

## New Legislation Limits Governor's COVID-19 Pandemic Powers

The COVID-19 State of Emergency is currently in effect through March 28, 2021 (Executive Order 202.96). Pursuant to Chapter 71, effective March 7, 2021, the governor will no longer have the authority to issue new COVID-19 directives and will need to comply with additional requirements to extend or modify existing COVID-19 directives in 30-day increments. At press time, the governor has issued approximately 100 executive orders related to the COVID-19 pandemic, many of which are still in effect. According to the new legislation, the governor may extend or modify these directives subject to the additional notice and certification requirements.

### Chapter 71 at a Glance

- Current COVID-19 executive orders remain in effect for 30 days
- The governor cannot issue new COVID-19 directives
- The governor may extend or modify existing COVID-19 directives in 30-day increments subject to new requirements:
  - NYSDOH required to explain and certify modifications and extensions
  - The governor must provide notice to the Assembly Speaker and Senate Temporary President (Majority Leader) and relevant committee chairs
  - The governor must provide notice to affected municipalities
  - Legislature and affected municipalities must be given opportunity to comment
- The state must post more information about COVID-19 executive orders
- Municipalities may issue local emergency orders that do not conflict with state emergency orders
- Legislature may terminate the governor's Executive Orders and/or State of Emergency Declaration by concurrent resolution

The new legislation may be reviewed on the following websites:

- New York State Senate <https://www.nysenate.gov/legislation>
- New York State Assembly <https://nyassembly.gov/leg/>

The Governor's office currently posts each executive order at <https://www.governor.ny.gov/executiveorders> but this legislation will provide the public with specific information regarding the status, purpose and enforcement of COVID-19 executive orders.

### COVID EXECUTIVE ORDERS: A BRIEF HISTORY

Article 2-b of the Executive Law provides the governor with emergency powers to declare a state disaster emergency and to take steps to ensure the public health and safety during the state of emergency, which allows the governor to suspend state and local laws and regulations in 30-day increments to address the emergency (Executive Law, §29-a). For example, Executive order 202.1 suspended the Open Meetings Law to allow towns to hold virtual meetings. In 2020, the Legislature adopted Chapter 23 to provide the Governor with additional emergency powers to issue directives in the interest of public health and welfare that were necessary to cope with the COVID-19 pandemic. For example, Executive Order 202.4 was a pandemic-related directive to towns to reduce their in-person nonessential workforces. The governor's authority to suspend the application of a particular statute (EO 202.1) existed prior to the pandemic and will continue after the pandemic. The governor's authority to issue directives (EO 202.4) was provided to the Governor under Chapter 23 of the Laws of 2020 expressly to address concerns during the pandemic and were scheduled to expire on April 30, 2021. Upon the adoption of Chapter 71, these additional powers will expire upon the termination of the COVID-19 state of emergency.

