

## Resources

### Virtual Meetings of Michigan Municipalities During the COVID-19 Pandemic Likely to Continue Based on Recent Legislation

October 14, 2020

Since the early stages of the COVID-19 pandemic, municipalities in Michigan have met virtually under the authority of a series of executive orders issued by Governor Whitmer permitting public bodies, except the state legislature, to meet by virtual means. These executive orders, including most recently Executive Order No. 2020-154 (COVID-19), temporarily suspended certain requirements of Michigan's Open Meetings Act (OMA) and enabled municipalities that would otherwise be required to meet in person, to meet virtually. However, recent rulings by the Michigan Supreme Court earlier this week effectively terminated Governor Whitmer's executive orders and seemingly ended the ability of public bodies in Michigan to continue meeting virtually.

In response, the Michigan Legislature swiftly passed SB 1108 that amends the OMA to allow for public bodies to continue meeting electronically under certain circumstances, including statewide or local states of emergency or disaster, through December 31, 2021. The bill will now be enrolled and presented to Governor Whitmer for signature. As a result, while not yet law until signed, it seems that virtual meetings of municipalities may continue for the time being upon the adoption of these new amendments.

#### Recent Michigan Supreme Court Rulings

On October 12, 2020, the Michigan Supreme Court issued two orders in response to its recent decision in *In re Certified Questions (Midwest Inst of Health v. Governor)*—the landmark decision holding that Governor Whitmer lacked authority to issue or renew COVID-19 executive orders under the Emergency Management Act after April 30, 2020, as well as holding that Governor Whitmer lacked authority to exercise emergency powers under the Emergency Powers of the Governor Act. In its October 12 order in *In re Certified Questions (Midwest Inst of Health v. Governor)*, it denied the Governor's motion to extend the effective date of the Court's decision until October 30.

Additionally, on October 12, the Court issued an order in *House of Representatives & Senate v. Governor*—a different lawsuit brought by the Michigan Legislature, which also challenged Governor Whitmer's authority to issue executive orders during the COVID-19 pandemic. In that order, the Court emphasized that the executive orders issued under the Emergency Powers of the Governor Act "are of no continuing legal effect" and that the Court's order was effective immediately.

#### SB 1108 and Virtual Meetings of Public Bodies

The Court's October 2, 2020, decision in *In re Certified Questions (Midwest Inst of Health v. Governor)*, which struck down the Governor's executive orders, did not address the status of or impact upon decisions already rendered by public bodies during the time period of those executive orders, creating uncertainty as to the efficacy of such decisions. But what was made clear—based on the Court's October 12 order—was that moving forward, Governor Whitmer's executive orders related to the OMA are terminated and no longer in effect. As a result, many municipalities have canceled virtual meetings this week until more clear guidance is made available.

Recognizing the need for public bodies to continue meeting virtually under certain circumstances, including that of states of emergency and disaster, SB 1108 was quickly passed by the Michigan Legislature this week to address this issue. The bill amends the OMA and allows public bodies to meet by electronic means through December 31, 2021, and will retroactively apply to decisions rendered as of March 18, 2020. While SB 1108 is not yet law, as it still needs to be signed by Governor Whitmer, it seems likely it will be signed and that municipalities will be allowed to continue meeting virtually during the COVID-19 pandemic. In the meantime, conducting virtual meetings until the bill is signed by Governor Whitmer is not without risk, given the executive orders are not effective.

Virtual Meetings of Michigan Municipalities During the COVID-19 Pandemic Likely to Continue Based on Recent Legislation (Cont.)

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