STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SECRETARY OF SENATE
2020 JUL 17 PM 3:01

EXECUTIVE ORDER

No. 2020-154

Alternative means to conduct government business during the COVID-19 pandemic

Rescission of Executive Orders 2020-129, 2020-132, and 2020-141

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended (EMA), MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the EPA, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the EMA.

Those executive orders have been challenged in *Michigan House of Representatives and Michigan Senate v. Whitmer*. On May 21, 2020, the Court of Claims ruled that Executive Order 2020-67 is a valid exercise of authority under the Emergency Powers of the Governor

Act but that Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are being challenged on appeal.

On June 18, 2020, I issued Executive Order 2020-127, again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature had declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke the Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency on the people of Michigan, with the intent to preserve the rights and protections provided by the EMA. The EMA vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)–(2). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders take steps to limit in-person contact. These critical mitigation measures include social distancing and limiting the number of people interacting at public gatherings and at work. Public bodies and entities must continue to conduct public business during this emergency, and the general public must be able to continue to participate in government decision-making and adjudication without unduly compromising public health, safety, and welfare. To that end, it is reasonable and necessary to provide temporary alternative means to conduct public meetings, conduct administrative proceedings, and provide the required notice under tax abatement statutes.

Executive Orders 2020-129, 2020-132, and 2020-141 afforded limited and temporary relief from certain rules and procedures in order to provide such alternative means. These measures have been effective. This order therefore extends the duration of such measures, as it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. With this order, Executive Orders 2020-129, 2020-132, and 2020-141 are rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

I. Remote meetings of public bodies

1. To the extent that the Open Meetings Act ("OMA"), 1976 PA 267, as amended, MCL 15.261 to 15.272, requires that a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body, strict compliance with section 3 of the OMA, MCL 15.263, is temporarily suspended in order to alleviate any such physical-place or physical-presence requirements, as follows:

   (a) A meeting of a public body may be held electronically, including by telephonic conferencing or video conferencing, in a manner in which both the general public and the members of the public body may participate by electronic means.

   (b) A meeting of a public body held electronically must be conducted in a manner that permits two-way communication so that members of the public body can hear and be heard by other members of the public body and so that general public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. The public body may use technology to facilitate typed public comments that may be read to or shared with members of the public body and other participants to satisfy the requirement that members of the public can be heard by others during the meeting.

   (c) Members of a public body and of the general public participating electronically will be considered present and in attendance at the meeting and may participate in the meeting as if physically present at the meeting.

   (d) All persons must be permitted to participate in any meeting of a public body held electronically, except as otherwise provided in the OMA.

   (e) If a public body directly or indirectly maintains an official internet presence, the public body must, consistent with and in addition to any other applicable notice requirements under the OMA, post advance notice of a meeting held electronically on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings. Notice of a meeting of a public body that will be held electronically must include all of the following:

      (1) An explanation of the reason why the public body is meeting electronically.

      (2) Detailed procedures by which the public may participate in the meeting remotely, including a telephone number, internet address, or both.

(3) Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.

(4) Procedures by which persons with disabilities may participate in the meeting.

(f) The right of a person to participate in a meeting of a public body held electronically includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of the public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations to minimize the possibility of disrupting the meeting.

(g) A public body may not require a person as a condition of participating in a meeting of the public body held electronically to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms necessary to permit the person to participate in a public comment period of the meeting.

(h) A person must be permitted to address a meeting of a public body held electronically under rules established and recorded by the public body. A person must not be excluded from a meeting held electronically otherwise open to the public except for a breach of the peace actually committed during the meeting.

(i) During a meeting of a public body held electronically, members of the public body are urged to take all votes by roll call to avoid any questions about how each member of the public body votes.

(j) If a public body holding a meeting electronically directly or indirectly maintains an official internet presence, the public body is encouraged to make available to the general public through the public body's website homepage an agenda and other materials relating to the meeting.

(k) Members of the general public otherwise participating in a meeting of a public body held electronically may be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of the OMA applicable to a closed session.

2. If a decision or other action of a public body complies with the requirements of this part and the requirements of the OMA not suspended by this part, it must be considered to comply with the OMA.

3. If a statute or rule other than the OMA requires that public comments be permitted or a public hearing be held, including in conjunction with the issuance of a permit or a hearing required under the Uniform Budgeting and Accounting Act, 1968 PA 2, as

amended, MCL 141.421 et seq., a public body or department or agency may provide a means for remote public comment or participation through the use of any technology that would facilitate a member of the general public's ability to participate remotely to the same extent as if the member of the general public appeared in person. If not expressly authorized by statute or rule, written comment, including by electronic means, is also permitted.

4. Strict compliance with subsection 6 of section 11a, subsection 7 of section 384, and subsection 1 of section 418a of the Revised School Code, 1976 PA 451, as amended, MCL 380.11a(6), MCL 380.384(7), and MCL 380.418a(1), is temporarily suspended so as not to require school district boards to hold meetings at least once each month.

5. A public body holding a meeting electronically as provided under this part is encouraged to do so in a manner that effectuates as fully as possible the purposes of the OMA, which include promoting government accountability and fostering openness in government to enhance responsible decision-making. Discussions or deliberations at an open meeting that cannot at a minimum be heard by the general public participating in the meeting are contrary to these purposes. Accordingly, members of a public body must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision, and must avoid "round-the-horn" decision-making in a manner not accessible to the public at an open meeting.

6. Nothing in this part permits a public body to limit or restrict the rights of the press or other news media. Members of public bodies are encouraged to facilitate access by members of the press and other news media both to meetings held electronically and to members of public bodies.

7. As used in this part, the terms "decision," "meeting," and "public body" mean those terms as defined under section 2 of the OMA, MCL 15.262, except this part does not apply to state legislative bodies.

II. Alternative notice of tax abatement hearings

1. A person is considered to have been provided the notice and opportunity to be heard required by a tax abatement statute if the responsible local governmental unit abided by the following procedures:

   (a) To ensure that notice is provided to any real property owners within a proposed tax abatement district that are entitled to notice, the local governmental unit must publish in three successive issues of a generally circulated newspaper serving the proposed tax abatement district where available, or if no such newspaper is available, by the posting of the notice in five conspicuous places in the proposed tax abatement district.

   (b) To ensure that notice is provided to any required taxing jurisdiction, assessor, or other public official that is entitled to receive notice under the particular tax abatement statute, the local governmental unit may provide notice via email to

the appropriate governmental or business email address.

(c) To ensure that notice is provided to the general public, the local governmental unit must:

(1) Post notice of the public hearing in a prominent and conspicuous place at both the public body's principal office; and

(2) Post notice of the public hearing on a portion of the local governmental unit's website that is fully accessible to the public, if the local governmental unit directly or indirectly maintains an official internet presence. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings.

2. Strict compliance with any requirement under a tax abatement statute to provide notice of a public hearing is temporarily suspended to allow for notice to be provided consistent with section 1 of this part. Failure to strictly comply with the procedures set forth in section 1 of this part does not by itself constitute grounds to invalidate an action taken by a local governmental unit under a tax abatement statute.

3. This part does not change or otherwise affect the timing requirements for notice of public hearings in any tax abatement statute. Nor does this part prohibit a local governmental unit from providing notice in the manner prescribed by the relevant tax abatement statute.

4. As used in this part:

(a) The term "local governmental unit" means a political subdivision of this state that is authorized to create an abatement district, reduce the level of taxation on a certain property, or exempt certain property from taxation, under a tax abatement statute. Additionally, for the purposes of the Plant Rehabilitation and Industrial Development Districts Act, it also includes a Next Michigan development corporation as that term is defined in section 3 of the Next Michigan Development Act, MCL 125.2953.

(b) The term "tax abatement district" means any district that can be created by a local governmental unit in a tax abatement statute within which certain property may be eligible for a property tax exemption.

(c) The term "tax abatement statute" means one of the following statutes that allows for a reduction in, or an exemption of, the level of taxation ordinarily imposed on property in this state: the Obsolete Property Rehabilitation Act, MCL 125.2781 *et seq.*, the Neighborhood Enterprise Zone Act, MCL 207.771 *et seq.*, the Commercial Rehabilitation Act, MCL 207.841 *et seq.*, the Commercial

Redevelopment Act, MCL 207.651 *et seq.*, and the Plant Rehabilitation and Industrial Development Districts Act, MCL 207.551 *et seq.*

III. Remote means of carrying out state administrative procedures.

1. Hearing officers or arbitrators may conduct Michigan Employment Relations Commission (MERC) hearings by electronic means, including video conferencing. To the extent necessary, strict compliance with the procedural requirements of 1939 PA 176, as amended, MCL 423.1 et seq. (employment relations commission), 1947 PA 336, as amended, MCL 423.201 et seq. (public employment relations), and 1969 PA 312, as amended, MCL 423.231 et seq. (compulsory arbitration of labor disputes in police and fire departments), is temporarily suspended.

2. Notice to MERC, as well as personal service of notice, service of process, or written notice of a dispute relating to an impending strike or an impending lockout, may be provided by mail or by electronic means, including email. To the extent necessary, strict compliance with rules and procedures under sections 9, 9a, 9d(3), 11, 23(2), and 27 of 1939 PA 176, as amended, MCL 423.9, 423.9a, 423.9d(3), 423.11, 423.23(2), and 423.27, and any other procedural statutes governing MERC, is temporarily suspended.

3. The Unemployment Insurance Agency (UIA) may permit hearings to be held by telephone or electronic means, including video conferencing. To the extent necessary, strict compliance with rules and procedures under the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, as amended, MCL 421.1 et seq., is temporarily suspended.

4. Notice to the UIA and written notice by the UIA may be provided by mail or by electronic means, including email. To the extent necessary, strict compliance with rules and procedures under the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, as amended, MCL 421.1 et seq., is temporarily suspended.

5. Hearings held under the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 et seq., as well as under the MAHS Administrative Hearing Rules, R 792.10101 et seq., and any informal hearings required by statute, rule, or regulation, may proceed by telephone or by electronic means, including video conferencing. To the extent necessary, strict compliance with the rules and procedures of the APA and the MAHS Administrative Hearing Rules is temporarily suspended. This does not apply to hearings by the Joint Committee on Administrative Rules.

6. Notice and service of process required by the APA and the MAHS Administrative Hearing Rules may be provided by mail or by electronic means, including email. To the extent necessary, strict compliance with rules and procedures under the APA and the MAHS Administrative Hearing Rules is temporarily suspended.

7. Administrative rules or emergency rules may be filed with the secretary of state electronically, including by email. To the extent necessary, strict compliance with

rules and procedures under the APA is temporarily suspended.

8. Pursuant to section 18 of the Uniform Electronic Transactions Act, 2000 PA 305, as amended, MCL 450.848, the Department of Technology, Management and Budget (DTMB) is directed to authorize the acceptance, use, and reliance upon electronic signatures for a signature required by sections 11(b)(4), 32b(3), and 54f of the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, as amended, MCL 421.11(b)(4), 421.32b(3), and 421.54f. Pursuant to section 7 of the Uniform Electronic Transactions Act, 2000 PA 305, as amended, MCL 450.837, a signature must not be denied legal effect or enforceability solely because it is in electronic form, and if a law requires a signature, an electronic signature satisfies the law.

9. Pursuant to section 18 of the Uniform Electronic Transactions Act, 2000 PA 305, as amended, MCL 450.848, the DTMB is directed to authorize the acceptance, use, and reliance upon electronic signatures for a signature required under the APA, including any requirement of a signature for filing administrative rules or emergency rules with the secretary of state. Pursuant to section 7 of the Uniform Electronic Transactions Act, 2000 PA 305, as amended, MCL 450.837, a signature must not be denied legal effect or enforceability solely because it is in electronic form, and if a law requires a signature, an electronic signature satisfies the law.

IV. General Provisions

1. This order is effective immediately and remains in effect during any state of emergency or state of disaster arising out of the COVID-19 pandemic, and for 28 days thereafter to the extent necessary to permit reliable scheduling of hearings and meetings under Parts I and III.

2. A provision of this order will prevail over any conflicting provision of a local charter, ordinance, or rule.

3. This order supersedes sections 2 and 3 of Executive Directive 2020-2.

4. Executive Orders 2020-129, 2020-132, and 2020-141 are rescinded.

Given under my hand and the Great Seal of the State of Michigan.

Date: July 17, 2020

Time: 1:54 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE