but initial approval is not required for the order or its extensions.
- 4. The Governor should sign legislation that restores many of the Comptroller's powers to review state contracts before they are signed.** The bill, [A7925-A \(Zebrowski\) / S6809-A \(Reichlin-Melnick\)](#), puts into law a 2019 Memorandum of Understanding between Comptroller DiNapoli and then-Governor Andrew Cuomo that restored the Comptroller's authority to do a "pre-audit" review of many SUNY, CUNY, and Office of General Services contracts.

Emergency Orders Under New York Law

New York State law and the state constitution gives the governor an immense amount of power over state budgeting and spending. Recent natural disasters and the COVID-19 pandemic have highlighted that state law also gives the governor extraordinary authority to issue emergency orders that suspend state and local laws and regulations.

The Legislature is responsible under the [State Constitution \(Section 25 of Article III\)](#) for adopting measures necessary to ensure that state government can operate during emergencies. This includes passing laws regarding the Governor's emergency powers and ability to issue executive orders related to them, which have the force of law.

Disasters are defined under [Section 20 of the Executive Law](#), which states that a "disaster" means the "occurrence or imminent, impending or urgent threat of wide spread or severe damage, injury, or loss of life or property from any natural or man-made causes, including but not limited to" the following items:

- | | | |
|---------------|-----------------------|---------------------------|
| 1. fire | 11. wave action | 21. explosion |
| 2. flood | 12. volcanic activity | 22. radiological accident |
| 3. earthquake | 13. epidemic | 23. nuclear, chemical, |
| 4. hurricane | 14. disease outbreak | biological, or |
| 5. tornado | 15. air contamination | bacteriological release |
| 6. high water | 16. terrorism | 24. water contamination |
| 7. landslide | 17. cyber event | 25. bridge failure |
| 8. mudslide | 18. blight | 26. bridge collapse |
| 9. wind | 19. drought | |
| 10. storm | 20. infestation | |

Under [Section 28 of Article 2-B of the Executive Law](#), emergency disaster declarations cannot last more than 180 days, but may be renewed by the Governor without limit. Suspensions of law once an emergency is declared can last a maximum of 30 days under [Section 29-A of the Executive Law](#), but may also be renewed without limit by the Governor.

In practice, recent executive orders asserting emergency powers have both: (1) declared a disaster; and (2) suspended specific sections of laws for a period of 30 days.

At any time, the legislature can terminate a state disaster emergency by concurrent resolution.

Continuing Orders That Declare a “Disaster Emergency”

Governor Hochul has also extended a number of orders that declared a disaster emergency under the Cuomo administration via [Executive Order \(“EO”\) 3](#), which has been [extended 12 times](#), and is currently in effect until October 18, 2022. The order extended several states of emergencies related to natural disasters which have since ended. It also extended [EO 211](#) on gun violence, first issued in July 2021. The gun violence emergency is the only Cuomo-era disaster declaration still in effect, which expires on October 18, 2022.

New Emergency Orders Signed by Governor Hochul

Governor Hochul has signed six new executive orders that all declare disaster emergencies:

- One emergency order related to a natural disaster: Hurricane Ida ([EO 2](#) - no longer in effect).
- Four related to public health emergencies:
 - COVID-19 order in response to the Omicron wave ([EO 11](#) - no longer in effect)
 - Healthcare staffing shortages due to the ongoing COVID-10 pandemic ([EO 4](#) - extended through September 27, 2022)
 - Monkeypox virus ([EO 20](#) - in effect through September 27, 2022)
 - Polio virus ([EO 21](#) - in effect through October 9, 2022)
- Another relates to conditions at Rikers Island ([EO 5](#) - extended through October 2, 2022)

Suspension of Comptroller Review and Competitive Bidding

Many EOs declaring disaster emergencies have suspended sections of the State Finance Law which relate to competitive bidding and the State Comptroller’s review of contracts, under the purported reason that they speed up delivery of goods and services during crises. The Comptroller’s office has questioned this practice, [saying that](#):

"Issuance of executive orders which suspend the comptroller's independent oversight limits transparency and increases the potential for waste, fraud and abuse ... When this oversight is removed, even for emergency situations, the process may not work as well as it should."

The orders suspending comptroller review that have been in effect under Governor Hochul include:

- Cuomo-era EOs [198](#) (St. Lawrence Flooding), [211](#) (Gun Violence), [213](#) (NYC Metro Area Flooding)
- Governor Hochul's EOs [2](#) (Hurricane Ida), [4](#) (Healthcare Shortages), and [11](#) (COVID-19)

Beyond issuing emergency orders that suspend Comptroller review, the Governor's FY 2020-2021 executive budget eliminated the requirements from [Sections 112](#) and [163](#) of the State Finance Law for a number of appropriations. This was opposed by [the State Comptroller](#) as well as [Reinvent Albany and other watchdog groups](#).

The lack of Comptroller review and proper safeguards to ensure competitive bidding has resulted in a number of questionable contracts signed by the state under both the leadership of governors Cuomo and Hochul.

- The poor and slow administration of the state's Emergency Rental Assistance Program (ERAP) under former Governor Cuomo was managed by Guidehouse, [under a no-bid contract](#), which had recently hired an ex-Cuomo administration staffer, Joseph Spinelli.
- Most recently, under the Hochul administration, the state paid nearly [nearly twice the price as California for COVID tests](#) from a small firm, Digital Gadgets, a company owned by a New York City family that has donated at least \$300,000 to Hochul's campaign, which bought the tests from AccessBio and resold them to the state.

Legislative "Rollback" of Gov. Cuomo's COVID-19 Order

After an extended COVID-19 state of emergency under the Cuomo administration, the Legislature passed a bill to ["rollback" the Governor's emergency powers](#). The legislation was in response to concerns about abuse of executive power under the [2020 law pushed by Governor Cuomo](#). The 2020 law expanded the definition of an emergency to include disease outbreaks, and gave the governor the ability to issue directives. The "rollback" legislation in 2021 removed the ability of the governor to issue directives, but retained the language related to "disease" outbreaks.

The [new law](#) also put specific requirements on the Governor's office, but only related to the extension or modification of Executive Order 202:

- The Department of Health had to certify that the continuing directive addressed only the spread/reduction of the COVID-19 virus, vaccine distribution, or the use of face coverings, including an explanation of how these goals were to be met.
- Modifications of EO 202 were limited, such as adjusting the number/percentage applied under restrictions, or eligibility criteria for vaccinations, for example.
- The Governor was required to notify Committee Chairs, the Speaker of the Assembly, and the Temporary President of the Senate — not the minority leaders — as well as local governments five days prior to extension or modification of any directives.
 - In response, the State Legislature and local governments could provide comments, which had to be responded to by the Governor's office. The Governor was not required to make changes based on the comments, but the comments and the Governor's response would be online for the public to see.
- Final directives were required to be online in a searchable format, including all comments received by the Governor from the State Legislature and local governments and the justification for the extension or modification of the directive.

The new law also gave the Legislature the ability to reject the issuance of a state disaster emergency, providing another tool for the Legislature to reject the Governor's emergency orders. The Legislature previously only had the ability to reject executive orders suspending sections of law.

Changes Needed to Curb Governor's Emergency Powers

The Legislature and Governor should act to prevent future potential abuses by enacting legislation to limit the governor's emergency powers and restore Comptroller review. Specifically:

- 1. Extension of emergency orders should be subject to greater notification and transparency. The Legislature should pass a bill modeled off of the Legislature's 2021 rollback of COVID-19 powers to require:**
 - a. Notification to the Legislature, affected local governments, and the State Comptroller at least five days prior to the extension and/or modification of the order, including the opportunity for comment; and
 - b. Any comments received must be responded to by the Governor's office.
- 2. All emergency orders and their extensions should be online in a searchable format.** The Governor can do this administratively, or it can be required by the Legislature, modeled off of the Legislature's 2021 roll-back of COVID-19 powers to require:
 - a. A listing of specific laws that have been suspended or modified, with justifications and certifications from the relevant agencies.
 - b. A listing of all comments received by any relevant government bodies, including a response by the Governor's Office to the comment.

3. **Emergency declarations lasting more than one year should be required to be approved by majority vote in each house of the Legislature.** Under current law, the Legislature can pass a resolution to *overturn* an executive order or emergency declaration, but initial approval is not required for the order or its extensions.
4. **The Governor should sign legislation that restores many of the Comptroller's powers to review state contracts before they are signed.** The bill, [A7925-A \(Zebrowski\) / S6809-A \(Reichlin-Melnick\)](#), puts into law a 2019 Memorandum of Understanding between Comptroller DiNapoli and then-Governor Andrew Cuomo that restored the Comptroller's authority to do a "pre-audit" review of many SUNY, CUNY, and Office of General Services contracts.

Appendix - Emergency Declarations in Effect During Governor Hochul's Administration as of October 17, 2022

Stated Emergency	Emergency Order Number(s)	Summary of Suspended Laws (see spreadsheet for full details)	Start of Emergency Order	End of Emergency Order (As of 10/17/2022)	Length of Emergency (Days)
Lake Ontario and the St. Lawrence River Flooding	3-3.3 (198 Cuomo)	<ul style="list-style-type: none"> - Economic Development Law - Environmental Conservation Law - Highway Law - Part RRR of Chapter 59 of the Laws of 2017 (Design Build Requirements) - Public Buildings Law - State Finance Law (Comptroller review) - Certain NYS Codes, Rules and Regulations 	November 20, 2019	January 21, 2022	794
Gun Violence (Currently in effect)	3 - 3.11 (211 Cuomo)	<ul style="list-style-type: none"> - Executive Law - State Finance Law (Comptroller review) - "Any other provision of statute, local law, orders, rules or regulations" 	July 6, 2021	October 18, 2022	470
Steuben County Tropical Cyclone	3 (212 Cuomo)	No suspensions	August 19, 2021	October 23, 2021	66
NYC Metro Area Flooding	3 (213 Cuomo)	<ul style="list-style-type: none"> - Economic Development Law - Executive Law - General City Law - Highway Law - Second Cities Law - State Finance Law (Comptroller Review) - Transportation Law - Vehicle and Traffic Law - Village Law - NYC Administrative Code - Certain NYS Codes, Rules and Regulations 	August 21, 2021	October 23, 2021	64
Hurricane Ida	2 - 2.2	<ul style="list-style-type: none"> - Economic Development Law - Executive Law - General City Law - Highway Law - Second Class Cities Law - State Finance Law (Comptroller review) - Vehicle and Traffic Law - Village Law - NYC Administrative Code - Certain NYS Codes, Rules and Regulations 	September 2, 2021	November 16, 2021	76

Empire State of Emergency: The overuse of Governor's emergency powers invites the abuse of power and corruption

Stated Emergency	Emergency Order Number(s)	Summary of Suspended Laws (see spreadsheet for full details)	Start of Emergency Order	End of Emergency Order (As of 10/17/2022)	Length of Emergency (Days)
Healthcare Staffing (Currently in effect)	4 - 4.13	<ul style="list-style-type: none"> - Economic Development Law - Education Law - Insurance Law - Public Health Law - Retirement and Social Security Law - State Finance Law (Comptroller Review) - Certain New York Codes, Rules and Regulations 	September 27, 2021	October 27, 2022	396
Rikers Island (Currently in effect)	5 - 5.12	<ul style="list-style-type: none"> - Criminal Procedure Law - Mental Hygiene Law - Certain New York Codes, Rules and Regulations 	September 28, 2021	November 1, 2022	400
COVID-19	11 - 11.9	<ul style="list-style-type: none"> - Public Health Law - Public Officers Law - Real Property Tax Law - State Finance Law (Comptroller Review) - Certain New York Codes, Rules and Regulations 	November 26, 2021	September 12, 2022	291
Monkeypox Virus (Currently in effect)	20 - 20.2	<ul style="list-style-type: none"> - Education Law - Insurance Law - Public Health Law - Certain New York Codes, Rules and Regulations 	July 29, 2022	October 27, 2022	91
Polio Virus (Currently in effect)	21	<ul style="list-style-type: none"> - Education Law - Public Health Law - Certain New York Codes, Rules and Regulations 	September 9, 2022	November 8, 2022	61

A list of the orders and specific suspended laws is available [here](#).