

CAPITOL NEWS UPDATE

WEEK OF OCTOBER 17, 2022



McAlvey Merchant
& ASSOCIATES

WHITMER VETOES LEGISLATION TO LIMIT EMERGENCY POWERS

Gov. Gretchen Whitmer vetoed eight bills out of a 30-bill plan last week that would limit the time frame for specific emergency orders issued by the executive branch, and give the ability to extend the orders to the legislature.

The vetoed bills included:

HB 6184, 6194 and 6195 which would limit emergency orders to 28-days, similar to the timeframe of the Emergency Management Act, with the possibility of extension by the Legislature after that.

HB 6202 and 6204, which would have required the governor and officials from certain state departments to notify legislators within 24 hours of issuing certain emergency orders.

HB 6185 and 6189, which sought to repeal existing emergency laws that regulate insurance corporations during emergencies.

HB 6193, which addressed the emergency conditions necessary for an order related to vacating an unsafe house.

Alexander released a statement criticizing the governor's decision to not sign the bills, saying the vetoes "shut people out and shield government officials from public accountability."

House Republicans who introduced the bill said that the bills would have strengthened transparency and legislative oversight. "By increasing transparency and oversight, our straightforward, common-sense plan would inform and involve Michigan residents and their representatives during emergencies," Rep. Julie Alexander (R-Hanover) who introduced the bills along with other legislators, said.

In her veto letter to the House, Whitmer said, "by restricting executive branch authority in times of crisis, they would limit the state's ability to protect the people we represent."

The remaining bills in the package are under consideration in the Senate.

STATE APPOINTEES COULD FACE REMOVAL FROM OFFICE, LEGAL CONSEQUENCES

Michigan Attorney General Dana Nessel's office issued a letter this week indicating that two Republican members of the Michigan Board of State Canvassers could be at risk of being removed

from office or facing legal liability for not acting on advice from the department regarding their “clear legal duty.”

"A member of a state board, council, commission, or task force, who receives advice from the department regarding his or her clear legal duty and does not act in conformity with that advice may be refused representation by the department in civil litigation related to that duty and could potentially lose their statutory immunity from tort liability," Grossi wrote. "It is important to note that the member could also be denied indemnification if a judgment is entered against them and may face suspension or removal from office by the governor."

The letter, dated Oct. 18 from Chief Deputy Attorney General Christina Grossi, was issued in response to questions posed in a Sept. 27 request for opinion from Sen. Jeremy Moss (D-Southfield).

Earlier this year, Republican members of the Michigan Board of State Canvassers, Richard Houskamp and Tony Daunt denied certifying two ballot petitions for proposed amendments regarding abortion rights and an expansion of voting rights into the Michigan Constitution, based on technical aspects of the petitions such as ballot language and line spacing, during the Aug. 31 hearing.

The Michigan Supreme Court then intervened in September with an order compelling the Board of State Canvassers to certify the ballot language. The board certified the language the next day.

Sen. Moss requested the opinion from the Attorney General’s office in response to the Supreme Court’s order, asking whether members of a state panel with a clear legal duty to perform various functions under state law is advised of its duty, and then fails or refuses to perform it, are immune from tort liability due to failure or refusal to perform its functions. Moss said his request was to clear the air before the general election.

“I don’t want any shenanigans happening in the certification of this election like those that were attempted in the last election,” Moss said. “I just want everybody to be on the same page of what might happen if a rogue member clearly does not perform their ministerial duties as prescribed by law.”

The letter crafted by Grossi also addressed a second question of whether the members are entitled to state-funded representation in civil litigation over their non-performance of a legal duty and if the department can decline to represent them.

Grossi referenced statute related to public office holders having a "fiduciary relationship to the people whom they have been elected or appointed to serve," and pointed out that courts have imposed a fiduciary standard on public officials requiring disinterested conduct.

"And since a public officer's fiduciary obligation is to exercise discretion reasonably and in good faith, failing to carry out a clear legal duty, particularly one that is akin to a ministerial act, could be seen as a violation of the public trust."

JUDGE REJECTS CHANGES TO ELECTION RULES

A state judge has said that an election manual for the upcoming general election from Secretary of State Jocelyn Benson's office contained rule changes that should have gone through the regular rulemaking process, and that the Bureau of Elections exceeded its authority.

Michigan Court of Claims Judge Brock Swartzle ordered Benson's office and Bureau of Elections Director Jonathan Brater to rescind or revise the manual, invalidating additions outside of the promulgated rules process.

The changed rules in the May manual which Swartzle pointed out include rules that banned personal electronic devices from individuals working in absentee voter counting board facilities, created a new form for election challengers, made it unclear whether political parties could appoint challengers on Election Day and limited challengers' ability to talk with election inspectors or record certain challenges.

Regarding the rule around the electronic device ban, Swartzle pointed out that the law around absentee vote counting boards prohibits "a challenger from disclosing information relating to the processing of ballots before the polls close." But "it does not categorically prohibit the possession of electronic devices" in the counting board facility.

"Prohibiting electronic devices in the AVCB facility might be a good idea, but before a good idea can become law or have legal force and effect, that idea must be embodied within an enacted statute or promulgate rule," Swartzle wrote.

Swartzle's order happened after several election challengers, two legislative candidates and the state and national Republican parties claimed the rules contained in the May manual violated Michigan election law and bypassed the proper rulemaking process.

Benson's office plans to appeal the ruling.

DETAILS ANNOUNCED IN 2015 UIA FRAUD CASE SETTLEMENT

The state will pay \$20 million to settle a class action lawsuit between the Unemployment Insurance Agency and unemployment claimants who said they were wrongly found to have committed unemployment fraud between 2013 and 2015.

Attorney General Dana Nessel and the plaintiff's counsel Michael Pitt announced details of the settlement this week. In September, the Legislature passed a supplemental appropriations bill that was signed by Gov. Whitmer to set aside around \$20 million to pay for the agreement.

The money will be disbursed among about 8,000 people — those who the UIA collected money for the first time on or after March 9, 2015.

The case began in 2013 when Michigan began using an auto-adjudication computer system, Michigan Data Automated System, that flagged potential cases of unemployment fraud, then adjudicated those cases, resulting in seizure of assets such as tax refunds and paychecks, without any human involvement.

Individuals falsely accused by the MIDAS system filed a class action lawsuit against the state in 2015, alleging their due process rights had been violated by the government's seizures.

The settlement comes after two Michigan Supreme Court decisions regarding the claimants' standing, and work with a mediator earlier this year to determine how many people were affected, how much money was seized and how much had already been refunded by the state.

The parties plan to submit the settlement to the Court of Claims "in the coming months."

MM&A BRIEFS

ZERO COUNTIES IN MICHIGAN AT HIGH RISK FOR COVID-19

For the second week in a row, the Centers for Disease Control and Prevention have determined there are zero counties in Michigan at a high COVID-19 Community Level. Previously, Michigan has had at least one count at a high level every week since mid-July.

WHITMER VETOES DEER HARVEST BILL

Gov. Whitmer vetoed HB 6354 last week which would decriminalize hunters who failed to report their deer harvest within 72 hours. Whitmer said she decided to veto the bill after hearing from deer hunters and conservation groups, and that the bill did not reflect its original intent after amendments that "limit the ability of the Department of Natural Resources and the Natural Resources Commission's ability to collect timely, high-quality information on deer harvest, hindering the state's ability to scientifically manage our deer population and reducing opportunities for the public and Michigan's hunters to participate in decisions around wildlife management."

CONSUMERS ENERGY FOUNDATION AWARDS TWO GRANTS TOTALING \$500K

Consumers Energy Foundation recently announced it has awarded grants of \$250,000 a piece to the Cristo Ray Community Center in Lansing and the Roscommon County United Way in Houghton Lake.

CALENDAR OF EVENTS

Oct. 21 100th House District Candidate Tom Kunse (R) - Sporting Clay Shoot
Location: 2 p.m., Clare Rod and Gun Club, 10844 South Eberhart Road, Clare

Oct. 22 Rep. Stephanie Young (D-Detroit) Family Movie Fundraiser
Location: 2 p.m., Redford Theater, 17360 Lahser Road, Detroit

Oct. 25 Rep. Brenda Carter (D-Pontiac) - Fa-BOO-lous Lunch
Location: 11:30 a.m., Michigan Beer and Wine Wholesalers Association, 332
Townsend St., Lansing

Oct. 27 Rep. Kara Hope (D-Holt) Halloween Happy Hour
Location: 5 p.m., Corey's Lounge, 1511 South Cedar St., Lansing

30th House District Candidate Will Bruck (R) - Evening Reception
Location: 5 p.m., 7676 Strong Road, Newport