Executive Order 2020-141: Providing alternative notice of public hearings under Michigan's tax abatement statutes (June 30, 2020)

EXECUTIVE ORDER

No. 2020-141

Providing alternative notice of public hearings under

Michigan's tax abatement statutes

Rescission of Executive Order 2020-103

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.

It has long been the public policy of this state that, in certain circumstances, tax-based incentives can be properly used to bring about change that is beneficial to the public as a whole. To this end, the Legislature has enacted several statutes that operate as tax abatements. In these statutes, the Legislature has authorized certain local governmental units to create tax abatement districts within which certain properties can receive some form of property tax exemption. But before a tax abatement district can be created and before property can be approved for a tax exemption, the responsible local governmental unit is required to conduct a public hearing and provide notice of the hearing to multiple parties including individuals, public officials, and other municipalities. This provision of such notice ensures that all persons affected by the local governmental unit’s decision-making have an opportunity to be heard in that decision-making process.

Strict compliance with the notice requirements of certain tax abatement statutes would require dozens of staff to work in-person to complete the hundreds of mailings required, increasing in-person interactions and putting people at risk. In order to reduce in-person work and minimize the risk of transmission of COVID-19, I find it reasonable and necessary to provide temporary alternative means for satisfying those statutory notice requirements. Executive Order 2020-103 provided those alternative means. This order extends their duration, as it remains reasonable and necessary to reduce in-person work and minimize the risk of transmission of COVID-19. With this order, Executive Order 2020-103 is rescinded.

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

1. Consistent with Executive Order 2020-129, or any order that follows it, any public hearing that is required to take place under a tax abatement statute may be held electronically, including by telephonic conferencing or video conferencing, in a manner that allows all persons and entities entitled to notice under the applicable tax abatement statute to participate by electronic means.

2. Strict compliance with any requirement under a tax abatement statute to provide notice of a public hearing is temporarily suspended to allow for the responsible local governmental units to provide notice of public hearings in the following manner:

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.

3. Section 2 of this order does not prevent a local governmental unit from providing notice in the manner prescribed by the relevant tax abatement statute if the local governmental unit is able to do so safely and consistently with workplace standards enacted in accordance with Executive Order 2020-114, or any order that follows it.

4. Without regard to whether the local governmental unit provided notice in the manner required by the relevant tax abatement statute or in the manner set forth in section 2 of this order, notice of a public hearing required by a tax abatement statute that will be

conducted electronically in accordance with Executive Order 2020-129, or any order that follows it, must include each of the following:

a. An explanation of the reason why the public body is meeting electronically.

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

c. 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.

d. Procedures by which persons with disabilities may participate in the meeting.

5. This order does not change or otherwise affect the time requirements for notice of public hearings in any tax abatement statute.

6. A person is considered to have been provided the notice and opportunity to be heard required by a tax abatement statute if the local governmental unit followed the procedures set forth above in sections 2 and 3 of this order. Failure to strictly comply with the procedures set forth in sections 2 and 3 of this order does not by itself constitute grounds to invalidate an action taken by a local governmental unit under a tax abatement statute.

7. To the extent that this order creates a conflict with any requirement set by a local governmental unit's charter or ordinances, the provisions of this order control.

8. As used in this order:

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.*

9. Executive Order 2020-103 is rescinded.

10. This order is effective immediately and continues through July 31, 2020.

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

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