IN THE STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN HOUSE OF REPRESENTATIVES and MICHIGAN SENATE,

Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity as Governor for the State of Michigan,

Defendant.

Case No. 20- -MZ

Hon.

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THE MICHIGAN LEGISLATURE'S
MAY 6, 2020 MOTION FOR IMMEDIATE DECLARATORY JUDGMENT

The Michigan House of Representatives and the Michigan Senate (together, "the Legislature") respectfully move for an immediate declaratory judgment under Michigan Court Rule 2.605(A) and (D).

The Legislature is entitled to immediate declaratory relief. The Governor is acting pursuant to emergency powers that she does not have while eviscerating laws that she is charged to enforce. She has chosen to regulate every aspect of nearly 10 million lives with no consent or input from the people's representatives, whose assistance the Governor publicly disdains. No statute or constitutional provision empowers the Governor to declare a statewide, indefinite state of emergency and then rely on that declaration to exercise unfettered lawmaking authority. Quite the opposite: the Michigan Constitution vests that power solely with the Legislature. The Governor's actions offend fundamental separation-of-powers principles. Those unconstitutional acts cannot stand.

In support of this motion, the Legislature relies on the facts, law, and argument contained in the accompanying brief. The Legislature sought concurrence in the relief requested, but the Governor's counsel did not respond.

The Legislature respectfully requests oral argument on this motion. The motion deserves oral argument in light of the significance of the issues presented.

WHEREFORE, the Legislature respectfully requests that the Court grant its motion and enter an immediate judgment declaring invalid and uneforceable the COVID-19 orders described in the accompanying brief.

Respectfully submitted,

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Dated: May 6, 2020

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BRIEF IN SUPPORT OF THE MICHIGAN LEGISLATURE'S MAY 6, 2020 MOTION FOR IMMEDIATE DECLARATORY JUDGMENT

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INTRODUCTION

The fabric of civility that unites our society is thin even in the best of times. While the rule of law and the strength of our democratic institutions have kept it from tearing, Governor Gretchen Whitmer insists on a course of action that is an affront to both, and the Legislature is left with no choice but to seek this Court's intervention to restore constitutional order. Even in times of crisis, the law demands respect. "[I]t may easily happen that specific [legal] provisions may, in unforeseen emergencies, turn out to have been inexpedient. This does not make these provisions any less binding." *People ex rel Twitchell v Blodgett*, 13 Mich 127, 139 (1865). "Constitutions"—and statutes too, for that matter—"can not be changed by events alone." *Id.* This idea that the law must apply in both good times and bad times does not just grow from a blind devotion to abstract notions of justice. No, legal limits must be honored in even the roughest of times because our state could otherwise fall into "anarchy or despotism" without them. *Ex parte Milligan,* 71 US 2, 121; 18 L Ed 281 (1866).

The Governor's recent actions in responding to the ongoing COVID-19 crisis reflect patent disregard for the law. In issuing a multitude of executive orders prescribing rules for all aspects of life in Michigan, the Governor has become a lawmaking entity all to herself. Yet none of her claimed sources of authority gives her the power that she's now trying to wield. The general constitutional authority of the executive does not include legislative power. A 1976 statute gives powers for only a limited period that has now terminated. A 1945 statute governing *local*

emergencies cannot be used to address a statewide pandemic. If these problems of authority are not enough, the Governor's actions face another issue: they offend the separation-of-powers principles enshrined in the Michigan Constitution.

No doubt these are indeed unprecedented times. The Legislature does not minimize the genuine challenges that Michiganders face. But Michigan's laws and Constitution contemplate that the Legislature and the Governor will work *together* to address these challenges. The Governor is best equipped to act swiftly, while the Legislature is best equipped to act deliberately; to be effective, the State's response to this crisis must be both swift *and* deliberate. The Legislature has already taken several steps to respond. The Governor, however, has chosen a go-it-alone approach. Though she evidently sees less need for cooperation in times of emergency, "[e]mergency does not create power." *Home Bldg & L Ass'n v Blaisdell,* 290 US 398, 425; 54 S Ct 231; 78 L Ed 413 (1934).

The Governor's COVID-19-related orders cannot stand, and this Court should enter a declaratory judgment in favor of the Legislature.

BACKGROUND

I. Historical and Legal Background

In February 1973, three years of unusually heavy rainfall lifted lake waters surrounding Michigan to record levels. Experts predicted that a "Flood of the Century" loomed just months away and would engulf Michigan's coastal towns, leaving $112 million in damage in its wake. See Exhibit 1, Stevens, *Great Lakes Shore Towns Await 'Flood of the Century,'* NY TIMES (February 25, 1973), p 1.

Everyone prepared for the worst—the Army Corps of Engineers built dikes along the lakefront, and coalitions of residents lined city canals with sandbag ramparts. *Id.*

Frustrated by the "unduly restrictive and limited" powers to respond that were afforded him under existing laws like the 1945 Emergency Powers of the Governor Act ("EPGA"), Michigan governor William Milliken asked the Legislature for "plenary power to declare states of emergency both as to actual and impending dangers"—like these floods. Exhibit 2, William G. Milliken, Governor, Special Message to the Legislature on Natural Disasters (April 11, 1973), in 1973 House Journal 860–63. Governor Milliken correctly read his emergency powers under the EPGA as "pertinent to civil disturbances, and only indirectly relate[d] to natural disasters." *Id.*

The EPGA had become law nearly three decades earlier, in May 1945, just weeks after Germany's official surrender put an end to World War II. During the war, Detroit was known as the "Arsenal of Democracy for its crucial role in [producing weapons for] the war effort." Maraniss, *Once in a Great City: A Detroit Story* (NY: Simon & Schuster, 2015), p 63. Competition for new auto and defense jobs attracted "a combustible mix of whites from Appalachia and blacks from the Deep South" to Detroit, and racial tensions "exploded in a race riot that left thirty-four dead" and many more injured before 6,000 federal troops showed up to quell it. *Id.*; Detroit Historical Society, *Race Riot of 1943* <https://bit.ly/3b190xo> (accessed May 2, 2020). In response, the Michigan Legislature passed the EPGA to give then-governor Harry Kelly "wide powers to maintain law and order" in an area within the state to deal with future "times of public unrest and disaster." Exhibit 3, *Measure Gives Governor*

Wide Emergency Powers, Lansing State Journal (April 6, 1945). Those powers would be needed again in the summer of 1967.

George Romney was the chief spokesman of one of the key groups that adapted Detroit's manufacturing apparatus to produce arms and aircraft engines for the war effort, and had "expressed distaste for [the issue of] segregated public housing … that served as the backdrop for the 1943 [] riot." Maraniss, *Once in a Great City*, at 225. Twenty years later, he was Michigan's governor. What started as a police raid of an after-hours bar on Detroit's West Side escalated into a five-day "spasm of civil disorder" that resulted in 43 dead, 483 fires, seven thousand arrests, and millions of dollars in damage. *Id.* at 370. Governor Romney immediately invoked the EPGA to quell the riots. See US Senate Committee on Government Operations, *Riots, Civil and Criminal Disorders* (Washington, DC: US Government Printing Office, 1967), pp 1235–36. To do so, he issued a proclamation declaring "that a public crisis, emergency, rioting, and civil disturbances exist within the City of Detroit, Michigan, within the City of Highland Park, Michigan, and within the City of Hamtramck, Michigan, in the County of Wayne." *Id.* at 1236. He later did much the same in connection with later events in Grand Rapids and Flint. (Romney EOs 1967-4, -5.)

The Legislature tailored the EPGA to address the exact issues governors Kelly and Romney faced: "During times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, when public safety is imperiled," and "upon his or her own volition" or application of a city mayor, county

sheriff, or state police commissioner, a governor may "proclaim a state of emergency and *designate the area involved* … [and] 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) (emphasis added). These area-specific orders, rules and regulations can last until the governor declares "the emergency no longer exists," and may, among other things, control traffic and transportation, regulate building and vehicle use, establish a curfew, control places of assembly, or address the "storage, use, and transportation" of dangerous materials. *Id.*

Although the EPGA helped Governors Kelly and Romney, it was local in scope, and "silent with respect to powers necessary to combat" the kind of "imminent disaster" Governor Milliken faced in 1976. Exhibit 2, Milliken Message, at 861. So, as it did after the riots of 1943, the Legislature responded—this time by introducing 1976 HB 5314. All agreed that HB 5314 was intended to solve deep flaws in Michigan's existing emergency-powers laws. HB 5314's legislative analysis said it would address the "inadequacy" of Michigan's existing emergency-powers laws to address "3 major disasters in the last 13 months." Exhibit 4, June 24, 1976 Legislative Analysis of HB 5314, p 1. And the Michigan State Police Director, Col. George L. Halverson, urged Governor Milliken to support HB 5314 because "Michigan ha[d] been responding to disaster situations without appropriate legislation" and had been responding to crises "administratively" instead of "statutor[ily]." Exhibit 5, July 29, 1975 Halverson Memorandum, p 1. HB 5314 became the 1976 Emergency

Preparedness Act, later expanded and renamed the Emergency Management Act ("EMA"). See MCL 30.401.

> The EMA departed from the locally focused EPGA, with directives to:
>
> > provide for planning, mitigation, response, and recovery from natural and human-made disaster within and outside this state; to create the Michigan emergency management advisory council and prescribe its powers and duties; to prescribe the powers and duties of certain state and local agencies and officials; to prescribe immunities and liabilities; to provide for the acceptance of gifts; and to repeal acts and parts of acts.

Id. Unlike the EPGA, the EMA specified that the governor has the authority to "issue executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(2). And in 1990, the Legislature broadened the EMA by expanding the Governor's authority to address both disasters *and* emergencies. See 1990 PA 50.

But the Legislature also created a specific way to open the EMA toolbox. The governor must first order or proclaim a state of disaster or emergency that "indicate[s] the nature of the disaster [or emergency], the *area or areas* threatened, the conditions causing the disaster [or emergency], and the conditions permitting the termination of the state of disaster [or emergency]." MCL 30.403(3)–(4) (emphasis added). And the order or proclamation may last until either (a) the governor finds that the threat or danger has passed or the disaster conditions no longer exist, or (b) the declared state of disaster has been in effect for 28 days. After the 28-day period has run, "the governor shall issue an executive order or proclamation declaring the state of disaster terminated, unless a request by the governor for an extension of the state of disaster for a specific number of days is approved by resolution of both houses of the legislature." *Id.*

The EMA's utility since its enactment cannot be overstated. Before this year, Michigan governors have invoked the EMA to address hazards 85 times. Michigan State Police, *Michigan Hazard Analysis* <https://bit.ly/35vJ3oI> (April 2019), p 324. Governors have used the EMA to address issues ranging from natural disasters (tornadoes, snowstorms, flooding, hurricane evacuation), to man-made problems (sewer main break, sinkhole, airline crash, gas pipe rupture, widespread power failure), to ecosystem aberrations (deep frost, insect infestation, extreme cold). *Id.* Some of these events affected as little as one area (e.g., one county), while others affected *every* area (e.g., every county). *Id.* Over that same period, the EPGA has been virtually dormant. In the past 43 years, the EPGA has been invoked *one time*—in January 1985, to combat an ice storm affecting a few specific southwest Michigan counties. *Id.*

The Legislature has amended the EMA several times, with each amendment improving the Act's ability to respond to a future disaster or emergency. For example, to comply with the federal Emergency Planning and Community Right-To-Know Act, the Legislature expanded the scope of the EMA from disasters to include emergencies. Exhibit 6, Senate Fiscal Analysis of 1990 PA 50. In the aftermath of the September 11, 2001 terrorist attacks, the Legislature extended the time for which the Governor can declare a state of emergency or disaster without a legislative extension from 14 to 28 days and allowed the Governor to issue a heightened state of alert related to terrorism. See 2002 PA 132 (2001 HB 5496). In 2005, the Legislature expanded the list of health professionals to whom civil immunity applies when rendering services

during a declared state of disaster. See 2005 PA 321 (2005 HB 4508). And between 2013 and 2018, the Legislature created and raised the range of required funds in the EMA's Disaster and Emergency Contingency Fund, see 2013 PA 109 (2013 HB 4670); 2016 PA 220 (2016 SB 914); 2018 PA 263 (2017 HB 4609), while increasing the cap on funds available to local governments during a crisis or emergency, see 2013 PA 110 (2013 SB 330); 2018 PA 264 (2017 HB 4610).

Until now, Michigan governors have exercised their EMA authority the way the EMA intended: *with*—not *without*—the Legislature. The Legislature here seeks to restore the long tradition of cooperation and preserve that constitutional order.

II. Factual Background

This case arises from a global event that will define the decade: the COVID-19 pandemic.

Governor Whitmer and the Legislature recognized early on the gravity of the threat. As the virus spread, both branches teamed up to craft Michigan's response. On March 10, 2020, the Governor announced two presumptive-positive cases and issued the first of now 69 executive orders relevant to this action. See EO 2020-4; State of Michigan, *Michigan announces first presumptive positive cases of COVID-19* <https://bit.ly/2zVg2XH> (last accessed May 5, 2020). With this order, the Governor declared a state of emergency citing three sources of authority: Article 5, § 1, of Michigan's 1963 Constitution, the EMA, and the EPGA. EO 2020-4. The Governor ordered the following:

1. "A state of emergency is declared across the State of Michigan";

2. "The Emergency Management and Homeland Security Division of the Department of Police must coordinate and" activate services; and

3. "The state of emergency is terminated when emergency conditions no longer exist and appropriate programs have been implemented to recover from any effects of the emergency conditions, consistent with the legal authorities upon which this declaration is based *and any limits on duration imposed by those authorities*." [*Id.* (emphasis added).]

On April 1, 2020, the Governor issued an Executive Order titled "Expanded emergency and disaster declaration." EO 2020-33. In it, the Governor:

1. Declared an expanded "state of emergency *and a state of disaster* … across the State of Michigan";

2. Rescinded and replaced the March 10, 2020 Executive Order;

3. Ordered that the "state of emergency and the state of disaster will terminate when emergency and disaster conditions no longer exist and appropriate programs have been implemented to recover from any effects of the statewide emergency and disaster, consistent with the legal authorities upon which this declaration is based and *any limits imposed by those authorities, including section 3 of the Emergency Management Act[.]*"; and

4. Ordered that all previous orders that rested on the March 10, 2020 Executive Order 2020-04 "now rest on this order." [*Id.* (emphasis added).]

The March 10 and April 1 orders served as bookends for several critical actions by the Governor and the Legislature to combat COVID-19. Among these achievements was the Legislature's appropriation, and the Governor's signing into law, of a $150 million funding package to support current and future COVID-19 public health efforts, including additional funding for COVID-19 health care capacity, preparedness and response activities, and a reserve fund for future needs. 2019 HB 4729; 2019 SB 151. In a rare joint statement, the Governor and legislative leaders assured Michiganders that "the Executive and Legislative branches of state

government are working together to do whatever is necessary to ensure an effective response to COVID-19." *Joint Statement from Governor Whitmer and Legislative Leaders* <https://bit.ly/2zUtwTn> (March 30, 2020).

From day one, the Legislature has been dedicated to addressing the COVID-19 crisis as it does every legislative problem: by building consensus using diverse viewpoints and input from stakeholders from Iron Mountain to Detroit to Kalamazoo. To this end, the Legislature approved the Governor's requested "extension of the state of emergency and state of disaster" from the March 10, 2020 order and April 1, 2020 order, setting April 30, 2020 as its new expiration date. 2020 SCR 24. Multiple legislative workgroups were created to study how the economy could safely be reopened. A plan formulated by Senate leadership is structured on five phases that outline conditions in the state, suggest safe business operations, and propose levels of safe citizen activity. See Open Michigan Safely Proposal <https://bit.ly/350BaHm> (accessed May 5, 2020). As conditions improve and hit certain case- and testing-numbers benchmarks, restrictions are lifted. The House of Representatives released a similar three-step "Comeback Roadmap" that also reflected a more regional and risk-based approach. See Michigan's Comeback Roadmap Proposal <https://bit.ly/2W7RbZ6> (accessed May 5, 2020).

Both chambers have also introduced COVID-19 related legislation. Since March 12, 2020, 66 bills on COVID-19 related issues, ranging from a bill seeking an income tax deduction for first responders (see 2020 HB 5749) to a bill that protects emergency responders by requiring a hospital to notify them if a patient they

transported has tested positive for COVID-19 (see 2020 HB 5704), have been introduced in the House. Senators have introduced at least 27 COVID-19 related bills in their chamber. The Legislature has even passed legislation that would codify nearly all the Governor's executive orders (except the stay-at-home order and few others).

To date, the Governor has issued 69 COVID-19 executive orders—more than any other governor in the nation. See Council of State Governments, *COVID-19 Response for State Leaders* <https://web.csg.org/covid19/executive-orders/> (accessed May 3, 2020). Of these 69 orders, 40 remain un-rescinded. See EO Nos. 14, 17, 22, 26, 27, 28, 31, 34, 36, 38–41, 44-48, 61–72. Of those 40, three are her April 30, 2020 orders, which extend the EPGA emergency and terminate and redeclare a state of emergency and state of disaster under the EMA. EOs 2020-66–68. To address the 37 remaining orders, the Legislature has passed 2020 SB 858, which would have enacted into law, for a specified period, 28 of her executive orders. The bill was presented to the Governor on the date of its passage and she vetoed it four days later, on May 4.

Members of the Legislature have fielded an unprecedented number of requests from constituents, as the number, breadth, and contents of the Governor's executive orders have created significant confusion. The Legislature sought clarification and explanation for their constituents, through letter requests to the Governor and other less formal channels. Many of these clarifications have made their way into the over 200 FAQs the Governor has had to publish explaining various parts of her orders. See COVID-19 Executive Orders, <https://bit.ly/2W1jHf7> (accessed May 5, 2020).

The Legislature has also worked behind the scenes to recommend new executive orders or changes to existing ones. For example, in a March 28, 2020 letter to the Governor, Senate Majority Leader Shirkey shared his concern that "the brave and hard-working medical professionals in Michigan," who are using their best medical judgment in treating patients with COVID-19, are working while "the threat of legal liability hangs over their heads." Exhibit 7, March 28, 2020 Letter. He urged the Governor to offer protections to these workers, as other states have done, to suspend certain laws so that these workers will be immune from civil liability for any injury or death "alleged to have been sustained directly as a result" of the medical services rendered "in support of the State's response to the COVID-19 outbreak," unless gross negligence is established. *Id.* The following day, the Governor issued EO 2020-30 (now EO 2020-61), suspending and relaxing rules and restrictions regarding providers of medical services as necessary to support the response to COVID-19 pandemic. In another letter, legislative leadership urged the Governor to change her first "Stay Home, Stay Safe" order of March 23, 2020 to allow car sales. She revised "Stay Home, Stay Safe" order of April 9, 2020, incorporating that suggestion.

Until the past few weeks, Michigan's collective effort to combat COVID-19 was characterized by the Legislature's attempts at bipartisan and inter-branch cooperation. In letters to the Governor, legislative leaders thanked the Governor and her staff for their "continued efforts on behalf of our state and citizens to help slow the impact of COVID-19 on Michigan" and for "continu[ing] to work tirelessly to

provide information upon request to assist in answering questions from constituents[.]" Exhibit 8, April 26, 2020 Letter. The Legislature continued to pursue cooperation, even after the Governor made it clear she viewed Michigan's response to COVID-19 response as a one-person show. See Jesse, *Gov. Gretchen Whitmer: All Michigan K-12 schools must close until April 5*, Detroit Free Press <https://bit.ly/2Wou6Aq> (March 12, 2020) (announcing closure of schools despite initially saying she couldn't unilaterally close schools).

Many legislators have also sought data, modeling, and other relevant information the Governor has used to guide her decision-making. See, e.g., Michigan House Republicans, *Rep. Frederick requests more COVID-19 transparency from state* <https://bit.ly/3fifHyl> (April 4, 2020). Those requests have largely been ignored. Against this background, and to fulfill the Legislature's oversight role, the Legislature passed a concurrent resolution on April 24, forming a bipartisan Joint Select Committee on the COVID-19 Pandemic. 2020 HCR 20. The Governor responded by mocking the Legislature's efforts to fulfill its law-making role, saying it was "struggling to figure out how to stay relevant in this moment." Gray, *Michigan Legislature wants to create committee to oversee Whitmer's coronavirus response*, Detroit Free Press <https://bit.ly/2SxQGp5> (April 23, 2020). Although the Legislature "certainly [has] a role to play," she said, the executive branch has "gone out of [its] way to try to keep [the Legislature] included so that they know what and why the actions that [she] was taking were necessary"; the Legislature, she said, was free to "come in and . . . create their committee and then head back home." *Id.* More

recently, the Governor said she will "accommodate" legislative oversight efforts only if the Governor deems them "reasonable" and not "partisan."

On April 27, 2020**,** a few days before the as-extended state of emergency was to expire, the Governor announced that she would request that the Legislature further extend her State of Emergency Declaration. Exhibit 9, April 27, 2020 Letter. Unable to agree to terms, the next day passed without the Legislature entering a resolution to further extend the state of emergency and state of disaster. Rather than continuing to implement all public policy decisions via ad hoc executive orders, the Legislature offered to extend the states of emergency and disaster so long as any future "stay-at-home" requirements be passed through the bipartisan legislative process, while still permitting the Governor to supplement with executive orders as needed. She not only refused to consider that offer but forwarded it to the media. Mauer, *Whitmer not giving up powers, says Michigan remains in a state of emergency*, Detroit News <https://bit.ly/2WpuKh6> (April 29, 2020).

Then, on April 30, 2020, less than five hours before the as-extended state of emergency and state of disaster were set to expire, the Governor issued a series of executive orders. First, she issued EO 2020-66, terminating the State of Emergency declared under the Emergency Management Act in the April 1, 2020 Order (EO 2020-33).

One minute later, the Governor issued a second order: Declaration of State of Emergency, EO 2020-67. Unlike her March 10, 2020 or April 1, 2020, declarations, EO 2020-67 says in its title that it was issued "under the Emergency Powers of the

Governor Act, 1945 PA 302." After again citing to the EPGA, the Governor ordered that "[a] state of emergency *remains* declared across the State of Michigan under the Emergency Powers of the Governor Act of 1945[.]" *Id.* (emphasis added). The Governor strayed from the text of her prior emergency declarations when she ordered that the declaration will continue through a date certain, May 28, 2020, adding that she will "evaluate the continuing need for this order prior to its expiration," leaving out even the perfunctory language from the prior orders about the termination conditions for the state of emergency and state of disaster. The Order rescinds the April 1 order, and all previous orders that had rested on it now rest on this order.

The third April 30, 2020 order, EO 2020-68, is a declaration of "states of emergency and disaster under the Emergency Management Act, 1976 PA 390." This order, like the preceding order, specifies that it will continue through May 28, 2020, and lays out no conditions for termination beyond the Governor's evaluation of the "continuing need for this order" prior to that date. But unlike the preceding order, which states that a state of emergency *remains*, this third order purports to *declare* states of emergency and disaster *now*: "I now declare a state of emergency and a state disaster across the State of Michigan under the Emergency Management Act." She orders that all prior orders resting on the April 1, 2020, declaration of emergency and disaster now rest on this order. *Id.* Thus, the orders simultaneously declare that the emergency is both continuing and new.

On May 2, 2020, the Governor issued her fourth stay-at-home order—EO 2020-70. That order carries forward her previous stay-at-home orders' core requirements,

including social-distancing and essential-businesses-only rules, until May 15, 2020. The Governor continues to issue orders today.

LEGAL STANDARD

MCR 2.605(A)(1) governs declaratory judgments. It provides:

> In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

"[A]n 'actual controversy' exists for the purposes of a declaratory judgment where a plaintiff pleads and proves facts demonstrating an adverse interest necessitating a judgment to preserve the plaintiff's legal rights." *Mich Ass'n of Home Builders v City of Troy*, 504 Mich 204, 225; 934 NW2d 713 (2019). "[W]henever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). A litigant may have standing in this context if the litigant has a special injury or right, or "substantial interest, that will be detrimentally affected in a manner different from the citizenry at large." *Id.* (cleaned up). "One great purpose [of a remedy by means of declaratory judgment] is to enable parties to have their differences authoritatively settled in advance of any claimed invasion of rights, that they may guide their actions accordingly and often may be able to keep them within lawful bounds[.]" *Merkel v Long*, 368 Mich 1, 13; 117 NW2d 130 (1962).

"The language of MCR 2.605 is permissive rather than mandatory; thus, it rests with the sound discretion of the court whether to grant declaratory relief." *PT*

Today, Inc v Comm'r of the Office of Fin & Ins Servs, 270 Mich App 110, 126; 715 NW2d 398 (2006); see *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978) ("The declaratory judgment rule was intended and has been liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people."). "An individual may request expedited consideration of the case in the trial court . . . ." *Paquin v City of St Ignace*, 504 Mich 124, 148; 934 NW2d 650, 663 (2019) (citing MCR 2.605(D)).

ARGUMENT

The Governor's COVID-19-related emergency orders are improper and invalid. Her orders were taken without authority and constitute *ultra vires* acts. Further, they are unconstitutional because they violate the separation-of-powers doctrine. The Court should immediately declare them unenforceable.

I. The Governor did not have authority to issue COVID-19-related orders after April 30, 2020.

"[I]f the Governor acts outside the scope of his [or her] authority, his [or her] actions are considered ultra vires." *McCartney v Attorney Gen*, 231 Mich App 722, 726; 587 NW2d 824 (1998); see also *Taxpayers of Michigan Against Casinos v State*, 471 Mich 306, 403; 685 NW2d 221 (2004) (Markman, J., concurring and dissenting) ("While the Governor has the power to issue executive orders on his own accord …, the permissible scope of such orders is limited by the express powers constitutionally or legislatively delegated to the Governor."). A governmental entity's ultra vires action is "void for all purposes." *Vill of Reed City v Reed City Veneer & Panel Works*, 165 Mich 599, 603; 131 NW 385 (1911). Here, the Governor cites three ostensible

sources of authority for her orders: (1) the Emergency Management Act; (2) the Emergency Powers of the Governor Act; and (3) the general grant of executive authority found in article 5, § 1 of the Michigan Constitution. Yet none of these provisions give the Governor the statutory authority to impose the kind of broad-sweeping provisions found in the Governor's COVID-19-related executive orders. Exhibit 10, Table of EOs.

A. Because the Legislature has not extended the state of emergency under the Emergency Management Act, the Governor may not exercise authority under that law to address COVID-19.

The EMA allows the Governor to declare a statewide state of disaster or emergency for up to 28 days. "After 28 days," she must "issue an executive order or proclamation declaring the state of disaster [or emergency] terminated, unless" the legislature approves "by resolution of both houses" her request "for an extension of the state" of emergency or disaster. MCL 30.403(3)–(4). The Governor purported to fulfill the EMA's termination requirement here by ending the states of emergency and disaster on April 30, only to redeclare states of emergency and disaster—based on the exact same underlying facts—one *minute* later. This disingenuous interpretation of the EMA renders the 28-day limit meaningless and shows that the Governor believes she can simply disregard the statute's plain meaning and the Legislature in general. Such blatant disregard for the law cannot stand. As of May 1, the Governor cannot exercise any emergency powers under the EMA.

1. The Governor's orders are inconsistent with the EMA's plain text.

The Court's "primary goal when interpreting statutes is to discern the intent of the Legislature. To do so, [the Court] focus[es] on the best indicator of that intent, the language of the statute itself." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 205–06; 815 NW2d 412 (2012). The Court must read "provisions of statutes reasonably and in context" and "subsections of cohesive statutory provisions together." *Detroit Pub Sch v Conn,* 308 Mich App 234, 248; 863 NW2d 373 (2014).

The EMA's plain language confirms that the Governor's April 30 declaration of states of emergency and disaster—and the executive orders that derive from that declaration—were improper. The language mandates that a given state of emergency will end after 28 days unless the Legislature determines otherwise. In fact, the Legislature used the word "terminated," a word typically used to connote the absolute end of the matter—not a temporary pause, a point of reassessment, or a time for potential revival. *See Black's Law Dictionary* (11th ed 2019) (defining "terminate" to mean: "[t]o put an end to; to bring to an end … [t]o end; to conclude."); see also, e.g., *State ex rel Flynt v Dinkelacker*, 156 Ohio App 3d 595, 600; 807 NE2d 967, 972 (2004) ("Terminated means done, finished, over, kaput."); *Conecuh-Monroe Cmty Action Agency v Bowen*, 852 F2d 581, 588; 271 US App DC 283 (1988) ("[C]ommon usage suggests that the word ["terminate"] means a complete cut-off[.]"); *Jones Motors v Workmen's Comp Appeal Bd*, 51 Pa Cmwlth 210, 213; 414 A2d 157, 159 (1980) ("We have no doubt that the word 'termination' connotes finality. … 'Termination' signifies a conclusion or cessation, and its meaning is not interchangeable with 'suspend.'").

The EMA does not describe a process for the Governor to reinstate a state of emergency or disaster, particularly in the face of the Legislature's express refusal to grant an extension. Cf. *Youngstown Sheet & Tube Co v Sawyer,* 343 US 579, 637; 72 S Ct 863, 871; 96 L Ed 1153 (1952) (Jackson, J., concurring) ("When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter."). Indeed, after the 28 days have run, the EMA does not contemplate any role for the Governor at all without a legislatively-approved extension, other than performing the mandatory ministerial act of issuing a final executive order to close out the declaration of emergency or disaster. Thus, in the statutory chronology, the Governor trades the benefit of acting first for the limit of having the Legislature act last. The Court has no power to reallocate that statutory bargain. See *Nickola v MIC Gen Ins Co*, 500 Mich 115, 125; 894 NW2d 552 (2017) ("We do not read requirements into a statute where none appear in the plain language and the statute is unambiguous.").

In short, the language of the statute contemplates that the Legislature, not the Governor, will have the final say when it comes to the length of a declared state of emergency or disaster under the EMA after 28 days. By placing the legislative extension request at the last stage in the process, requiring an extension of a "specific number of days," MCL 30.403(3)–(4), and mandating that the declared state of emergency or disaster would "terminate" at a given point, the Legislature expressly avoided circumstances in which the Governor could unilaterally push the State into

an indefinite declared state of emergency. Yet that is exactly what the Governor is now attempting to do, despite asking the Legislature twice to grant her a necessary extension. Lauren Gibbons, *Whitmer seeks 28-day extension of Michigan's coronavirus state of emergency* <https://bit.ly/2ykZQyB> (April 27, 2020) (noting that the Governor described Legislative approval as "necessary"); see also Exhibit 11, *Social Distancing Law Project: Assessment of Legal Authorities*, pp 5, 29 (2007) (Michigan Department of Community Health opining that "restrictions on the movement of persons" and "closure[s] of public places" in the event of a pandemic could only last 28 days unless extended by joint resolution of the Legislature).

2. The Governor's contrary interpretation would produce absurd results.

In the face of plain language, the Governor has staked out a remarkable position: the statute (in her view) allows her to declare and terminate states of emergency over and over for as long as she wants without the consent of the Legislature or any other person or entity. In the Governor's reading, if she enters perfunctory termination and reinstatement orders every four weeks, then a state of emergency or disaster can exist *forever*, as does her power to rule the state via executive order. That is a staggering abuse of power.

Courts "are required to interpret statutes in their *entirety* in the most reasonable manner possible." *Duffy v Michigan Dept of Nat Res*, 490 Mich 198, 215 n 7; 805 NW2d 399 (2011) (emphasis in original). Thus, courts should use "common sense" when interpreting a statute, *Diallo v LaRochelle*, 310 Mich App 411, 418; 871 NW2d 724 (2015); accord *Marquis v Hartford Acc & Indem*, 444 Mich 638, 644; 513

NW2d 799 (1994), and should avoid "absurd results," *People v Pinkney*, 501 Mich 259, 266; 912 NW2d 535 (2018) (cleaned up).

The Governor's interpretation of the EMA would produce absurd results. Under it, the Governor has already issued contradictory orders that simultaneously declare the existence of an emergency (in the course of declaring a second state of emergency) and the *non*-existence of an emergency (in the course of terminating the first). Given current forecasts that COVID-19 could create issues well into 2021, this bob-and-weave could be expected to go on for months or even years. See Chad Livengood, *Pfizer preparing to manufacture COVID-19 vaccine in Kalamazoo*, <https://bit.ly/2YB49QP> (May 5, 2020) (quoting the Governor: "We can't resume normal life until we have a vaccine."); Madeline Ciak, *Khaldun: Michigan's COVID-19 fight likely will last until 2021*, <https://bit.ly/2W9czxr> (May 5, 2020). Yet no purpose is served by inconsistent orders like these; if anything, the back-and-forth could be expected to confuse the public at a time when clarity in messaging is key. Courts do not care for this kind of behavior. See, e.g., *Gill v New York State Racing & Wagering Bd*, 11 Misc 3d 1068(A); 816 NYS2d 695 (NY Sup Ct, 2006) (finding that regulatory board improperly used emergency rulemaking process to circumvent time limits on duration of emergency rules by repeatedly "let[ting] the rule lapse as if the emergency disappeared for 24 hours and then [reinstating the rule as if the emergency had] magically reappeared 24 hours later"); *Boston Gas Co v Fed Energy Regulatory Comm*, 575 F2d 975, 978 (CA 1, 1978) (refusing to interpret a statute to create an "endless cycle" of petitions and rehearings).

Further, the Governor's failure to include any statement in her April 30, 2020, order, as required under the EMA, outlining "the conditions permitting the termination of disaster" or emergency beyond her own undefined evaluation is insufficient. MCL 30.403(3)–(4). It gives no one, the Legislature or the citizens, any idea of when the declaration may end and her continued issuance of Executive Orders cease.

If the Governor's faux "termination" order is to be given effect (as the law says it must), then a number of impractical consequences arise: suspended statutes would come back into force, only to disappear a moment later; reallocated resources would be instantaneously sent to their original positions, only to be reassigned again seconds after; and private property that was commandeered via executive order would return to the rightful owners, only to be passed back into the hands of the State for a second time in little to no time. See MCL 30.407 (describing the powers of the Governor incident to an emergency or disaster declaration). Here again, these inevitable consequences create inefficiencies and chaos amidst already challenging circumstances. None of them serve the purpose of the statute. All of them are absurd.

3. The Governor's interpretation of the EMA renders the Legislature's role a nullity.

Only one purpose is served by the Governor's on-again-off-again approach to emergency management: it allows her to ignore the Legislature. That, of course, is not an appropriate purpose.

A court's construction of a given statute should not render a provision surplusage or nugatory. *Apsey v Mem Hosp*, 477 Mich 120, 127; 730 NW2d 695 (2007)

(citation omitted). A provision "is rendered nugatory when an interpretation fails to give it meaning or effect." *Id.* Courts have also said that interpretations must avoid rendering a portion of a statute "meaningless," *Herald Wholesale, Inc v Dept of Treasury*, 262 Mich App 688, 699; 687 NW2d 172 (2004); *People v Morey*, 230 Mich App 152, 158; 583 NW2d 907 (1998), or "unnecessary," *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 399; 738 NW2d 664 (2007); *Gross v Gen Motors Corp*, 448 Mich 147, 159; 528 NW2d 707 (1995). However phrased, the Court must apply "any reasonable construction" before it accepts an interpretation that renders part of a statute "unnecessary." *Ex parte Landaal*, 273 Mich 248, 252; 262 NW 897 (1935).

The Governor's interpretation distorts the EMA and renders the Legislature's role mere surplusage and nugatory. The EMA unequivocally provides the Legislature a meaningful role: the Legislature is the *only* party that the EMA empowers to authorize an extension of the state of emergency or disaster. If the Governor can rescind her declaration and restate it literally a minute later, as the Governor did here to implement a *de facto* extension, then that role becomes meaningless. If the Legislature's refusal to extend a declaration has no practical effect, its inclusion in the EMA is unnecessary, and the Governor's invocation of it was a sham. This cannot be. The Court must read the EMA to give each clause real meaning. Only one interpretation gives all clauses in the sections at issue real meaning: Once the Governor has declared an emergency or disaster, the only way that she can use emergency powers to control that emergency or disaster after 28 days is if the Legislature passes a concurrent resolution extending her declaration.

If the Governor can circumvent the legislative-approval clause with two strokes of a pen, then that clause is effectively optional. The Governor's interpretation then, would render the whole exercise of approval "pointless and absurd."

4. The Governor's interpretation of the EMA defeats a central purpose of the statute: allocating power across both the legislative and executive branches to respond to crises.

Recall that the Court is aiming for a "reasonable construction in consideration of the purpose of the statute and the object sought to be accomplished." *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). While the purpose of a statue can often be found on its face, it can also be found in interpretive tools like the House Legislative Analysis. See *Bell v FJ Boutell Driveaway Co*, 141 Mich App 802, 810; 369 NW2d 231 (1985).

Here, the 28-day period is meant to allow quick but temporary unilateral action by the Governor to address sudden disasters or emergencies. The law gives the Legislature 28 days to gather itself to assume its own role, to determine whether to grant a request for an extension from the Governor, and to otherwise address the crisis. See House Legislative Analysis, HB 5496, <https://bit.ly/3b8XMXM> (May 5, 2002) (explaining that the 28-day unilateral action period "recognizes that sometimes the legislature may not be in session during the time when a state of emergency or disaster needs extending"). In other words, once feasible, the Legislature is meant to take the reins. It may choose to extend the declaration if it wishes; otherwise, the Governor's ability to exercise the EMA's emergency powers ends. The statute caps

the Governor's unilateral exercise of that power at 28 days because the amount of power the Governor may wield during that emergency or disaster is vast. See MCL 30.405 (detailing powers, including seizure of private property and suspension of laws). Indeed, in response to an inquiry from then-State Representative Gretchen Whitmer concerning a separate statute, the Attorney General took pains to highlight the "broad authority" that the Emergency Management Act provides. See OAG, 2003, No. 7141 (October 6, 2003).

The concurrent resolution contemplated by the EMA provides a necessary check on the Governor's temporary authority. See House Legislative Analysis, *supra* (noting concerns about "abuses of executive power"). If the Governor can nevertheless implement an end-run around the resolution process (as she has done in this case with her April 30 declarations), then her powers are effectively indefinite—renewable at her whim. See *id.* (summarizing the views of some that 60 days would be "a considerable length of time for the state government to be able to exercise emergency powers"). The Governor's interpretation flips the political compromise baked into the EMA on its head.

* * * *

In short, the Governor cannot rely upon the EMA to justify her April 30 declarations of emergency and disaster, or any of the executive orders that rest on those declarations.

B. The Governor cannot use the Emergency Powers of the Governor Act—a law designed for acute, local emergencies in an area within the state—to justify an indefinite, statewide state of emergency.

The Governor also purports to rely on the EPGA in issuing her statewide executive orders. See MCL 10.31–.33. But that statute applies only to geographically limited, civil disturbance-like emergencies—not statewide natural emergencies. Thus, it cannot grant her the authority she asserts here.

1. The plain language of the statute signals that it was intended for local matters within the state.

"Statutory interpretation begins with the text of the statute[.]" *People v Hall*, 499 Mich 446, 453; 884 NW2d 561, 565 (2016); *O'Leary v O'Leary*, 321 Mich App 647, 652; 909 NW2d 518, 520 (2017). "[N]ontechnical words and phrases should be construed according to their plain meaning, taking into account the context in which the words are used." *S Dearborn Envtl Improvement Assn, Inc v Dept of Envtl Quality*, 502 Mich 349, 361; 917 NW2d 603 (2018) (cleaned up). In doing so, the Court "may consult dictionary definitions." *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Applying these principles to the EPGA, it becomes plain that the statute was intended to address only instances of local concern.

The statute starts by noting that the Governor may act during times of public emergency "within" the State; "within" is a meaningful choice. MCL 10.31(1). "'Within' means 'on the inside or on the inner-side' or 'inside the bounds of a place or region.'" *State v Turner*, --- N.E.3d ----, No. CA2018-11-082, 2019 WL 4744944, at *4 (Ohio Ct App, September 30, 2019) (quoting *Webster's Third New International*

Dictionary 758 (1993)). Thus, something defined as "within" relative to something else implies that the former is engulfed (and therefore smaller in size) than the latter. It follows that a place "within" the State is not coterminous with the State as a whole; it does not make sense to say that the State is "within" the State, after all. Had the Legislature meant for the legislation to apply to the State writ large, it could have said so, as it has done in other legislation. See, e.g., MCL 28.6 (requiring the commissioner of the Michigan State Police to "put into effect plans and means of cooperating with the local police and peace officers *throughout* the state" (emphasis added)).

Similarly, the statute reaffirms its local, geographic focus in repeatedly referring to "areas," "sections," and "zones." The scope of the Governor's emergency declaration power under the EPGA is limited to "the *area* involved," and any orders she promulgates have to be calibrated to "the affected *area*." MCL 10.31(1) (emphasis added). She may take measures "to bring the emergency situation within the affected area under control." *Id.* The Governor's powers include controlling traffic "*within the area or any section of the area*" designated as the emergency area. *Id.* (emphasis added). And when the Governor controls the "ingress and egress of persons and vehicles" to and from properties, she does so within "designat[ed] zones within the area." *Id.* Contrast the EPGA's contemplation of gubernatorial power over a single "area" with the EMA, which expressly contemplates that the Governor's declaration under that act might reach "*areas*." MCL 30.403(3).

These words—"area," "zone," and "section"—all establish that the Governor's power is intended to reach some subpart of the state as a whole. For example, *Merriam-Webster's Online Dictionary* defines "area," in relevant part, as "a particular extent of space or one serving a special function," such as "a geographic region." Merriam-Webster's Online Dictionary, *Area* <https://bit.ly/3c17JYu> (accessed May 5, 2020). Similarly, *Webster's New World College Dictionary* defines "area" as "a part of a house, lot district, city, etc. having a specific use or character." Likewise, a "zone" contemplates "[a]n area that is different or is distinguished from surrounding areas." *Black's Law Dictionary* (11th ed. 2019), while a "section" is "a part of something" or "any of the more or less distinct parts into which something is or may be divided." *Forrester Lincoln Mercury, Inc v Ford Motor Co*, No. 1:11-CV-1136, 2012 WL 1642760, at *4 (MD Pa, May 10, 2012) (quoting dictionary definitions). None of these words, then, imply that the Governor's powers under the EPGA are intended to reach the entirety of the state.

Lastly, the EPGA identified local officials who can petition for a declaration of emergency, such as a mayor of a city or the sheriff of a county. *See* MCL 30.403(3). This choice to empower local officials further shows that the scope of the emergency is fundamentally local. See also, e.g., NY Exec Law 24 (statute borrowing EPGA's language but expressly noting that it creates a "local state of emergency"); La Stat 14:329.6 (statute borrowing Michigan EPGA's language but expressly noting that the state of emergency is declared as to "any part or all of the territorial limits of [a] local government").

Thus, even when the EPGA's words are read alone, they signify that the EPGA is intended to address specific, local concerns—not matters covering every inch of the state.

2. Reading the EMA together with the EPGA confirms that the EPGA is a locally focused statute.

Of course, the EPGA's words are not to be read alone; they should be read with related statutes. The statutory interpretation canon of *in pari materia* confirms that the EPGA is not meant to address matters of statewide concern. "[S]tatutes that relate to the same subject or that share a common purpose are *in par[i] materia* and must be read together as one." *Hall*, 499 Mich at 459 (cleaned up). "The application of *in pari materia* is not necessarily conditioned on a finding of ambiguity." *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 74; 894 NW2d 535 (2017). This doctrine "rests on two sound principles: (1) that the body of the law should make sense, and (2) that it is the responsibility of the courts, within the permissible meaning of the text, to make it so." Scalia and Garner, *Reading Law*, p 252 (2012). Fundamentally, though, a statute "cannot be read intelligently if the eye is closed to considerations evidenced in affiliated statutes." Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum L Rev 527, 539 (1947). The EPGA and EMA should therefore be read *in pari materia*. They occupy the same realm of the law. The cover the same general topic (gubernatorial emergency powers) and have the same goal (crisis control).

Reading the EPGA's conception of an "emergency" against the EMA's definition of the "emergency" highlights the former's local bent. The EPGA

contemplates, for example, that the Governor will act in "emergency" instances like "rioting"—a decidedly local problem. MCL 30.403(1). The later-enacted EMA references "emergency," too, explaining that an emergency exists whenever the Governor decides "state assistance is needed to supplement local efforts." MCL 30.402(h). In other words, even in the EMA, a declared "emergency" is a local problem that becomes so severe the State must help. But the EMA goes further, providing for the further power to declare a state of *disaster*. A disaster is an occurrence of "widespread" damage, including, among other things, "epidemic[s]." MCL 30.402(e). Other examples of disasters confirm their wide geographical scope; they include "blight, drought, infestation," "hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities." *Id.* Importantly, while the EPGA does briefly reference a "disaster," it does *not* empower the Governor to declare a "state of disaster." And when the EMA was originally passed, it gave the Governor the power to declare only disasters, leaving local emergencies to the EPGA. See 1976 PA 390. The Legislature expanded the scope of the EMA to include emergencies only to comply with the federal Emergency Planning and Community Right-To-Know Act—and even those amendments maintained a notably statewide focus. See Exhibit 6, Senate Fiscal Analysis, 1990 PA 50 (1990).

This deliberate distinction—wherein one statute has a "state of disaster" and the other doesn't—must be given meaning. See *Pike v N Michigan Univ*, 327 Mich App 683, 696; 935 NW2d 86 (2019) ("[W]hen the Legislature uses different words, the words are generally intended to connote different meanings."). On the other hand,

"emergency," which appears in both places, should be defined consistently across the two acts. See *Paige v City of Sterling Hts*, 476 Mich 495, 520; 720 NW2d 219 (2006) (rejecting the notion that "absolutely identical phrases in our statutes … [can] have different meanings in different statutes"). The net effect is that "emergencies" (of the kind that can trigger the EPGA) are local, while "disasters" (of the kind that can only justify action under the EMA) are statewide events. (Of course, "disasters" might cause one or more "emergencies," but they still carry different meaning.)

Further, the EPGA does not include the broad management tools that the EMA provides for statewide issues. Put differently, the EMA's administrative components contemplate emergencies more in the order of a statewide or widespread crisis—or problems at least requiring state-level resources. For example, it provides for federal aid, MCL 30.404(3), 30.405(1); includes detailed rules for compensation for property, MCL 30.406; establishes departments and department heads to oversee state administration, MCL 30.407–.408; provides for county representatives from each county, MCL 30.409; and many similar provisions. In contrast, the EPGA is barely a half-a-page of text—far more fitting for small, local management. It imagines only that the Governor will issue "rules, orders, and regulations" in an undefined way. MCL 10.31(1).

Lastly, interpreting these statutes as coextensive would ignore the canon against surplusage. As noted above, a court "must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory." *People v Rea*, 500 Mich 422, 428; 902 NW2d 362 (2017).

But extending the EPGA's powers to the entire state and to every conceivable crisis would render the EMA largely meaningless. Why would a Governor acquiesce to the more rigid procedures of the EMA when she could have all she wanted (with a few exceptions) through a brute-force application of the EPGA?

To give full effect to each statute, then, the Court should keep each statute in its proper lane—the EPGA applying in cases of localized emergencies and the EMA applying to, among other things, more general, statewide disasters such as epidemics. In fact, the EMA seems to demand this kind of lane-keeping in saying that it is not intended to "[l]imit, modify, or abridge the authority of the governor to proclaim a state of emergency pursuant to [the EPGA]." MCL 30.417(d). If the EMA and EPGA were construed to apply to same kinds of statewide crises, then the EMA's procedures would necessarily attach—and therefore modify—the declarations of emergency issued under the EPGA.

If the statutes were not construed in this complementary way—that is, if they could instead operate as to same kinds of crises and at the same time—then they would find themselves bound into conflict. The 28-day-unilateral action limitation in the EMA and the lack of any similar limitation in the EPGA would produce a significant conflict. See, e.g., *Jackson Cmty Coll v Michigan Dept of Treasury*, 241 Mich App 673, 681; 621 NW2d 707 (2000) (holding that two statutes conflicted just over the definition of "taxpayer"). And in this unfortunate circumstance, the EMA's 28-day unilateral-action provision would control. First, the EMA is more specific than the EPGA: regarding duration, the EMA provides a mechanism to decide the length

of a state of emergency or disaster and a formal process to terminate the state of emergency or disaster, see MCL 30.403(3), (4), while the EPGA only refers vaguely to a "declaration by the governor that the emergency no longer exists" without providing guidance as to when or how that declaration is made, MCL 10.31(2). "When two statutes are *in pari materia* but conflict with one another on a particular issue, the more specific statute must control over the more general statute." *Donkers v Kovach*, 277 Mich App 366, 371; 745 NW2d 154 (2007). Second, in construing two evidently conflicting statutes *in pari materia*, the older statute must yield to the newer one. See *Metro Life Ins Co v Stoll*, 276 Mich 637, 641; 268 NW 763 (1936); *Parise v Detroit Entmt, LLC*, 295 Mich App 25, 28; 811 NW2d 98 (2011). The EPGA was passed in 1945 and the EMA in 1976; thus, the EMA provision would control.[1]

3. The historical context shows that the EPGA was meant for local matters.

Context also matters. A crucial factor in determining the Legislature's original intent is the historical context in which the statute was passed and implemented. See *Dept of Envtl Quality v Worth Tp*, 491 Mich 227, 241; 814 NW2d 646 (2012) (holding that courts must read statutes "in conjunction with" the "historical context").

The context of the EPGA's enactment establishes that the Act was designed for local issues. A *Lansing State Journal* article written on April 6, 1945 noted that the

[1] That the Governor can under certain circumstances choose to act under either the EMA or EPGA does not change this analysis. In *Mich Deferred Presentment Servs Ass'n v Com'r of Office of Fin & Ins Regulation*, 287 Mich App 326, 334; 788 NW2d 842 (2010), for example, the court considered two statutes outlining damages for someone who was the victim of a bad check. Although the victim could have sought damages under either statute, the court held that more specific statute governed.

EPGA "result[ed] from the 1943 Detroit race riot" and would "give the governor wide powers to maintain law and order in times of public unrest and disaster." Exhibit 3, Article; see also Michael Van Beek, *Emergency Powers Under Michigan Law*, available at <https://bit.ly/2z3f8rC> (last accessed May 5, 2020) (explaining that the EPGA "was enacted in response to race riots in Detroit in 1943," a situation that had required troops and a curfew). It should come as no surprise then that provisions of the EPGA read like riot-control measures in a specific area within the state, under which the Governor can establish curfews, control public streets, and limit the dissemination of alcohol and explosives. See MCL 10.31(1). In sum, the EPGA's historical context shows that it was passed to allow the Governor to address localized crises—specifically to preserve law and order in the face of civil unrest.

This "local riots" idea was the common understanding of the EPGA for decades. In the mid-1970s, for example, Governor Milliken expressed concern over statewide effects of high-water levels in the Great Lakes. In a special message to the Legislature on non-manmade disasters in 1973, he reiterated that the EPGA was "pertinent to civil disturbances" and concluded that "[u]nder existing law, the powers of the Governor to respond to disasters is unduly restricted and limited." See Exhibit 2, Milliken Special Message. Because the EPGA was insufficient to address a statewide, natural disaster, he asked "that the Legislature give the Governor plenary power to declare states of emergency both as to actual and impending disasters." *Id.* He repeated this same message in 1974 and 1975. The Legislature responded by

passing the EMA. This windup confirms that the EMA is the device for broader emergencies, not the EPGA.

Court cases show the same. The only three court cases that even mention the EPGA all confirm this local understanding. Two discuss the EPGA in the context of local responses to localized emergencies—local curfews. See *Walsh v City of River Rouge*, 385 Mich 623; 189 NW2d 318 (1971); *People v Smith*, 87 Mich App 730; 276 NW2d 481 (1979). The last touches upon the EPGA's potential preemption of a local law designed to corral Michigan State students during "a drunken, raucous semi-annual event." *Leonardson v City of E Lansing*, 896 F2d 190, 192 (CA 6, 1990). Obviously, none of these concern widespread statewide disasters, let alone pandemics.

Past Governors understood the limited nature of the EPGA as well. To the Legislature's knowledge, no Governor has used the EPGA in at least 30 years (as far back as electronic records are available) for any emergency, let alone statewide emergencies. Before the present administration, the Legislature is not aware of a single use of the EPGA to manage a statewide crisis. In fact, when the Michigan Department of Community Health conducted an assessment in cooperation with the Centers for Disease Control and Prevention of all laws that might be relevant in responding to a pandemic, the EPGA barely warranted a mention (particularly as compared to the EMA). See Exhibit 11, *Social Distancing Law Project: Assessment of Legal Authorities* (2007). The EPGA was referenced only in noting the Governor's

power to impose a curfew. *Id.* at 16. This Governor, however, has nevertheless invoked the EPGA at least 59 times in the last few months.

The Governor's novel approach to the EPGA is inconsistent with the context in which this statute was first implemented and has since operated.

4. The Court should construe the EPGA to apply to only local problems to avoid potential constitutional concerns.

Furthermore, the Court should agree that the EPGA is limited to local matters because to do otherwise would raise constitutional concerns. "[A]s between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act." *Hunter v Hunter*, 484 Mich 247, 264 n 32; 771 NW2d 694 (2009). Yet ignoring the EPGA's geographic limitations is constitutionally fraught. As explained in Section II.F, the Governor's interpretation of the EPGA creates an impermissible delegation of powers; it delegates too much raw power with insufficient standards for the Governor's exercise of power and no meaningful temporal limitation. The Court should therefore accept the Legislature's argument, which preserves the EPGA's constitutionality.

* * * *

As a matter of pure statutory construction, the EMA and EPGA can be read in harmony with one another. By its plain text, the EPGA gives the Governor great power over a geographically small crisis area. The EMA gives her power over statewide crises, and because it gives the Governor extreme power over the entire state, it requires the approval of the Legislature after a relatively brief duration. Alternatively, if the court were to decide that both the EMA and EPGA can be invoked

by the Governor during statewide crises, then the EMA's 28-day limit and legislative approval process beyond 28 days must apply to the EPGA as well. The only interpretation of these two laws that does not make sense is the Governor's: that both the EMA and EPGA govern statewide crises, but that the Governor only needs legislative approval after 28 days if she decides, in her sole discretion, to proceed exclusively under the EMA. Such an interpretation places no meaningful limits on the Governor's power at all, and for all the reasons above, is nonsensical.

The careful balancing advocated by the Legislature ensures that at no time does the executive branch exercises more power than it should. It keeps unlimited geographical scope, unlimited power, and the indefinite exercise of that power out of the executive branch's hands at one time. But for all the reasons above, the Governor's attempt to shift the balance by applying the EPGA to a statewide problem should not be countenanced.

C. The Constitution's general grant of executive authority does not empower the Governor to issue law-making executive orders like these.

The Michigan Constitution vests "executive power" in the Governor. See Const. 1963, art. 5, § 1. The Governor invokes this power in claiming authority to issue the challenged executive orders.

The Governor errs in relying on her "executive power." "Executive power" is merely the "authority exercised by that department of government which is charged with the administration or execution of the laws." *People v Salsbury*, 134 Mich 537, 545; 96 NW 936 (1903); see also, e.g., *Tucker v State*, 218 Ind 614, 670; 35 NE2d 270

(1941) (gathering authorities explaining that "[t]he executive power [held by governors] is the power to execute the laws, to carry them into effect as distinguished from the power to make the laws and the power to judge them"). The "executive power" does not grant the Governor an untethered right to issue executive orders on any subject at her complete discretion. Rather, an executive order resting on "executive power" must in turn trace back to the "administration" or "execution" of some other law, be it a constitutional or statutory one. As explained above, the Governor cannot identify any such law here. The constitutional provision, then, does the Governor no good on its own.

The Constitution's grant of executive power proves to be irrelevant here because the Governor is instead exercising *legislative* power, not executive might. "It scarcely bears repeating that the executive power cannot be used to enact actual statutes. That power is vested exclusively in the Legislature." *Coal of State Emp Unions v State*, 498 Mich 312, 329–30; 870 NW2d 275 (2015). "The legislative power is the authority to make, alter, amend, and repeal laws," *Harsha v City of Detroit*, 261 Mich 586, 590; 246 NW 849 (1933), and the Governor "has not the slightest power in framing the law," *People v Dettenthaler*, 118 Mich 595, 602; 77 NW 450 (1898). And "[h]owever much cooperation there is between the branches, the Legislature exercises only the legislative power and the executive exercises only the executive power." See *Natl Wildlife Fedn v Cleveland Cliffs Iron Co*, 471 Mich 608, 645; 684 NW2d 800 (2004), overruled on other grounds by *Lansing Sch Ed Ass'n*, 487 Mich at 349.

As further explained below, the executive orders that the Governor has issued in response to COVID-19 are quintessential legislative acts, reflecting policy judgments that in turn affect nearly every aspect of life in Michigan. Indeed, the Legislature cannot find a single example of a prior governor claiming lawmaking authority of this sort under article 5, section 1. This case should not be the first. The orders cannot stand on the "executive power" provision. Cf. *Youngstown Sheet & Tube Co*, 343 US at 587 (holding that a seizure order issued during a time of purported crisis could *not* rest on "the several constitutional provisions that grant executive power to the President" because the order "directs that a presidential policy be executed in a manner prescribed by the President").

II. The Governor's COVID-19 executive orders violate the separation of powers.

Having decided that the Governor's COVID-19 executive orders lack statutory authority under the EMA and EPGA, the Court need not go further. But even if the Governor acted within her statutory authority, her ongoing declarations and executive orders would face another problem: separation of powers. In effectively exercising standardless lawmaking authority, the Governor has usurped the Legislature's power.

A. Michigan's Constitution follows the venerable American tradition of separating lawmaking power from executive power.

Perhaps no principle is more foundational to American constitutional theory than the separation of powers: "the legislature makes, the executive executes, and the judiciary construes the law." *Wayman v Southard*, 23 US 1, 46; 6 L Ed 253 (1825).

James Madison said that "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced as the very definition of tyranny." *The Federalist* No. 47 (Madison) (Clinton Rossiter ed, 1961), p 298. This division forces the branches to defend their powers against the other branches, thereby lowering the risk that the citizenry is subject to "the inconstant, uncertain, unknown, arbitrary will of another." J Locke, Second Treatise of Civil Government, § 22 p 17 (CB Macpherson ed, 1980).

Michigan's 1963 Constitution adheres to these same separation-of-powers principles. See *Westervelt v Nat'l Resources Comm'n*, 402 Mich 412, 427; 263 NW2d 564 (1978) (repeating the same principles). Unlike the US Constitution, however, every Michigan Constitution since our first in 1835 has included a provision making the separation of powers explicit. In Michigan's 1963 Constitution, that provision is Article 3, § 2: "The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." This clear embrace of the separation-of-powers doctrine shows the deep importance of the separation of powers to Michigan's constitutional structure. See Official Record, Constitutional Convention 1961, p 601 (describing the Separation of Powers Clause as a "principle quite fundamental" to Michigan's constitutional structure).

Our Supreme Court, too, has recognized the liberty-preserving nature of the separation of powers. See *Dearborn Tp v Dail*, 334 Mich 673, 682–83; 55 NW2d 201,

205 (1952) ("In many decisions this court has upheld and jealously guarded the right to keep distinctly separate one department from another."). "When the legislative and executive powers are united in the same person or body . . . there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner." *Soap and Detergent Ass'n v Nat Resources Comm'n*, 415 Mich 728, 751; 330 NW2d 346 (1982), quoting *The Federalist* No. 47 (Madison); see also *Musselman v Governor*, 200 Mich App 656, 665; 505 NW2d 288 (1993). "By separating the powers of government, the framers of the Michigan Constitution sought to disperse governmental power and thereby to limit its exercise." *Fieger v Cox*, 274 Mich App 449, 464; 734 NW2d 602 (2007) (cleaned up). Thus, "if there is any ambiguity, the doubt should be resolved in favor of the traditional separation of governmental powers." *Civil Serv Comm'n of Michigan v Auditor Gen*, 302 Mich 673, 683; 5 NW2d 536 (1942).

B. Lawmaking power rests exclusively in the hands of the Legislature.

As a state, Michigan has broad police power, of which the lawmaking power is vested exclusively in the Legislature. Article 4, § 1, of Michigan's 1963 Constitution says that *all* legislative power is vested in the Legislature. See also 1 Cooley, Constitutional Limitations (2d ed), p 129 ("But what is for the public good, and what are public purposes, and what does properly constitute a public burden, are questions which the legislature must decide upon its own judgment, and in respect to which it is vested with a large discretion . . . the people have been satisfied to leave to the judgment, patriotism, and sense of justice of their representatives."). "The legislative

power, under the Constitution of a state, is as broad, comprehensive, absolute, and unlimited as that of the Parliament of England, subject only to the" U.S. and Michigan constitutions. *Young v City of Ann Arbor*, 267 Mich 241, 243; 255 NW 579 (1934). Even more specifically, Article 4, § 51, explicitly gives the lawmaking power *to protect public health* to the Legislature: "The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health."

And Michigan's courts have held time and again that when public policy decisions are required, the Legislature is the branch best equipped to make them. *Henry v Dow Chem Co*, 473 Mich 63, 91 n 22; 701 NW2d 684 (2005) (stating that public policy must be set by "the Legislature—the branch of government best able to balance the relevant interests in light of the policy considerations at stake"); *People v Mineau*, 194 Mich App 244, 248; 486 NW2d 72 (1992) (stating "public policy issues are best addressed by the Legislature"). Indeed, the more complex the policy problem, the more appropriate that the Legislature decide it. See *N Ottawa Cmty Hosp v Kieft*, 457 Mich 394, 408 n 14; 578 NW2d 267 (1998) ("The public policy issues surrounding these circumstances are complex, and we think that such issues are best taken up by the Legislature[.]"); *Van v Zahorik*, 227 Mich App 90, 98; 575 NW2d 566 (1997), aff'd 460 Mich 320; 597 NW2d 15 (1999) (citing the need to "defer[] to the Legislature in matters involving complex social and policy ramifications" (cleaned up)).

The Legislature is situated to decide questions of public policy because of its nature and design. Unlike some states, Michigan has a full-time Legislature. It consists of 148 diverse members who come from every part of the state. These legislators know their small group of constituents and are tasked with representing their interests. The Legislature's composition, by nature, gives it a tremendous policy-making advantage over the other branches. See 1 Story, Commentaries on the Constitution of the United States (4th ed) (Boston: Little, Brown, & Co, 1851), § 557 (saying that as a law affects all and "involves interests of vast difficulty and complexity, and requires nice adjustments, and comprehensive enactments, it is of the greatest consequence to secure an independent review of it by different minds, acting under different, and sometimes opposite opinions and feelings").

And it's not just *who* the Legislature comprises, but *how* the Legislature conducts its work that makes it the perfect branch to parse policy problems. *Glancy v City of Roseville*, 457 Mich 580, 590; 577 NW2d 897 (1998) (stating that the Legislature is well equipped to consider "policy arguments and make policy choices" because it has the "ability to consider testimony from a variety of sources and make compromise decisions"). The Legislature reaches consensus through rigorous parliamentary debate. This process of compromise and give-and-take ensures that rural interests are not subordinated to urban interests; employee interests are not subordinated to business interests; and "up-north" interests are not subordinated to "downstate" interests. This process of distillation and refinement is invaluable and irreplaceable. See *Terrien v Zwit*, 467 Mich 56, 67; 648 NW2d 602 (2002) (noting that

the Legislature should "especially" make social policy when resolution "requires placing a premium on one societal interest at the expense of another: 'The responsibility for drawing lines in a society as complex as ours—of identifying priorities, weighing the relevant considerations and choosing between competing alternatives—is the Legislature's . . . .'" (quotation omitted)).

C. The Governor is unilaterally making laws.

In contrast with Article 4's articulation of the Legislature's law-making power and processes, Article 5—which applies to the executive branch—says nothing about the lawmaking power, excepting two sections on the veto power and reorganization of departments.

The Governor's ongoing COVID-19-related orders have strayed far into the realm of legislative power. In contrast with executive power—the authority to *execute* laws—"legislative power is the authority, under the Constitution, *to make laws*, and to alter and repeal them." 1 Cooley, Constitutional Limitations (2d ed), pp 89–90. The word *law* does not encompass only the technical rules falling into one of MCL 8.8's technical categories—i.e., a public act, initiated law, or a reorganizing executive order. Rather, it embraces any "regime that orders human activities and relations through systematic application of the force of politically organized society." *Black's Law Dictionary* (11th ed. 2019).

The Governor's flagship order, the stay-at-home order, EO 2020-70, provides just one example of how these executive orders have strayed far into the realm of lawmaking. The order commands all Michigan residents "to stay at home or at their

place of residence," subject to certain exceptions, and prohibits "all public and private gatherings of any number of people." ¶ 2. Michigan's citizens may leave their homes to get groceries, or to engage in outdoor recreational activities, exempted employment, or care for others. *Id.* ¶ 7. But these exceptions have exceptions, too. For example, a citizen can get necessary groceries, but if she needs "non-necessary supplies" she may only get them curbside. *Id.* ¶ 7(a)(7)–(8). Besides a few categories, "travel is prohibited, including all travel to vacation rentals." *Id.* ¶ 7(b)–(c). Michigan's businesses are affected, too. Citizens who run businesses that the Governor has declared non-essential, must, among other things, suspend all non-basic operations that require people to leave home. *Id.* ¶ 4. Those with businesses that the Governor has permitted to stay open must, among other things, restrict the number of workers present and keep workers and patrons six feet apart. *Id.* ¶ 11. Big-box stores over 50,000 feet are restricted to four people per 1,000 square feet of space, and smaller stores are restricted to 25% of total occupancy. *Id.* ¶ 12. All "short-term vacation property" rentals are prohibited. *Id.* ¶ 13. Violating the order is punishable as a misdemeanor. *Id.* ¶ 20.

To be sure, this is not just about one order. The Governor has issued 69 COVID-19-related executive orders—more than any other governor. These orders are not only the most frequent in number, but the most expansive in scope. Take just five orders, by way of example. EO 2020-54 prohibits entering a building to evict someone. EO 2020-17 suspends all "non-essential medical and dental procedures." EO 2020-58 purports to extend the statute of limitations, and EO 2020-38 to revise

and suspend certain FOIA mandates. And EO 2020-70 restricted the ability of the faithful to congregate and freely exercise their religion. Five signatures, by one person, unilaterally overrode the legislatively-enacted laws for whether Michigan's property owners may regain control of their property, how Michigan's doctors may practice medicine, which patients may seek what treatments, when Michigan defendants are relieved of lawsuits that the Legislature has declared stale, how long Michigan's citizens can be made to wait for public documents, and how people choose to worship their creator. And these are just a few of the orders. The overwhelming majority of the Governor's orders are in this same vein.

The Governor's executive orders improperly exercise lawmaking power. They reorder the way Michigan's citizens work, the way we shop, the way we realize our rights, the way we interact with our neighbors, the way we travel, the way we spend our leisure time, and the way we see family. Michigan residents are right now foregoing Governor-declared non-essential functions of civilization in order to "follow the law." And Michigan's businesses are refusing otherwise lawful transactions with willing patrons because the Governor has declared those transactions not just unlawful, but criminal. In other words, these executive orders alter our "human activities and relations" with each other and seek to establish "rules of civil conduct." *Black's Law Dictionary* (11th ed. 2019). All with the threat of criminal enforcement because the Governor says they are the law. This restructuring of the livelihoods and social interactions of Michigan's citizens is incontrovertibly lawmaking. Although it

may not have the consensus and transparency normally associated with lawmaking, it is still an act of legislative will and an exercise of the legislative power.

This will not do.

D. The Governor's lawmaking violates the separation of powers.

The Governor's argument for indefinite unilateral authority is, at bottom, an argument from necessity. Her job is to keep Michigan safe, she says, and she will do that any way she can. But at the end of the day, Governor Whitmer is just that—the Governor. She is not the House and she is not the Senate. She may, therefore, *execute* the laws, but she may not *make* the laws. Neither competence nor good intentions may raze the constitutional walls separating the branches of government.

Nor can speed and decisiveness justify the Governor's exercise of lawmaking power. As the Supreme Court put it in describing the federal constitution: "The Constitution … is concerned with means as well as ends. The Government has broad powers, but the means it uses to achieve its ends must be consistent with the letter and spirit of the constitution." *Horne v Dept of Agric*, 576 US 350; 135 S Ct 2419, 2428; 192 L Ed 2d 388 (2015). "[A] strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way." *Id.* The separation of powers in the Michigan Constitution likewise sacrifices speed in lawmaking for the sake of liberty of the people. The relevant question is not whether the Governor makes policy decisions faster than the Legislature; she might. The question is whether the Constitution gives her the right to do so. It does not. See, e.g., Michigan.gov, *Office of Governor Gretchen Whitmer: Executive Orders*,

available at <https://bit.ly/33Fs8yX> (accessed May 3, 2020) (delineating specific things that an executive order may do).

Indeed, the Constitution *contradicts* the Governor's justification of her violation of the separation of powers. Article 3, § 2, the separation-of-powers clause, excepts from the grant of executive powers any limits "expressly provided in this constitution." The Constitution's grant of legislative power, in Article 4, § 1, is such an exception, vesting all legislative power in the Legislature, subject to just two exceptions: Article 4, § 6, vests legislative power in the redistricting commission, and Article 5, § 2, grants the Governor legislative power to reorganize executive branch agencies. This limited power and the veto power, *Co Com'rs of Oakland Co v Oakland Co Executive*, 98 Mich App 639, 651; 296 NW2d 621 (1980), are *the only* grants of legislative power to the Governor. Applying the doctrine of *expressio unius*, because the Constitution explicitly grants the executive branch legislative power to veto and reorganize, the Governor cannot discover legislative power in any other constitutional provision. See *Detroit City Council v Detroit Mayor*, 283 Mich App 442, 456; 770 NW2d 117 (2009).

And under the Constitution, because the Governor's executive orders violate the separation of powers doctrine, even if the Legislature had *intended* to give such lawmaking power to the Governor, it could not. Michigan's foremost constitutional law expert, Justice Cooley, considered it a "settled maxim[] in constitutional law" that "the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority." 1 Cooley, Constitutional Limitations (2d

ed), p 116 ("Where the sovereign power of the State has located the authority, there it must remain[.]"). The Legislature may not "relieve itself of the responsibility" to make laws, nor may it "substitute the judgment, wisdom, and patriotism of any other body" for its own. *Id.* at 116–117. At most, "the Legislature, within limits defined in the law, may confer authority on an administrative officer or board to make rules as to details, to find facts, and to exercise some discretion, in the administration of a statute." *Ranke v Michigan Corp & Sec Comm*, 317 Mich 304, 309; 26 NW2d 898 (1947). These acts of execution are far different from lawmaking.

E. The separation of powers is not diminished by crisis.

The COVID-19 crisis does not require Michigan to realign the constitutional lawmaking powers; instead, we should be enforcing their separateness. The United States Supreme Court said it best: "Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved." *Home Bldg & L Ass'n*, 290 US at 425. Many state supreme courts have said the same, including our own. See *Twitchell*, 13 Mich at 139; see also, e.g., *Fed Land Bank of Wichita v Story*, 1988 OK 52; 756 P2d 588, 593 (1988); *State ex rel Dept of Dev v State Bldg Com'n*, 139 Wis 2d 1, 9; 406 NW2d 728 (1987); *Matheson v Ferry*, 641 P2d 674, 690 (Utah, 1982); *Worthington v Fauver*, 88 NJ 183, 207; 440 A2d 1128 (1982); *Opinion to the Governor*, 75 RI 54, 60; 63 A2d 724 (1949). Indeed, when state courts consider the "executive powers exercised by state officials during emergencies," their decisions "consistently reinforce[] the understanding that there are no inherent executive powers under state constitutions, only delegated powers that must be

managed by previously adopted statutes." Jim Rossi, *State Executive Lawmaking in Crisis*, 56 Duke Law Journal 237, 252 (2006).

Nor can the Governor usurp the lawmaking power merely because she disagrees with the legislative response to the COVID-19 crisis. The separation of powers must be respected, even when one branch's "power is usurped or abused" by another. *Musselman*, 200 Mich App at 665 (quotation omitted). Even then, another branch may not "attempt[] to correct the wrong by asserting a superior authority over that which by the constitution is its equal." *Id.*; see also, e.g., *Maryville Baptist Church, Inc v Beshear*, No 20-5427, slip op at 7 (CA 6, May 2, 2020) ("[W]ith or without a pandemic, no one wants to ignore state law in creating or enforcing these [executive] orders.").

Many of these ideas were captured in Justice Jackson's famous concurrence in *Youngstown*, 343 US 579. There, Justice Jackson noted that the Executive Branch had functionally asked "for a resulting power to deal with a crisis or an emergency according to the necessities of the case, the unarticulated assumption being that necessity knows no law." *Id.* at 646. Though many thought that finding such power for the executive "would be wise," that "is something the forefathers omitted. They knew what emergencies were, knew the pressures they engender for authoritative action, knew, too, how they afford a ready pretext for usurpation. We may also suspect that they suspected that emergency powers would tend to kindle emergencies." *Id.* at 649–650. Nevertheless, Justice Jackson said, "emergency powers are consistent with free government only when their control is lodged

elsewhere than in the Executive who exercises them." *Id.* at 652. He concluded: "With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations." *Id.* at 655. So too here.

Because the separation of powers is a cornerstone of our form of government, and because it is *the* foundational structural protection against the abuse of our liberties, the courts must resist all temptations to sacrifice it for expediency. "The hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power, even to accomplish desirable objectives, must be resisted." *Immigration and Naturalization Serv v Chadha*, 462 US 919, 951; 103 S Ct 2764; 77 L Ed 2d 317 (1983).

F. The EPGA's delegation of power cannot save the Governor's COVID-19 executive orders.

The Governor will assuredly wave away these separation-of-powers concerns by referencing the EPGA as the source for her authority. Because the EPGA is not a proper source of authority, the Court need not wrestle with this issue at all. But that reference would be wrong for two reasons. First, her interpretation of the EPGA would give her breathtakingly broad powers—far more legislative power than the Legislature could ever constitutionally delegate. Second, even if the Legislature could give the executive branch that much power, the EPGA lacks appropriate standards to guide the Governor's exercise of that delegated power.

1. Under the Governor's interpretation, the EPGA grants her unbelievably broad power—so much so that it becomes legislative power.

The EPGA, as interpreted by the Governor, is functionally an open-ended grant of legislative power. The EPGA states that, after the Governor declares an emergency, she "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. As outlined above, the Governor believes this language entitles her to make rules touching the most intimate parts of Michiganders' lives. Judging from the orders she has issued, the Governor has not felt constrained by the examples of statutory power reflected in the actual statutory text.

The Governor construes the EPGA to mean that she can rule by executive fiat on any public policy issue remotely touched or affected by the COVID-19 pandemic. For example, her statute-of-limitations executive order isn't aimed at controlling the COVID-19 pandemic itself—it's aimed at controlling the legal ramifications. Many of her COVID-19 executive orders aim to control the secondary social effects of the pandemic, not the pandemic itself. Some, in an exercise of power two or three degrees divorced from the pandemic, seek to regulate the effects of the executive orders themselves. See, e.g., EO 2020-63 (suspending the expiration of personal protective orders because "proceedings designed to protect vulnerable individuals" have in "some cases" become "exceedingly difficult" in part because of the Governor's own control measures). If the EPGA can be interpreted to give the Governor power to control literally any aspect of our social structure that is affected by the pandemic, it

provides her substantively limitless legislative power. With a little creativity, this approach would effectively transfer the entire legislative power of the State (if not more) to the Governor during an emergency. No statute can transfer that amount of raw legislative power to another branch. Cf. *Michigan State Hwy Comm v Vanderkloot*, 43 Mich App 56, 62; 204 NW2d 22 (1972) ("[A] statute which in effect reposes an absolute, unregulated, and undefined discretion in an administrative agency … pass[es] beyond the legitimate bounds of delegation of legislative power."). If the Governor believes the EPGA did, she is wrong, and her actions unconstitutional.

2. Because the EPGA, as interpreted by the Governor, lacks adequate standards, it impermissibly delegates authority to the Governor.

Even if this *amount* of power was delegable, the EPGA contains insufficient standards to guide its use.

To avoid an unconstitutional delegation of legislative power, a statute "must contain language, expressive of the legislative will, that defines the area within which an agency is to exercise its power and authority." *Westervelt*, 402 Mich at 439. "[A] complete lack of standards is constitutionally impermissible." *Oshtemo Charter Tp v Kalamazoo Co Rd Com'n*, 302 Mich App 574, 592; 841 NW2d 135 (2013). Importantly, standards exist on a spectrum—what is appropriate in one case will not be appropriate in another. "[D]elegation must be made not on the basis of the scope of the power alone, but on the basis of its scope plus the specificity of the standards governing its exercise. When the scope increases to immense proportions (as in *Schechter*) the standards must be correspondingly more precise." *Synar v United*

States, 626 F Supp 1374, 1386 (DDC, 1986). To put it simply: greater delegation requires greater standards. And standards prove especially important when delegating to the Governor, as delegating to the chief executive "pose[s] the most difficult threat to separation of powers, and therefore require the strictest standards." Kaden, *Judicial Review of Executive Action in Domestic Affairs*, 80 Colum L Rev 1535, 1545 (1980). The Court should therefore exercise a heightened level of scrutiny and skepticism.

To decide whether a statute contains sufficient standards, the Court applies a three-step analysis. First, the statute must be read as a whole and "the provision in question should not be isolated but must be construed with reference to the entire act." *State Conservation Dept v Seaman*, 396 Mich 299, 309; 240 NW2d 206 (1976). Second, the standard must be "as reasonably precise as the subject matter requires or permits." *Id.* And third, "if possible the statute must be construed in such a way as to render it valid, not invalid, as conferring administrative, not legislative power and as vesting discretionary, not arbitrary, authority." *Id.* (quotation marks and citation omitted)

The EPGA, at least as the Governor interprets it, fails each part of the *Seaman* test.

First, taking the statute as a whole, there is little guidance for the Governor to be found in the EPGA. The statute is exceptionally short. It is comprised of three sections, only one of which is substantive. That substantive section says that "[d]uring times of great public crisis . . . the governor may proclaim a state of

emergency." MCL 10.31. After so declaring, she "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." *Id.* Although the section gives examples of such orders, it says the Governor's powers are not limited to those orders. *Id.* In sum, the EPGA's standard consists solely in two words: "reasonable" and "necessary."

Second, in the Governor's view, the subject matter of the EPGA includes any possible public-policy area affected by COVID-19. Again, given the inherent nature of a contagious disease, this spin on the EPGA allows orders on practically every imaginable topic. Thus, as the Governor's applied it here, the Legislature shifted to the executive branch vast lawmaking power over every corner of the economy and social life with only the guiding words "reasonable" and "necessary." "Reasonableness" is already the lowest standard of acceptable governmental action; actions that fail to meet that standard—in other words, arbitrary and capricious conduct—are already unlawful. And importantly, the "necessary" referenced in MCL 10.31 isn't even the formulaic "necessary to implement this act." Rather, it is "necessary to protect life and property" or bring the crisis "under control"—a far broader mandate, which, as interpreted by the Governor, includes actions unrelated to the crisis at hand. Both words grant pure discretion, unguided by any other standard. See, e.g., *Yant v City of Grand Island*, 279 Neb 935, 945; 784 NW2d 101 (2010) ("[R]easonable limitations and standards may not rest on indefinite, obscure, or vague generalities[.]"); *Lewis Consol Sch Dist of Cass Co v Johnston*, 256 Iowa 236,

247; 127 NW2d 118 (1964) ("Is it sufficient that an administrative officer, or body, be given power to do whatever is thought necessary to carry out their purposes and to enforce the laws, without other guide than that they must keep within the law? We think something more is required.").

The Governor may respond that the phrases "to protect life and property or to bring the emergency situation within the affected area under control" provide additional standards. This suggestion would be wrong, as it confuses the statute's *goals* with its *standards*. The goal of the EPGA is to protect life and property and to manage unforeseen crises. Even that goal is rather ambiguous. But more to the point, *how* the Governor achieves that goal is signing "reasonable," "necessary" executive orders. In short, these other phrases are *not* the standards, but objectives. The only *standards* guiding how the Governor achieves that objective are that her orders be "reasonable" and "necessary."

The Governor may mistakenly emphasize that because the EPGA's subject matter is unforeseen crises, and because such crises must be handled decisively and with flexibility, the "reasonable" and "necessary" standards are as specific as they can be. This suggestion is unpersuasive, too. It sounds much like the argument from necessity that Justice Jackson so persuasively refuted in *Youngstown*. And it is a double-edged sword: as the breadth of her powers grow, so does the need for proportionally strong standards. If the EPGA really gives her such broad powers to handle unforeseen crises, there must be better standards than "reasonable" and "necessary." Delegation requirements don't have a subject-matter exception.

In the end, this case is much like *Blue Cross & Blue Shield of Michigan v Milliken*, 422 Mich 1, 51; 367 NW2d 1, 27 (1985), in which the Supreme Court applied these *Seaman* factors and concluded that a statute was an impermissible delegation. There, the Court faced a statute establishing a panel of three actuaries to resolve risk-factor disputes. The Court held the statute violated *Seaman*'s test where it simply provided the Insurance Commissioner with the discretion to "approve" or "disapprove" risk factors proposed by health care corporations. *Id.* at 53–54. Importantly, *Blue Cross* struck down provision even though the statute had a clearly and specifically articulated public policy *goal* to guide execution of the act: "to . . . secure for all of the people of this state who apply for a certificate, the opportunity for access to health care services at a fair and reasonable price." MCL 550.1102(2). Like the statute in *Blue Cross*, the EPGA includes statutory goals but vests the Governor with nearly discretion-less power to meet those goals. See also *Oshtemo Charter Tp*, 302 Mich App at 592 (expressing "extreme[] skeptic[ism]" towards a statute that "contain[ed] neither factors for the [decisionmaker] to consider … nor guiding standards").

On the other end of the spectrum is *Blank v Dept of Corr*, 462 Mich 103, 124; 611 NW2d 530 (2000), in which the Michigan Supreme Court considered whether the Department of Correction's ("DOC") enabling act was an "unconstitutionally broad delegation of legislative power." The court held that the statute's "many" limitations on the DOC's authority were "sufficient guidelines and restrictions." *Id.* at 125–126. These guidelines included, among many others, abiding by the Administrative

Procedures Act; promulgating "rules only for the effective control and management of DOC"; prohibiting rules that applied to smaller municipal jails; taking "necessary or expedient" action to properly administer the act; and forbidding rules on firearms and name changes. *Id.* at 126. The delegation was therefore "sufficiently limited to pass constitutional muster." *Id.*

Blank is fundamentally unlike this case. The DOC's enabling statute's standards included significant limitations; the EPGA's include two perfunctory words. *Blank* required adherence to the APA; the EPGA does not. *Blank* included specific substantive limitations; as interpreted by the Governor, the EPGA does not. And *Blank*'s use of the "necessary or expedient" language was as to implementation of the act, not a category so broad as "protecting life and property." The power the Governor claims under the EPGA is much greater than the power delegated to the DOC, but it is controlled by a fraction of the standards. Without more, the Governor's interpretation of the EPGA is an unconstitutional delegation of power. See also *People v Turmon*, 417 Mich 638, 645–648; 340 NW2d 620 (1983) (reciting an extensive statutory framework with myriad standards before concluding it was a constitutional delegation of authority).

Third, and finally, the Legislature has already offered the Court a construction of the EPGA that could save it from invalidation. That construction would, however, invalidate the Governor's particular *use* of the EPGA in this instance. That is unavoidable. Because, as the Governor interprets it, the EPGA includes no real, substantive standards governing her exercise of an unparalleled delegation of

authority, the Court should find that her interpretation is unconstitutional. If her reading of the statute is wrong, then her acts are without authority. If she is right, then the act itself must fall.

That holding would *not* endanger the public. The Legislature has already taken up legislation to codify the appropriate executive orders. And its plans to reopen the economy keep many of the stay-at-home order's restrictions in place and rely on federal guidelines. The Legislature has had constant talks with the Governor and will continue to have them and support her efforts; for example, when she asked for funds to fight COVID-19, the Legislature immediately responded with $150 million. And if the Governor wants to suggest anything to the Legislature, she can. In fact, Article 5, § 17, of the 1963 Michigan Constitution contemplates just such a partnership when it states that the Governor may at any time "present to the legislature information as to the affairs of the state and recommend measures he considers necessary or desirable." If the Governor needs the Legislature to act quickly, she can even convene the assembly at her discretion. Const 1963, art 5, §§ 15–16. It is time the Legislature and Governor resumed their proper lanes—legislating and executing for the people.

CONCLUSION

Our statutory and constitutional protections stand in good times and bad. "The proposition that an emergency justifies a removal of constitutional [and statutory] safeguards is an egregious fallacy. A safeguard once let down inevitably must lead to mischief. If one be let down, why not another?" *Steinacher v Swanson*, 131 Neb

439; 268 NW 317, 324 (1936). The heart of our legal structure must not be sacrificed for momentary expediency. These principles have carried us through so many years of prosperity, and they have carried us through painful years of war and economic hardship. They must be preserved now, too. The Court should grant the Legislature's motion for immediate declaratory judgment.

Respectfully submitted,

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Dated: May 6, 2020

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2020, I filed the foregoing with the Clerk of the Court and all counsel of record via email, in accordance with temporary court procedures.

By: /s/ Michael Williams
Michael R. Williams (P79827)

IN THE STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN HOUSE OF REPRESENTATIVES and MICHIGAN SENATE,

Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity as Governor for the State of Michigan,

Defendant.

Case No. 20- -MZ

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EXHIBIT 1

1973 N.Y. TIMES, GREAT LAKES SHORE TOWNS AWAIT 'FLOOD OF THE CENTURY'

Great Lakes Shore Towns Await 'Flood of the Century'

By William K. Stevens Special to The New York Times

Feb. 25, 1973


The New York Times

LATE CITY EDITION

SAIGON AIDE SEES MEETING IN PARIS EASING U.S. ROLE

Labor Urges Policy Shift To Bolster Dollar Abroad

PRESIDENT VOWS SOCIAL PROGRESS WITHOUT WASTE

Israel Erred in Judgment On Libyan Jet, Dayan Says

Curran May Lease N.M.U. With a Million in Benefits

Farmhand Tells of Finding Met's Vase in Italian Tomb

Besieged Highlands City Awaits a True Cease-Fire

Great Lakes Shore Towns Await 'Flood of the Century'

Medical Society Faces Discipline Issues

See the article in its original context from February 25, 1973, Page 1 Buy Reprints

About the Archive

PORT CLINTON, Ohio, Feb. 24—The 7,200 people of this normally relaxed fishing and resort town on the southwestern shore of Lake Erie are waiting for disaster to strike.

They expect it in a month or two or three, whenever the first three-day northeast gale of 1973 roars across a lake swollen by the spring thaw to its highest level on record. The northeaster's 50-and 60-mile-an-hour winds are expected to push billions of gallons of water onto the south shore of the lake. It will be, they say hereabouts, as though a gigantic, brimful saucer were suddenly tipped.

Here and all along the shores of Lakes Erie, Michigan, Huron, Ontario and Saint Clair, citizens are piling up sandbags, building dikes and otherwise bracing for what the Army Corps of Engineers says will be the Great Lakes flood of the century.

Some communities are for the most part waiting helplessly, sure that their best efforts will not keep the waters away. Port Clinton, for instance, is particularly vulnerable to the combination of high water and high wind, situated as it is on narrow neck of land between Lake Erie and Sandusky Bay.

"If it comes like everyone is predicting, you'll find that Port Clinton is the Venice of Ohio," Mayor John Fritz said the other day.

Three straight years of abnormally high rainfall have raised Lakes Erie and Saint Clair to their highest levels —two feet and more above average, five and six feet above past low-water marks —since record-keeping began in 1860. Towns along Lakes Michigan and Huron are experiencing their highest waters since 1900. Lake Ontario is expected to reach nearrecord high levels by spring.

In these lakes, any high, sustained cross-lake winds of the kind that invariably come in the spring are said to pose substantial threats to windward communities. Only Lake Superior, where the water level has been deliberately controlled for some years, appears likely to substantially escape flooding.

"We're all living in fear, there's no question about it," said Mrs. Cecelia Minear, a waitress in the dining room of the Island House Hotel, a quaint brick hostelry just a block from the Portage River, near where it enters into the lake.

Are such fears exaggerated? Not according to Gary Turner, a shoreline manage. ment specialist for the Ohio Department of Natural Resources in Columbia. "There's no doubt in my mind that, iven a storm, they [in Port Clinton] are gone," he says.

The water of the Portage River is now nearly flush with the concrete surface of the foot of Madison Street, and it is expected to get nearly a foot higher in the spring.

Three times in the last three months, northeast winds have pushed the water past the Port Clinton Fish Comparry and the Fisherman's Wharf Marina and Bait Shop, right to the door of Clinton Auto Parts, a half-block from the shoreline.

And during a northeaster last Nov. 14, the water came into Clinton Auto Parts. "It was up to there," said Dick Rhode, a counterman, indicating a spot on a door jamb about eight inches from the floor. That is perhaps three feet above the shoreline half

Storm Is Convincing

The Nov. 14 storm, which caused an estimated $3-million in damage in the Port Clinton area alone, made beievers out of many who had not been before.

To the east of town, out on the Marblehead Peninsula, the November waves cracked to pieces a 200-yard-long dock of solid concrete that had stood for a hundred years. They tore apart the wooden docks at Limpert's Marina, not far away.

James E. Patz and his lamily had to evacuate their home west of Port Clinton, nearly a mile from the lake, when water poured through the living room picture window and rose to window level on a neighbor's car, "I've lived here all my life, and I thought I was safe," Mr. Patz said.

When the Patzes were evacuated by boat, they took along a wild rabbit whose fear of humans vanished in the face of the flood. Five hunting dogs across the way were not so lucky. Tethered, they drowned.

A little farther west, the November storm destroyed many beachfront homes. John Verb, 31 years old, and his family had to be evacuated by helicopter from their $27,000 home, which soon became a wreck valued at $6,000. Like many other area residents, he is trying to get a Small Business Administration loan to repair the damages.

"I love this place," said a wistful Mr. Verb. "In the summertime it was so beautiful."

Vast Losses Expected

Ohio has made no estimate of the damage that might result from the expected spring floods, but Michigan has, That state's Department of Natural Resources has calculated that Michigan alone will suffer $112-million in damage, the most since the last major Great Lakes flood in 1952.

The lakes are subject to periodic "highs" and "lows," depending on long-term rainfall patterns. Previous "lows" were in 1926, 1934, 1936 and 1964. In 1964, the low water levels disrupted shipping, left marinas and boat operators high and dry, destroyed fish and wildlife habitats and depressed shoreline land values. Previous "highs" were in 1929 and 1952, but the levels of those years are expected to be exceeded in 1973.

Many people in Port Clinton and elsewhere wonder why it is not possible to control the lake levels by regulating the flow of water artifically — manipulating the Welland Canal between Lakes Erie and Ontario, the Chicago Sanitary and Ship Canal, and the gates across the. Saint Marys River outlet from Lake Superior at Sault Sainte Marie, Mich.

Water flows "down" from Lake Superior, the highest of the lakes in terms of elevation, to Lake Ontario, the lowest. The levels in Lake Superior are regulated by manipulating the gates at Sault Sainte Marie and the dams that control water flow between Lake Superior and Hudson Bay.

The International Joint Commission on the Great Lakes on Feb, 1 closed one of two remaining open gates on the Saint Marys River in an attempt to reduce the flow into the lower Great Lakes — a course that has raised cries of protest from property owners along the Lake Superior shoreline near "the Soo." There, as along the other Great Lakes, rising waters have rapidly eroded beaches and threatened houses. Even so, it is predicted that this course will not reduce levels on the lower lakes for a year, and that offers no help for this spring.

B. G. DeCooke, chief of the Great Lakes Hydraulics and Hydrology program for the Corps of Engineers in Detroit, said that artificial factors were "not material" in the present situation in comparison with natural factors. In short, the lakes are at the mercy of nature, and people must prepare for the worst as well as they can.

Under its Operation Foresight program, the corps is distributing tens of thousands of sandbags to lakeside communities and in some cases is building dikes to block the waters.

One such place is Saint Clair Shores, a community of 90,000 on Lake Saint Clair just northeast of Detroit. There, on these February weekends, residents have been turning out in droves to build sandbag ramparts along the canals that lead from the lakes into the heart of

the city, and the corps intends to build dikes along the lakefront before the spring storms hit.

There is almost a carnival spirit to the citizen work in Saint Clair Shores. Boy Scout troops, Army reservists, teenagers who "want to have fun and meet people" and neighbors from nearby blocks all pitch in. In terms of community sprit, it is much like an old-fashioned house-raising, complete with hot coffee and, sometimes, beer.

"Those sandbags weigh 10 pounds in the morning, 50 at noon and 250 at five o'clock," joked one resident.

"I've taken off five pounds in the last two weeks and I needed it," said another.

All in all, Skint Clair Shores believes it will be buttoned up securely before spring.

That cannot be said in many other communities, including Port Clinton.

Huge rocks have been piled along the town's Lake Shore Drive to keep it from washing away, as it partially did last November. The corps has supplied some 40,000 sandbags to officials in the town and surrounding Ottawa County.

"Everyone's calling for them," said Howard Brown, Ottawa County Civil Defense Director. "The phones are ringing night and day."

But neither Mr. Brown nor anyone else has any illusions. "We know we can't stop it with sandbags. We can only try to stop it from being so bad."

As Mayor Fritz of Port Clinton explains it, there are just too many fingers running from the lake to the city to block them all. "So we'll just sandbag individual stores and such and let the water come," he said.

He predicted that in the event of a "real three-dayer" the entire Port Clinton peninsula and the town's neat would be awash, converting the higher ground to the, east into an island.

"If that happens," says Ray Sperber, news editor of The Port Clinton News Herald, "an ark won't help us."

But helicopters and amphibious vehicles will, and they are already on hand. Further, the town has asked that it be declared officially a flood plain by the Federal Government so that residents may be eligible for flood insurance. But Mayor Fritz does not believe that will happen before the floods come. Why has the town waited so long?

"Nobody really expected this to happen," he says. "We thought it could never happen to us."

Other fears remain. Police Chief Henry Jacoby worries that the sanitary sewers will be flooded, posing a serious health hazard.

“Diphtheria, yellow jaundice, the whole bit,” the Chief said. “We'll be sticking each other with needles then.”

Mostly, Port Clinton feels, there is little that can be done. Except pray.

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EXHIBIT 2

1973 WILLIAM G. MILLIKEN, GOVERNOR, SPECIAL MESSAGE TO THE LEGISLATURE

The Honorable William Ryan
Speaker of the House
State Capitol
Lansing, Michigan
Dear Speaker Ryan:

Transmitted to you with this letter is my Special Message on Natural Disasters to the First Session of the Seventy-Seventh Michigan Legislature.

Sincerely,
WILLIAM G. MILLIKEN
Governor

The message was referred to the Clerk and ordered printed in the Journal.

SPECIAL MESSAGE TO THE LEGISLATURE ON NATURAL DISASTERS

I am sending you this message today on a matter of utmost urgency.

Michigan is being threatened by the destructive forces of nature on a scale rarely experienced across the state. Seldom have our citizens been so helpless as individuals in coping with a sustained natural threat.

Waters bordering our shores have reached record high levels, and are going higher.

Wave action accelerated by wind is causing extensive flooding and serious erosion along hundreds of miles of shoreline.

Water that has long been about us is now upon us.

Numerous counties have been declared disaster areas, millions of dollars in property has been destroyed, thousands of people have been forced to evacuate their homes, scores of homes have been toppled into the lakes, and hundreds more are endangered.

Michigan State Police and National Guardsmen from more than a dozen cities, as well as trucks, helicopters and other equipment, have repeatedly been mobilized for emergency services, and prison trustees have provided emergency manpower.

Other steps have been taken to cope with the immediate and long-term effects. But we face a sustained threat and we need sustained efforts at the local, state and federal levels to meet it.

There is a critical need for greater emphasis on pre-disaster action.

Last November, I noted that the federal government had not viewed the Great Lakes problem with the sense of urgency that it deserved.

At that time, I asked for a nine-point program for federal assistance to cope with our shoreline problems. It now appears that a favorable response is developing.

In addition to elaborating today on steps that must be taken at the federal level, I want to outline what steps are being taken at the state level, and what further state action is needed, including prompt legislative action.

This is the situation in Michigan today:

— Lakes Erie and St. Clair are at the highest levels in this century and Lakes Huron and Michigan are near the highest mark for the century. Summer levels are now predicted to be 10 inches higher than last summer on Lakes Michigan and Huron, and five to six inches higher on Lake St. Clair and Lake Erie.
— We have flooding along 140 miles of Michigan shoreline, and there are more than 500 miles with extremely serious erosion problems. A dozen public water supply systems are in jeopardy.
— There are high risk shoreline areas in 35 of our 83 counties.
— About 5100 homes are threatened by flooding.
— Damage to public and private property totals an estimated $30 million from flood-damage alone, and millions more in erosion damage.
— Upwards of 20,000 people have been forced to evacuate their homes.

All indications are that the situation will get worse before it gets better.

Above normal precipitation in recent years has filled our lakes to the brim and left surrounding land so saturated it cannot retain additional water.

There is no immediate hope of controlling the rising lake levels. We have succeeded in getting temporary controls on flow into the lakes from the north. But this will have little immediate effect. Nor would it help greatly to increase the flow from the south. Just as we have had no control over natural events which precipitated the current problem, we have no control over the elements of nature necessary to ease the problem.

I am urging the U.S.—Canadian International Joint Commission to control the regulatory works at Sault Ste. Marie as to provide maximum relief from flooding and erosion along Michigan shores. Changing the regulatory mechanism will help, but it will not result in major lowering of levels.

We cannot turn back Nature, nor can we eliminate all risk for those who live close to some of its greatest wonders. But the State has a responsibility to help its citizens cope with disaster, and to avert it to the extent possible.

While nearly 80 percent of the Great Lakes shoreline is privately owned, the problem is a matter of not only private but public concern. The multiple issues of flooding, public and private property damage, loss of beaches, effect on water quality and loss of tax base require a well-developed, sound program for coastal protection.

State Action

We have taken legislative and other steps to give us a shoreline management program that will help us avoid serious problems in the future.

But we need prompt action, including legislative action, that will provide state assistance for local and individual self-help efforts in the face of a sustained threat of natural disaster.

I am therefore taking and recommending these steps:

1. I have instructed the Michigan State Police, the Michigan National Guard, and other state agencies to develop contingency plans for rescue, evacuation and other emergency services in all shoreline areas. This has been done and plans are being implemented where needed.

2. I have instructed the Emergency Services Division of the Michigan State Police to mobilize a standby force of prison trustees and personnel from voluntary agencies for use where there are urgent manpower needs for diking and other emergency operations. Trucks and other equipment will be provided where needed.

3. I am recommending that an Emergency Contingency Fund, amounting initially to $500,000, be created for allocation by the Governor in emergency situations.

4. I urge the Legislature to expedite consideration of my February 26 request for a $370,000 supplemental appropriation to provide technical assistance for individuals and localities, and to develop a pilot program for shoreline protection. Only the federal government has the resources to provide for substantial construction of protective devices. But we should move ahead with a state demonstration program now to determine feasibility of protection techniques, and with means of providing technical assistance to those who can't wait for federal aid.

5. I urge the Legislature to revise the General Property Tax Act to exempt flood and erosion protective devices from property taxation. Land owners now in effect are penalized for such devices. Under existing law they become capitalized improvements for tax purposes.

6. I urge local tax assessors to act favorably on the March 29 request of the Michigan State Tax Commission, made in response to Senate Concurrent Resolution 74, to review the assessment of property which has been devalued because of natural disaster. The Commission made the request in telegrams to about 560 assessors in counties bordering the Great Lakes.

7. It is essential that local units of government be given legal authority to help themselves to combat natural disasters. The police powers of some political subdivisions are, at best, vague at the present time. We must clarify the role of government at the local level and the use of private property where that is the most appropriate method of dealing with actual or threatened disasters. To that end, I will prepare amendments to existing village, township and county laws that would give local governments the tools to get the job done. Such legislation should have high priority. I also want to work with the Legislature in determining means of giving local communities ability to create special assessment districts which would provide the benefits of long-term financing to those shoreline residents who want to help themselves.

8. The state law is unclear with respect to utilizing the National Guard for pre-disaster assistance. Accordingly, I will recommend legislation which will clearly address itself to the technical problems of the state's ability to deliver services at critical periods without being bound by bureaucratic and administrative red tape.

9. I recommend that the Legislature give the Governor plenary power to declare states of emergency both as to actual and impending disasters.

Under existing law, the powers of the Governor to respond to disasters is unduly restrictive and limited. The existing Civil Defense law which was enacted in 1953 was primarily intended to cover catastrophies that might ensue from military attack. There is a need to clarify and define the types of natural disasters and further to grant extraordinary powers where the imminent and practical threat of disasters is a reality.

While it is possible that many of the special problems created by non-military disasters can be handled by broad interpretation of existing Michigan law, the Governor's emergency powers are not specifically addressed to the imminent potential of disasters.

The existing civil defense powers of the Governor are general in nature and specify that they are to be exercised under conditions of attack. The emergency power of the Governor, set forth in Act 302 of 1945, are pertinent to civil disturbances, and only indirectly relate to natural disasters. The Act is silent with respect to powers necessary to combat imminent disasters.

Because many types of disasters such as floods, winds of varying degrees of velocity and blizzards often can be foretold as to where and when they will strike, it appears prudent to permit the disaster apparatus to function before there is an actual incidence of calamity. This would avert needless loss of life and property and tremendously reduce losses.

Accordingly, I recommend that the Governor have plenary power to declare states of emergency both as to actual and impending disasters and to take certain steps pursuant to that declaration. I will specify these steps in draft legislation that I will forward to you promptly with a request that it receive prompt action.

Local Action

I view the role of the State as secondary to that of local political subdivisions, and as the coordinating entity to maximize full federal participation. That is one reason I recommended the statutory clarification of the role of local government.

Local units of government should make all possible effort, and use all possible resources, prior to seeking state assistance. The State, in turn, uses the Emergency Services Division of the State Police as a clearing center for requests for assistance and for coordinating the state's response.

Federal Action

Congress has recognized that the states are generally unable to commit massive financial resources in disaster situations. In 1970, the Congress passed the Federal Disaster Relief Act, commonly known as P. L. 91-606, as primary mechanism to compensate public and private damaged losses as a result of natural disasters. As Governor, I must certify that the state has expended at least $3.5 million in unreimbursed expenses in the 12 months preceding the disaster. With that certification, I can request that the President designate counties as federal disaster areas, thus making available the full resources of P. L. 91-606.

During the severe ice storm of March 13-15, 1972, we estimated a loss of about $3.5 million dollars in damage to public and private property. I immediately designated 10 counties as disaster areas and requested presidential declarations so that the state and local units could be reimbursed for some of their damages. A presidential declaration was made on April 5 for seven counties and thereafter almost $2 million in federal assistance was forthcoming to reimburse expenditures for public property loss.

On November 14, 1972, exceedingly high winds, coupled with the high lake levels, created disastrous flooding conditions in nine counties causing in excess of $10 million in damages. I immediately designated those counties as disaster areas and authorized the full use of the National Guard where necessary for evacuation and other purposes. I subsequently requested a presidential declaration which the President issued November 20. As of this date, Michigan citizens have received and are still receiving federal assistance, and approximately $5 million in federal loans under the Small Business Administration and the Farmers Home Administration have been disbursed.

The recent storm of March 16 caused extensive flooding again in 12 counties resulting in total property damage approximating $16 million. On March 23, I requested a presidential declaration for assistance to those counties and also for full federal resources for pre-disaster assistance.

Michigan was hit with another storm on April 9 which in some areas caused more extensive flooding than during the previous month. It also accelerated erosion damage to an extent that there is danger of flooding in areas not previously vulnerable to floods.

Since the November storms, our efforts at the state level to minimize future disasters have been a joint undertaking with federal authorities. The Department of Natural Resources was authorized to explore all avenues of federal preventive assistance as a review of state resources recognized our inability to adequately solve the problem. Preventive flood measures require massive financial outlay as well as materials and labor, all of which are beyond the scope of state capabilities.

The U.S. Army Corps of Engineers is authorized by federal law to administer a flood preventive program called Operation Foresight. It is intended to provide temporary protection in low-lying areas for high lake levels and impending storms which pose a threat to life and property. Federal law requires that projects be (1) determined to be beyond state or local capacity, (2) justifiable from economic and engineering standpoints, (3) designed to cope with expected high water levels and solely of a temporary nature, and (4) feasible for timely completion. The federal law does not allow emergency measures to prevent or mitigate shoreline or beach erosion. For this reason, only on-shore protective devices are available.

On December 20, 1972, the Corps of Engineers advised me that it would begin Operation Foresight in Michigan. On January 25, 1973, I advised the Corps, as required by federal law, that the State of Michigan did not have resources to complete the program and designated the Department of Natural Resources and the Emergency Services Division of the State Police as coordinating agencies to work with the Corps of Engineers. We pledge our state resources to assist the Corps in this endeavor.

During January, February and March, 1973, the Corps and state officials conducted over 25 meetings and site inspections in shoreline communities explaining the requirements of Operation Foresight and offering extensive technical assistance.

Over 30 communities have submitted resolutions to the Department of Natural Resources requesting Operation Foresight assistance and the Corps has approved plans in at least 21 of these areas. The Corps of Engineers already has provided about $5 million in construction aid, and has supplied more than 5 million sandbags for Michigan.

We have, then, had federal assistance in the form of President Nixon s responses to my requests for designation of disaster areas, and through the Operation Foresight program.

But more needs to be done for pre-disaster assistance.

I have outlined in this message a state action program which would give the State of Michigan a far greater capacity to deal with impending problems.

We need this further federal action:

1. At the present time Operation Foresight is primarily a diking preventive program. Offshore devices are prohibited under the federal law. I am asking our congressional delegation to press for the passage of federal legislation which would authorize the Corps of Engineers to repair, construct or modify flood and erosion control structures offshore where they will often do more good than onshore devices. This can help prevent erosion that, among other things, can lead to flooding.

I urge that you lend your support and pass appropriate resolutions expressing your support and urge our congressmen and senators to work for these amendments.

2. In the same context, the Federal Disaster Relief Act does not clearly define the areas of pre-disaster assistance that are intended to be covered. We are unable thus far to receive presidential approval for pre-disaster assistance under the Relief Act and I request that you join with me in urging our congressional delegation to work for prompt action on clarifying language that will clearly identify the areas of pre-disaster assistance that should be covered by federal laws.

3. Appropriation of sufficient funds to construct works authorized under Section 111 River & Harbor Act, 1968 PL 90-483.

4. Appropriation of sufficient funds to construct works authorized by Section 14, Flood Control Act of 1946—Construction of emergency works to protect roads, bridges and public works.

5. Amend Section 165 (c) (13) of the Internal Revenue Code of 1954 to allow casualty loss deductions for expenditures to construct protective works or to move homes from their original locations to prevent future storm losses.

6. Clarification by Internal Revenue Service of revenue ruling 79 as it relates to loss of land from erosion as a casualty loss.

7. Federal participation in construction of protective works for both public and private property.

8. Construction of low cost demonstration projects.

9. Provide research funds for lake level forecasting techniques which would be applicable to critical areas for prediction of specific erosion rates and flood damage.

10. Provide additional funding to coastal engineering research center of the Corps of Engineers for erosion-related activities on the Great Lakes.

11. Authorize the use of federal equipment for emergency control programs.

Conclusion

I have in this Special Message on Natural Disasters informed you of the role of the State of Michigan in recent months, and requested your urgently needed assistance in helping us cope with the problems facing us in the months ahead.

We have been effective in reacting to natural disasters.

We must be no less effective in preparing for them. In so doing, we can save lives and property.

From 1955 to 1969, our state suffered losses from flood damages of less than $3 million. Since 1970, we have suffered well over $30 million in damages to property, not to mention countless millions of dollars of damage to our shorelines.

All citizens of Michigan have a stake in the program I have outlined, including those who live far from a shoreline.

Today we are ravaged by one of our most precious resources — our water. We know not the form or the boundary of the natural disasters of tomorrow.

But we know that we must prepare for them.

Introduction of Bills

Rep. F. Robert Edwards introduced

House Bill No. 4535, entitled

A bill to amend chapter 66 of the Revised Statutes of 1846, entitled "Of estates in dower, by the curtesy, and general provisions concerning real estate," as amended, being sections 554.131 to 554.139 of the Compiled Laws of 1970, by adding section 34a.

The bill was read a first time by its title and referred to the Committee on Taxation.

Reps. Geake, Ziegler, Smart and Bennett introduced

House Bill No. 4536, entitled

A bill to amend section 35 of Act No. 331 of the Public Acts of 1966, entitled "Community college act of 1966," being section 389.35 of the Compiled Laws of 1970; to add section 34a; and to repeal certain acts and parts of acts.

The bill was read a first time by its title and referred to the Committee on Colleges and Universities.

IN THE STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN HOUSE OF REPRESENTATIVES and MICHIGAN SENATE,

Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity as Governor for the State of Michigan,

Defendant.

Case No. 20- -MZ

Hon.

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EXHIBIT 3

1945 LANSING STATE JOURNAL, MEASURE GIVES GOVERNOR WIDE EMERGENCY POWERS

Measure Gives Governor Wide Emergency Powers

Legislation, reportedly resulting from the 1943 Detroit race riot, was introduced in the senate Friday to give the governor wide powers to maintain law and order in times of public unrest or disaster.

It was introduced by Senators Charles N. Youngblood (D) of Detroit and Harry F. Hittle (R) of Lansing, at the request of the state police.

It would permit the governor, on application of a sheriff, state police commissioner or on his own volition, to declare of state of emergency in a specific area and to order almost unlimited controls over public activities and movements.

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EXHIBIT 4

1976 LEGISLATIVE ANALYSIS OF HB 5314

HOUSE BILL 5314 (with proposed House Appropriations Committee amendments)
Sponsor: Rep. Raymond C. Kehres

Analysis Section
House of Representatives
1st House Committee: State Affairs
2nd House Committee: Appropriations

Material in this analysis complete to 6-24-76. Additional information may follow.

The Apparent Problem to Which the Bill Addresses Itself:

Michigan's experience with 3 major disasters in the last 13 months has pointed up the inadequacy of the state's Civil Defense Act. The act has proven unwieldy to implement during disasters, largely because jurisdictional responsibility is not clearly defined. Further, the act, which became law in 1953, does not conform to current federal requirements which a state must meet in order to qualify for federal disaster assistance. While the state has been able to borrow federal funds during the recent disasters, it is unlikely that the ability to borrow would continue if Michigan's disaster legislation is not changed. For these reasons, legislation has been proposed based upon a model bill which has proven effective in other states and which complements federal disaster law.

The Manner in Which the Bill Addresses Itself to the Problem:

The bill would repeal the State Civil Defense Act and a corresponding appropriations act (Public Act 14 of 1973) and would create a new Emergency Preparedness Act. A Michigan Emergency Preparedness Advisory Council would be established which would consist of no more than 15 members appointed by the Governor with the advice and consent of the Senate. The Director of State Police would be the chairperson of the Council. The Council would advise the Governor and the director in developing plans for using the state's resources in an emergency. Council members would serve without compensation but would be reimbursed for expenses. At the time this Act would take effect, members of the existing Civil Defense Advisory Council would continue to serve at the Governor's pleasure as members of the Michigan Emergency Preparedness Advisory Council.

THE GOVERNOR: GENERAL POWERS AND DUTIES

The Governor could issue executive orders, proclamations and directives having the force of law to implement this Act. The Governor would be required, by executive order or proclamation, to declare a state of disaster if he/she found that a disaster or threat of disaster were imminent. A disaster would be defined as severe damage, injury or loss of life or property resulting from a natural or man-made cause. Civil disorders would not be within the context of the bill unless they resulted directly from and aggravated the disaster.

An executive order of a state of disaster would activate state, local, and interjurisdictional disaster emergency plans and would authorize the use of any force to which the plans apply and the distribution of any supplies or facilities. The Governor could, with the approval of the State Administrative Board, enter into a reciprocal aid agreement with another state, the federal government, or a foreign country. Coordinators of county and municipal emergency service organizations could assist in negotiating such an agreement and would have to carry out the agreement. The legislature would appropriate funds to implement a reciprocal aid agreement. If the President of the United States declared a major disaster to exist in Michigan, the Governor could apply for federal grants pursuant to the U.S. Disaster Relief Act of 1974. The Governor could enter into an agreement with the federal government pledging the state's share for financial grants.

In addition, the Governor could do the following upon declaring a state of disaster:

1) suspend a regulatory statute or rule pertaining to state business with the exclusion of criminal process or procedures;
2) utilize available state, federal, and local resources;
3) transfer the direction, personnel, or functions of state departments;
4) utilize private property to cope with a disaster, subject to compensation and authorized by the legislature;
5) direct evacuation and prescribe routes and modes of transportation;
6) control traffic to and from a disaster area and the occupancy of premises within the disaster area;
7) suspend or limit the sale or transportation of alcoholic beverages, firearms, explosives or combustibles;
8) provide for temporary housing; and
9) direct all other actions necessary under the circumstances.

A person who disobeyed or interfered with a rule or order of the Governor would be guilty of a misdemeanor.

THE DIRECTOR OF THE DEPARTMENT OF STATE POLICE: GENERAL POWERS AND DUTIES

The Director of the Department of State Police would be required to implement the Governor's orders in event of a disaster and would coordinate all federal, state, county, and municipal disaster prevention and recovery operations. At the direction of the Governor, the director would assume complete command of all disaster relief and recovery forces. The director's powers and duties would include:

1) the administration of federal and state relief funds and monies;

OVER

2) the mobilization and direction of state disaster relief forces;
3) the general mission assignment of Michigan National Guard forces;
4) the receipt, screening, and investigation of requests for assistance from counties and municipalities;
5) the making of recommendations to the Governor; and
6) other appropriate actions.

The director could use any volunteer services available and could issue a directive relieving volunteers of liability. The director would be required to maintain within the Department of State Police, a division which would coordinate the predisaster activities of state, federal, county, and municipal governments. The division would receive available federal and state disaster related grants and would apportion the grants to state, county, and municipal governments. The director would also be responsible for preparing and updating the Michigan Emergency Preparedness plan and for coordinating it with similar federal, county, and municipal plans.

STATE AGENCIES: GENERAL DUTIES

Each state agency specified in the Michigan Emergency Preparedness Plan would be required to prepare and update an annex to the plan providing for the agency's delivery of emergency services during a disaster. The designated agency would appoint an emergency services coordinator to represent the head of the agency in drafting and updating the agency's annex and in coordinating the agency's emergency preparedness efforts with those of other state agencies, county and municipal governments. The coordinator would also act as a liason between the agency and the state police.

COUNTIES AND MUNICIPALITIES: GENERAL POWERS AND DUTIES

Each county would be required to employ a county coordinator and each municipality with a population of 10,000 or more could employ a coordinator. The county coordinator would be appointed by the county board of commissioners (or county executive) and the municipal coordinator by the chief executive officer of the municipality. The coordinator would act under the board's or executive officer's direction in coordinating emergency services and recovery assisfance within the county or municipality. A municipality with less than 10,000 persons could appoint a coordinator to serve under the direction of a county coordinator. Municipalities with over 10,000 persons and counties could enter into reciprocal aid agreements which would be limited to the exchange of personnel, equipment, and other resources during a disaster. County boards of commissioners of no more than 3 adjoining counties could appoint a multicounty coordinator.

Counties and municipalities would have the authority to:

1) appropriate and spend funds, make contracts, and distribute supplies during a disaster;
2) provide for the health and safety of persons and property;
3) direct and coordinate the development of disaster plans;
4) appoint, employ, and remove rescue teams, fire or police personnel, and other disaster workers;
5) assign, subject to an order of the director or the Governor, county employees or property relating to fire fighting, engineering, health, or medical services, police, transportation, etc; and
6) waive legal procedures pertaining to public work, employment of permanent and temporary workers, use of volunteers, rental of equipment, purchase and distribution of supplies or expenditure of public funds in the event of a foreign attack.

County or municipal coordinators could develop mutual aid arrangements with other public and private agencies in Michigan for reciprocal aid and, in an emergency, each county or municipality would have to render assistance in accordance with the mutual aid agreement.

A county, municipal, or other agency appointed by the Governor could make, amend, or rescind ordinances or rules necessary for emergency purposes and supplementary to a directive issued by the Governor. The ordinances or rules would be temporary and not effective after a disaster.

DISASTER RELIEF WORK: COMPENSATION AND LIABILITY

State, county, municipal, or other government employees on duty on a disaster relief force would have the powers and privileges and receive the compensation incidental to their employment. Other disaster relief employees would be entitled to the same rights and immunities as state employees. All disaster relief forces would be under the control of the authority in charge of relief activities in their area and would be reimbursed for travel and subsistence expenses.

In case of a state of disaster declared by the Governor, the state would, with legislative appropriations, reimburse a political subdivision for compensation paid to employees serving as members of a disaster relief force and for any injury, death, loss, or damage to such employees within the political subdivision. Upon an appeal to the Governor for aid by a political subdivision, the subdivision would be liable to the state for reimbursement of all funds expended by the state.

Neither the state nor any political subdivision would be liable for personal injury or property damage sustained by volunteer worker. However, the rights of a person to receive entitled benefits or compensation under any other law would not be affected.

Neither the state nor a political subdivision, nor any employee attempting to comply with this Act would be liable for death, injury, or property damage as a result of such activity except in the case of gross negligence.

A person who allowed the state or a political subdivision to use his/her property during a disaster for sheltering persons would not be civilly liable for the death, injury, or loss of any person on the property.

MORE

However, a property owner would be legally obligated to inform any person using the property of any hidden dangers or hazards on the property.

FOREIGN ATTACK
In event of a foreign attack, an ordinance or rule of a county or municipality would have the full effect of law. All ordinances, rules, or laws in conflict with this Act would be suspended during the conflict. All action taken under this Act would be taken with due consideration to the wishes of federal authorities and, if possible, would be consistent with federal requests and recommendations.

INDIVIDUAL CITIZENS: GENERAL DUTIES
Each person within the state would be required to manage his/her affairs so as to assist the state in a time of disaster, including any personal service or use of property. Compensation for services or use of property would be paid only if normal obligations were exceeded and if the claimant had not volunteered his/her services. However, personal services could not be compensated except pursuant to statute, local law or ordinance. Compensation for property would be paid only if its use or destruction were ordered by the Governor or the director and the person claiming compensation filed a claim with the emergency services division of the Department of State Police. If a claimant refused to accept the amount of compensation offered by the state, he/she could file a claim in the State Court of Claims. This section would not authorize compensation for the damaging of trees or other property to provide a timber break or the release of water to avert a flood.

OTHER PROVISIONS
If a disaster occurred which had not yet been declared a state of disaster by the Governor but deemed a disaster by a local executive officer or governing body, the county or local coordinator would contact the state police emergency services division district coordinator. A county coordinator could not request state assistance or a declaration of a state of disaster for an emergency occurring only within the limits of a city or village unless requested to do so by the local executive officer. The district coordinator would assess the disaster to determine the personnel and services needed for relief and would then notify the director who would notify the Governor. In an emergency, the director could initiate temporary assistance and the Governor could then take action to relieve the disaster.

The Act would not interfere with:

1) a labor dispute;
2) the dissemination of news; (However, any communications could be requested to transmit public service messages during a disaster.)
3) the jurisdiction or responsibilities of law enforcement agencies, fire fighting forces or armed forces while in active duty; (However, disaster emergency plans would relay on the forces available during a disaster.) or
4) the authority of the Governor to proclaim a state of emergency pursuant to the Emergency Powers of Governor Act (MCLA 10.31 - 10-33).

FUNDING
A fund with a $500,000 ceiling would be established to implement the provisions of the bill. An annual accounting of expenditures would be made to the legislature and sufficient funds would be appropriated annually to maintain the fund.

Fiscal Implications:

The bill would create a contingency fund of up to $500,000 to make funds immediately available during disasters. The fund would be maintained as necessary by annual appropriations. The bill also repeals Public Act 14 of 1973 which established a 1-time disaster contingency fund. This fund presently has a balance of $269,000.

Argument For:

The bill would replace Michigan's outdated and inefficient State Civil Defense Act with legislation designed to provide a more rapid and orderly recovery from disasters. The bill clearly defines jurisdictional responsibility and thus would promote coordination and eliminate duplication of effort in response to disaster situations. Further, the bill would meet federal requirements to qualify for federal diaster assistance programs.

Suggested Amendments:

The Department of Military Affairs has proposed the following amendments to bring the bill into conformity with P.A. 150 of 1967:

1) Page 4 line 9, after "services," insert "National Guard when not mobilized for federal service or State Defense Force as authorized by Act 150 of 1967 and subject to federal limitations on crossing of national boundaries by organized military forces;" to replace "national or state guards while under the control of the state".

2) Page 7, line 6 after "roces", insert "except the National Guard or State Defense Force,".

3) Page 7, line 13 after "forces;" insert "the assignment of general missions to the National Guard or State Defense Force activated for state actual duty" to replace "the general mission assignment of Michigan national guard forces activated,".

Positions:

The Department of Civil Rights supports the bill. (6-23-76)

The Governor's Civil Defense Advisory Council supports the bill. (6-23-76)

The Department of Military Affairs supports the bill with its suggested amendments. (6-29-76)

The Department of Public Health supports the bill. (6-23-76)

The Department of State Police supports the bill. (6-23-76)

The Michigan Civil Defense Directors' Association supports the bill. (6-23-76)

ANALYSIS - H.B. 5314 (6-24-76)* PAGE 3

IN THE STATE OF MICHIGAN

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EXHIBIT 5

1975 HALVERSON MEMORANDUM

STATE OF MICHIGAN

WILLIAM G. MILLIKEN, GOVERNOR

DEPARTMENT OF STATE POLICE

714 S. HARRISON RD., EAST LANSING, MICHIGAN 48823
COL. GEORGE L. HALVERSON, DIRECTOR

July 29, 1975

SUBJECT: House Bill No. 5314

TO: Governor William G. Milliken

In accordance with the procedure established for reporting on legislative matters, the following comments on House Bill No. 5314 are submitted for your consideration:

Michigan has been responding to disaster situations without appropriate legislation. Many decisions are being made administratively that we believe should be statutory. Also, recent changes in federal disaster laws require supporting state legislation to qualify a state to participate in both public and individual disaster assistance programs.

This bill was introduced at the request of this agency and it has our full support.

Passage of this bill, with an expected amendment providing for a contingency fund, should benefit the department by providing immediate funds for overtime an other departmental disaster-related expenses.

The bill will cost the state initially to provide the contingency fund. However, it is necessary to have the funds available to qualify for federal assistance programs for disaster-related public an individual losses. These funds will also provide for a more rapid response to disaster-related expenses. It is our understanding that the Executive Office is recommending that the contingency fund be set at $1.5 million.

The Department of State Police would be the agency most affected by having the primary responsibility for diaster planning and mitigation. However, the following State agencies do have disaster responsibilities to a lesser degree:

Department of Agriculture
Department of Commerce
Department of Education
Executive Office
Department of Labor
Department of Management and Budget
Department of Military Affairs
Department of Natural Resources
Department of Public Health
Department of Social Services
Department of State Highways and Transportation

MICHIGAN
THE GREAT LAKE STATE

House Bill No. 5314 is essentially the same as a nationally recommended model bill which was drafted after careful consideration was given to the legislative needs to effectively prepare for and respond to disasters. Similar legislation has been adopted in other states and has proven effective. The authority and responsibilities of the various individuals, governmental agencies, and jurisdictions is clearly defined; it should contribute to a rapid, orderly recovery from diaster conditions without duplication of efforts. The bill will provide the necessary state legislation to complement federal disaster legislation for both individual and public assistance programs.

On June 17, 1975 the House State Affairs Committee voted to strike lines 19 and 20 from the original bill, thereby causing "riots and other civil disorders" to be included in the act.

We believe lines 19 and 20 of Section 2 should be retained in the bill for several reasons. One of the purposes of this bill is to update Michigan legislation to conform with Public Law 93-288, so Michigan can qualify for assistance for both public and private losses incurred as the result of a disaster through the Federal Disaster Assistance Administration. The definition of a "disaster" in Public Law 93-288 has never been interpreted to include riots or other civil disturbances, although several attempts have been made by governmental jurisdictions to seek federal disaster assistance following such incidents. If riots an civil disorders are included in the Michigan Disaster Preparedness Act, while being excluded from the federal act, it could result in the state being held responsible for heavy damages by the provisions of this act.

Another important factor to consider when including riots and other civil disorders in this bill is the fact that previous legislation is already in effect which mandates certain powers and responsibilities to police agencies in the event of riots, strikes, and unlawful assemblies. (Sections 750.523 through 750.528). The provisions of House Bill No. 5314 would be in conflict with the previous riot and civil disorder legislation as the local emergency services coordinators would have powers and responsibilities mandated to them in this bill that would duplicate those mandated to police agencies by previous riot legislation.

We recommend one additional amendment for your consideration:

On page 9, line 18, insert a comma after the words "Counties" and "over". As written, the bill would prohibit a number of counties from entering into reciprocal aid agreements or compacts because they do not have a population of 10,000 or over. We do not believe this is the bill sponsors' desire, but merely a punctuation error.

The bill is similar to Senate Bill No. 989 of the 1973-74 legislative session.

Sincerely,

George K. Hallenson

DIRECTOR

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EXHIBIT 6

1990 SENATE FISCAL ANALYSIS OF 1990 PA 50

SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

House Bill 5263 (Substitute H-1 as reported without amendment)
Sponsor: Representative James M. Middaugh
House Committee: Conservation, Recreation, and Environment
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 3-20-90

RATIONALE

Congress recently enacted the Emergency Planning and Community Right-To-Know Act, which requires the designation of state and local entities to coordinate emergency planning, including prevention and management of all disaster and emergency situations. Some feel that, in order to meet the Federal requirements, the State should expand the Emergency Preparedness Act to encompass prevention and response activities, at both the State and local levels, for emergencies and disasters.

CONTENT

The bill would amend the Emergency Preparedness Act to change the name of the Act to the "Emergency Management Act", change the name of the "Emergency Preparedness Plan" to the "Emergency Management Plan", and extend the Act's "disaster" provisions to "emergencies".

The bill also would do all of the following:

- **Outline the duties and responsibilities of the Department of State Police's Emergency Management Division.**
- **Specify local units' duties and responsibilities pertaining to emergency management activities.**
- **Provide limited immunity from liability to certain parties.**
- **Revise certain funding requirements under the Act.**
- **Repeal a section of the Act pertaining to the primacy of emergency orders in the event of a foreign attack.**

The Act requires the Governor to declare a "state of disaster" if a disaster has occurred or a threat of disaster is imminent. The Act would change that requirement to apply if the disaster had occurred or the threat of disaster existed, and would impose a parallel requirement for the declaration of a "state of emergency". The bill would define "disaster" as "an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause, including, but not limited to, fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation, explosion, or hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities, riots, or civil disorders". "Emergency" would mean "any occasion or instance in which the governor determines state assistance is needed to supplement local efforts and capabilities to save lives, protect property and the public health and safety, or to lessen or avert the threat of a catastrophe in any part of the state".

Emergency Management Division

The bill would delete sections of the Act requiring the Director of the Department of

H.B. 5263 (3-20-90)

State Police to maintain a division within the Department to coordinate "predisaster emergency service activities" and to be responsible for the preparation and updating of the "Michigan Emergency Preparedness Plan" and its compatibility with similar Federal, county, and municipal plans.

In place of those provisions, the bill would require the Department of State Police to establish an "Emergency Management Division" to coordinate emergency management activities of the State, counties, municipalities, and the Federal government. The Division would be responsible for preparing and maintaining a "Michigan Emergency Management Plan" that encompassed preparedness, mitigation, response, and recovery activities. The Division could receive available State and Federal emergency management and disaster-related grants and would have to administer and apportion those grants to agencies of the State and local units of government according to established guidelines. The Division would be empowered to do the following:

-- Promulgate rules to establish standards and requirements for the appointment, requirements, training, and professional development of emergency management coordinators.
-- Promulgate rules to establish requirements and standards for local and interjurisdictional emergency management programs, and periodically review local and interjurisdictional plans.
-- Promulgate rules to establish standards and requirements for the emergency training, exercise, and public information programs.
-- Survey both public and private industries, resources, and facilities necessary to carry out the Act.
-- Prepare, for the Governor's issuance, executive orders, regulations, and proclamations that were necessary or appropriate in coping with emergencies or disasters.
-- Provide for at least one State "Emergency Operation Center" to provide for the coordination of emergency response and disaster recovery.
-- Provide for the cooperation and coordination of State agencies and departments with Federal and local entities in emergency management activities.
-- Cooperate with the Federal government and any other public or private entity in achieving the Act's purposes and in implementing disaster preparation, mitigation, response, and recovery programs.
-- Perform other necessary, appropriate, or incidental activities for the Act's implementation.

Local Units

The Act requires each county board of commissioners to appoint a coordinator of emergency planning and services. The bill would refer to such a person as an "emergency management coordinator", and specifies that he or she would be responsible for "emergency management" rather than "emergency planning and services". In addition, in the absence of an appointed coordinator, the bill would require that the chairperson of the board of commissioners be the coordinator. While the Act allows the county boards of commissioners of up to three adjoining counties to agree upon and appoint a multicounty coordinator, the bill would delete a provision allowing a multicounty coordinator to be "compensated in a manner provided in the appointing resolutions".

The Act allows a municipality with a population of 10,000 or more to appoint a municipal coordinator, who is required to act for and at the direction of the municipality's chief executive. The bill would retain that provision and require a municipality with a population of 25,000 or more either to appoint a municipal emergency management coordinator or appoint the county's coordinator as the municipal emergency management coordinator. Absent an appointment, the municipality's chief executive would be the coordinator. Appointment of a coordinator would have to be made by the municipality's chief executive in a manner provided in its charter. The emergency management coordinator of a municipality with over 25,000 residents would have to act for and at the direction of the municipality's chief executive or the official designated in the municipal charter. The bill would delete a provision under which municipalities with at least 10,000 inhabitants and counties may enter into reciprocal aid agreements or compacts with

other counties or eligible municipalities; the bill provides, instead, that counties and municipalities of any size could enter into mutual aid or reciprocal aid agreements or compacts with other counties, municipalities, and/or public or private agencies. As with the current provision, a compact would be limited to the exchange of personnel, equipment and other resources during times of emergency or disaster, and the arrangement would have to be consistent with the Michigan Emergency Management Plan.

The Act lists a number of actions available to a county or municipality. The bill would grant these only to counties or municipalities that appointed an emergency management coordinator, and would add the following powers to that list:

-- Direction and coordination of the development of emergency operations, plans, and programs in accordance with policies and plans established by State and Federal agencies.
-- Declaration of a local state of emergency if circumstances indicated that the occurrence or threat of widespread or severe damage, injury, or loss of life or property existed. Directives restricting travel on county or local roads also could be issued.
-- Direction and coordination of local multi-agency response to emergencies within the county or municipality.
-- Appointment of a local emergency management advisory council.

County or municipal departments or agencies required by the local unit's emergency operations plan to provide an annex to the plan would have to prepare and update the annex to provide for, and coordinate, emergency management activities by the department or agency. The power to declare a local state of emergency would be vested in the chief executive of the county or municipality or the official so designated by charter, and could not be continued or renewed longer than seven days, except with the consent of the county's or municipality's governing body. A proclamation or declaration would have to be filed promptly with the State Police Emergency Management Division, unless circumstances prevented or impeded prompt filing.

Immunity from Liability

The bill specifies that a volunteer disaster relief worker or a member of an agency engaged in disaster relief activities would not be liable for damages resulting from an act or omission that arose out of and in the course of his or her good faith rendering of the disaster relief activity, unless the act or omission were the result of gross negligence or willful misconduct. The immunity provision would not apply, however, to a person who was engaged in disaster relief activity "for remuneration beyond reimbursement for out-of-pocket expenses".

Funding

The Act authorizes the Governor to apply for, accept, and disburse Federal grants after the President declares a major disaster to exist in Michigan. The bill would extend that authorization to cases in which the President declared an emergency to exist in the State. In addition, the Act authorizes the Governor to pledge the State's share for such financial grants and specifies that the State's share cannot "exceed 25% of the actual cost of the expenses and needs" and cannot exceed $5,000 to one individual or family. The bill would retain the authorization to pledge the State's share, but would delete the specific maximum amounts.

The Act created the Disaster Contingency Fund and mandates that it be maintained by annual appropriations at a level not in excess of $500,000. The bill would raise the maximum level of the Fund to $750,000 and require a minimum level of $30,000. The Act allows the Governor to authorize spending from the Fund to provide State assistance to local units if Federal assistance is unavailable. The bill provides that such assistance could be granted only if the Governor also declared a state of disaster or state of emergency. The maximum level of a State assistance grant to a local unit under the Act is $20,000 or 10% of the local unit's total annual operating budget for the preceding fiscal year, whichever is less. The bill would increase the maximum grant to $30,000 or 10%.

The bill would authorize the Director of the Department of State Police, or his or her designee, to promulgate rules to govern the application and eligibility for the use of the

Fund. The bill also specifies that rules promulgated before December 31, 1988, for that purpose would remain in effect until revised or replaced.

Repeal

The bill would repeal a section of the Act that grants a county or municipal ordinance or rule "the full force and effect of law" if there is a foreign attack upon Michigan. The provision that would be repealed also provides that all existing laws, rules, and ordinances that conflict with the Act, or with any order, rule, or directive issued under the Act, are to be suspended during the period that a conflict exists. The section also requires that all action taken under the Act be done with "due consideration to the relevant orders, rules, regulations, actions, recommendation, and request" of Federal authorities and that the actions be consistent, to the extent permitted by law, with those Federal measures.

MCL 30.401 et al.

FISCAL IMPACT

If enacted, the bill would require increased appropriations for the Department of State Police for: 1) maintaining a minimum balance of $30,000 in the Disaster Contingency Fund (in which there currently are no funds); and 2) increasing the amount of disaster relief available to local jurisdictions from $20,000 per jurisdiction to $30,000 per jurisdiction. The total impact of this bill would be a one-time appropriation of $30,000 and subsequent appropriations depending on the number of jurisdictions that qualified for disaster relief funds in a year. The increased costs to the State would be $10,000 per jurisdiction per disaster.

ARGUMENTS

Supporting Argument

The bill would bring the State's emergency management programs into conformance with Federal law and increase the scope, efficiency, and funding levels of Michigan's emergency management system.

Legislative Analyst: P. Affholter
Fiscal Analyst: M. Hansen

H8990\S5263A

IN THE STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN HOUSE OF REPRESENTATIVES and MICHIGAN SENATE,

Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity as Governor for the State of Michigan,

Defendant.

Case No. 20- -MZ

Hon.

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EXHIBIT 7

MARCH 28, 2020 LETTER MAJ. LEADER SHIRKEY TO GOV. WHITMER

16TH DISTRICT
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MIKE SHIRKEY
SENATE MAJORITY LEADER
MICHIGAN SENATE

March 28, 2020

The Honorable Gretchen Whitmer
Governor
P.O. Box 30013
Lansing, Michigan 48909

Governor Whitmer:

Thank you for your continued efforts on behalf of our state and its citizens to help slow the impact of COVID-19 on Michigan. The staff of the Executive have worked hard to provide information upon request to assist in answering questions from constituents that have arisen as a result of Executive Orders issued since March 10, 2020.

As you are well aware, hospitals and other health care providers throughout the state are dealing with a shortage of medical equipment necessary to treat patients with COVID-19, to test for the disease, to protect health care workers on the front lines, and to otherwise combat this pandemic. We know that you and citizens throughout the state are committed to addressing this shortage.

One consequence of the shortage of medical equipment is that doctors and other health care workers may be forced to make difficult choices about who gets the limited resources available, and who does not. At least one major health system in the state has already developed guidelines for staff to use in making these decisions, and I am sure that other health systems are doing or have done the same thing.

We have no doubt that the brave and hard-working medical professionals in Michigan will use their best medical judgment in making these decisions. But unfortunately, the threat of legal liability hangs over their heads. Other states have taken steps to protect health care workers from this threat so that they can focus on the thing that should matter most: the health of their patients. For example, New York's executive order suspended certain laws so that "all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses shall be immune from civil liability for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional." We believe licensed health facilities should receive similar protection.

We strongly encourage the Executive to take action consistent with the above to protect Michigan's health care workers and facilities and allow them to make the best medical decisions for their patients and all Michiganders.

We will continue to gather information from our constituents and provide recommendations for needed executive action during this crisis. We look forward to your response.

Thank you,

Mike Shirkey
Majority Leader
State Senate, 16th District

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EXHIBIT 8

APRIL 26, 2020 LETTER MAJ. LEADER SHIRKEY TO GOV. WHITMER

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MIKE SHIRKEY
SENATE MAJORITY LEADER
MICHIGAN SENATE

April 26, 2020

The Honorable Gretchen Whitmer
P.O. Box 30013
Lansing, MI 48909

Governor Whitmer:

Thank you for your continued efforts on behalf of our state and its citizens to help slow the impact of COVID-19 on Michigan. The staff of the Executive continue to work tirelessly to provide information upon request to assist in answering questions from constituents that have arisen as a result of the actions taken by the state of Michigan since March 10, 2020.

While Executive Order 2020-47 has sought to ensure motorists are able to maintain mobility for survival and essential functions during Secretary of State closures stemming from COVID-19, it has come to our attention that expired license and registration holders are subsequently having difficulties maintaining auto insurance.

As you know, valid auto insurance is required in order to operate a motor vehicle in the State of Michigan. Insurers are not required to insure motorists without a valid driver's license or registration. However, with the extension of the validity of driver's licenses and registrations under Executive Order 2020-47, these credentials that otherwise would have expired are valid until June 30, 2020.

In order to remedy difficulties in obtaining insurance, we suggest clarifying that licenses and registrations that were not otherwise suspended or revoked and are valid under EO 2020-47 until June 30, 2020, are to be considered valid and qualifying for obtaining or renewing auto insurance. In order to maintain motorist safety and compliance with the law, we suggest requiring proof of a valid, renewed license or registration be shown to the insuring entity by July 1, 2020 in order to maintain insurance coverage.

Additionally, insurance policy renewals are expected to start in May as part of the state's auto insurance reform. Without clarification that these licenses and registrations are considered valid until June 30, 2020, many more people may find themselves needlessly uninsured. We have a responsibility to ensure the citizens of Michigan have every opportunity to abide by the law. Making this reasonable clarification will help maintain mobility for essential functions and survival and prevent undue burdens from befalling Michiganders.

Another concern that has been brought to our attention is the ability for motor carriers to renew their hazardous material endorsement (HME). While EO 2020-47 provides for licensure relief for motor carriers regarding their commercial driver's licenses (CDLs), it does not address motor carriers with an HME that would expire during the state of emergency.

On April 8, the federal Transportation Safety Administration (TSA) issued an exemption from

certain HME requirements, specifically including security threat assessments performed by TSA. Specifically, this exemption allows states to extend expiration dates of valid HMEs that expired or will expire between March 1 and July 31 for 180 days.

In order to ensure there is no interruption in the delivery of necessary supplies, we suggest providing extensions to motor carriers with expiring HME in accordance with TSA guidelines. In combination with relief already provided for CDLs, an extension of HME expirations will ensure that motor carriers transporting hazardous materials, that have a direct and indirect impact on Michigan's COVID-19 response, will continue to operate without interruption.

I am thankful for your efforts on behalf of our state and for your consideration of our requests. I look forward to working with you to address these concerns. Your prompt attention to these challenges is greatly appreciated.

Thank you,

Mike Shirkey
Majority Leader
State Senate, 16th District

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EXHIBIT 9

APRIL 27, 2020 LETTER GOV. WHITMER TO MAJ. LEADER SHIRKEY AND SPEAKER CHATFIELD

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

April 27, 2020

VIA EMAIL

The Honorable Mike Shirkey
Senate Majority Leader
Michigan Senate
P.O. Box 30036
Lansing, Michigan 48909

The Honorable Lee Chatfield
Speaker of the House
Michigan House of Representatives
P.O. Box 30014
Lansing, Michigan 48909

Re: Extension of emergency and disaster declaration in Executive Order 2020-33

Speaker Chatfield and Leader Shirkey,

The COVID-19 pandemic continues to ravage our state. To date, Michigan has 38,210 confirmed cases of COVID-19 and 3,407 confirmed deaths caused by the disease. Many thousands more are infected but have not been tested. This disease, caused by a novel coronavirus not previously identified in humans, can easily spread from person to person and can result in serious illness or death. There is currently no approved vaccine or antiviral treatment.

To fight this unprecedented threat, I issued Executive Order 2020-4 on March 10, 2020, which declared a state of emergency across our state. On April 1, 2020, I issued Executive Order 2020-33, which rescinded the previous declaration and declared a new state of emergency and a state of disaster, reflecting the broader crisis we face. Since I first declared an emergency, my administration has taken aggressive measures to fight the spread of the virus and mitigate its impacts, including temporarily closing schools, restricting the operation of places of public accommodation, allowing medical professionals to practice to the full extent of their training regardless of licensure, limiting gatherings and travel, requiring workers who are not necessary to sustain or protect life to stay home, and building the public health infrastructure necessary to contain the infection.

There remains much more to be done to stave off the sweeping and severe health, economic, and social harms this disease poses to all Michiganders. To meet these demands, my administration must continue to use the full range of tools available to protect the health, safety, and welfare of our state and its residents. I welcome your and your colleagues' sustained partnership in fighting this pandemic. While I have multiple independent powers to address the challenges we now face, the powers invoked by Executive Order 2020-33 under the Emergency Management Act, 1976 PA 390, as amended, MCL 30.403 et seq., provide important protections to the people of Michigan, and I hope you agree they should remain a part our state's ongoing efforts to combat this pandemic throughout the full course of that fight.

For that reason, and in shared recognition of what this fight will require from us, I request a concurrent resolution under MCL 30.403(3) and (4) extending the state of emergency and the state of disaster declared in EO 2020-33 under the Emergency Management Act by 28 days from the date that Senate Concurrent Resolution No. 24 expires. As to the individual emergency orders I have issued, including Executive Order 2020-59, these measures expire at the time stated in each order, unless otherwise continued.

Sincerely,

Gretchen Whitmer
Governor

cc: House Democratic Leader Christine Greig; Senate Democratic Leader Jim Ananich

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EXHIBIT 10

TABLE OF GOVERNOR WHITMER'S EXECUTIVE ORDERS

Exhibit 10 - Table of Governor Whitmer's Executive Orders			
Date	**Title**	**Description (*rescinded/expired orders as of 5/5/20 excluded)**	**Number**
March 18, 2020	Temporary extension of deadline to redeem property for nonpayment of delinquent property taxes	Extends deadline to redeem property forfeited to the county treasurer; and "encourages" the State Court Administrative Office to "urge judges of the circuit court to amend orders of foreclosure" consistent with the above extension.	2020-14
March 20, 2020	Temporary restrictions on non-essential medical and dental procedure	Prohibits non-essential medical and dental procedures and orders director of Dept. of Licensing and Regulatory Affairs to issue directives as needed to enforce the above prohibitions.	2020-17
March 25, 2020	Extension of county canvass deadlines for the March 10, 2020 Presidential Primary Election	Extends deadline to April 24, 2020 for a board of county canvassers to complete the canvass of the March 10, 2020 Presidential Primary Election.	2020-22
March 27, 2020	Extension of April 2020 Michigan income tax filing deadlines	Extends income tax filing deadlines by approximately 90 days.	2020-26
March 27, 2020	Conducting elections on May 5, 2020 using absent voter ballots	Mandates that May 5, 2020 elections be conducted to "greatest extent possible" by absent voter ballots "issued and submitted without in-person interaction" and that each jurisdiction maintain at least one in-person voting location.	2020-27
March 28, 2020	Restoring water service to occupied residences during the COVID-19 pandemic	Prohibits water shut-offs for non-payment, and requires public water utilities to restore water service shut off due to non-payment except in cases of public-health risk, to make best efforts to remedy shut-offs due to any reason other than non-payment, and to provide accounting of all shut-offs and occupied residences without water service.	2020-28
March 30, 2020	Temporary relief from standard vapor pressure restrictions on gasoline sales	Extends until May 31, period of time during which winter-blend gasoline can be lawfully sold to enable distributors to safely shift to a lower volatility gasoline supply during the anticipated stretch of decreased demand with as little in-person work and travel as possible.	2020-31
April 2, 2020	Temporary restrictions on veterinary services; Rescission of Executive Order 2020-32	Adjusts and clarifies the restrictions set forth in, and rescinds, E.O. 2020-32, relating to restrictions on non-essential veterinary services and procedures.	2020-34
April 3, 2020	Protecting workers who stay home, stay safe when they or their close contacts are sick	Prohibits employers from discharging, disciplining, or retaliating against employees who stay home due to a particular risk of infecting others with COVID-19; requires employers to treat such employees as taking medical leave under the Paid Medical Leave Act; and announces state public policy that infected and symptomatic persons should stay home until 3 days after symptoms have passed or 7 days following a negative test; and that all persons in close contact with the above-described persons should remain isolated for 14 days.	2020-36
April 5, 2020	Temporary extensions of certain FOIA deadlines to facilitate COVID-19 emergency response efforts	Extends deadlines for public bodies to respond to FOIA-related requests or appeals and authorizes them to announce further deadline extensions as the public body deems necessary.	2020-38
April 7, 2020	Temporary relief from certain restrictions and requirements governing the provision of emergency medical services	Expands easing and suspension of requirements and restrictions governing emergency medical providers, including those pertaining to annual inspections of life-support vehicles, expiration of medical licenses during pending state of emergency, and declaring medical providers free from liability for injuries to others resulting from COVID-19-related treatment efforts except in cases of gross negligence.	2020-39
April 8, 2020	Temporary relief from certain credentialing requirements for motor carriers transporting essential supplies, equipment, and persons	Suspends enforcement of fines, penalties, or criminal sanctions for violations of requirements concerning licensure and trip permitting of motor carriers providing "critical assistance related to the COVID-19 pandemic."	2020-40
April 8, 2020	Encouraging the use of electronic signatures and remote notarization, witnessing, and visitation during the COVID-19 pandemic	Prohibits and suspends enforcement of rules and requirements denying legal effect or enforceability of a signature solely because it is in electronic form, and encourages governmental agencies and officials to use or permit the use of electronic records and signatures for transacting business and recognizing validity of legal instruments, including use of a remote electronic notary.	2020-41

Date	Title	Description (*rescinded/expired orders as of 5/5/20 excluded)	Number
April 13, 2020	Enhanced support for deliveries; Rescission of Executive Order 2020-12	Extends through May 11, 2020, the duration of the provisions of E.O. 2020-12, regarding deliveries of medical supplies and other essential items needed for safety, sanitation and prevention of COVID-19's spread; rescinds E.O. 2020-12.	2020-44
April 13, 2020	Enhanced authorization of remote means for carrying out state administrative procedures; Rescission of Executive Order 2020-23	Extends through May 11, 2020, the provisions of E.O. 2020-23, regarding remote means for carrying out state administrative procedures; rescinds 2020-23.	2020-45
April 13, 2020	Mitigating the economic harms of the COVID-19 pandemic through the creation of a spirits buyback program for restaurants and bars throughout the state	Authorizes the Michigan Liquor Control Commission to offer cash buyback for spirits ordered, received, and accepted before March 16, 2020; and specifies provisions for the buyback program.	2020-46
April 13, 2020	Temporary extension of validity of driver's licenses, state identification cards and registration.	Extends the validity and suspends expiration of certain operator's and chauffeur's licenses, state identifications, and vehicle registrations, with exceptions for operator's licenses revoked for traffic offenses and medical disqualifications.	2020-47
April 14, 2020	Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards; Rescission of Executive Order 2020-15	Clarifies and extends through May 12, 2020, the duration of E.O. 2020-23, regarding remote participating in public meetings and hearings and suspending monthly-meeting requirements for local school boards; rescinds 2020-15.	2020-48
April 14, 2020	Temporary enhancements to operational capacity and efficiency of health care facilities; Rescission of Executive Order 2020-13	Clarifies and extends the duration of the relief set forth under E.O. 2020-13, regarding suspension of restrictions on and licensure requirements for hospitals and medical/healthcare providers and personnel; rescinds 2020-13.	2020-49
April 15, 2020	Enhanced protections for residents and staff of long-term care facilities during the COVID-19 pandemic	Prohibits discharge of long-term care residents for non-payment, and specifying requirements for long-term care providers with respect to necessary COVID-19-related precautions and procedures for transfers and discharge of infected residents.	2020-50
April 15, 2020	Expanding child care access during the COVID-19 pandemic; Rescission of Executive Order 2020-16	Clarifies the scope of the expanded access to child-care facilities set forth in E.O. 2020-16 and extends its duration; rescinds E.O. 2020-16.	2020-51
April 17, 2020	Temporary extension of certain pesticide applicator certificates	Extends certificates of certain pesticide applicators set to expire on December 31, 2019.	2020-52
April 17, 2020	Enhanced restrictions on price gouging - Rescission of Executive Order 2020-18	Extends the duration of the "price gouging" restrictions of E.O. 2020-18 and rescinds E.O. 2020-18.	2020-53
April 17, 2020	Temporary prohibition against entry to premises for the purpose of removing or excluding a tenant or mobile home owner from their home; Rescission of Executive Order 2020-19	Extends the duration of and clarifies the relief set forth in E.O. 2020-19, regarding prohibitions on evictions and removal of tenants in default, with exceptions; rescinds E.O. 2020-19.	2020-54
April 17, 2020	Michigan Coronavirus task force on racial disparities - Department of Health and Human Services	Orders creation of a Michigan Coronavirus Task Force on Racial Disparities to address disparity in spread of COVID-19 among communities of color, and its underlying historical and systemic inequities.	2020-55
April 21, 2020	Temporary enhancements to operational capacity, flexibility, and efficiency of pharmacies; Rescission of Executive Order 2020-25	Extends duration of E.O. 2020-25, which eased restrictions and allowed flexibility in pharmacists' provision of prescription refills and COVID-19-related treatment; rescinds E.O. 2020-25.	2020-56
April 22, 2020	Temporary expansions in unemployment eligibility and cost-sharing; Rescission of Executive Order 2020-24	Continues provisions of E.O. 2020-24 and adds provisions relating to shared-work plans aimed at avoiding layoffs; and allowing certain retired state employees to return to service without losing access to pension payments; rescinds E.O. 2020-24.	2020-57
April 22, 2020	Temporary suspension of certain timing requirements relating to the commencement of civil and probate actions and proceedings	Suspends all deadlines concerning commencement of civil and probate actions as of March 10, 2020 until the end of the declared states of emergency and disaster.	2020-58
April 26, 2020	Temporary relief from certain restrictions and requirements governing the provision of medical services; Rescission of Executive Order 2020-30	Extends the duration and expands the scope of E.O. 2020-30, with respect to suspension of restrictions and licensure requirements regarding providers of medical services as necessary to support the response to COVID-19 pandemic; rescinds E.O. 2020-30.	2020-61

Date	Title	Description (*rescinded/expired orders as of 5/5/20 excluded)	Number
April 26, 2020	Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for county jails, local lockups, and juvenile detention centers Rescission of Executive Order 2020-29	Extends E.O. 2020-29's protocols and restrictions for entries into and transfers to and from prisons under Dept. of Corrections' authority aimed at suppressing the spread of COVID-19; rescinds E.O. 2020-29.	2020-62
April 27, 2020	Temporarily suspending the expiration of personal protection orders	Orders that all personal protection orders set to expire on or before June 1, 2020, be extended to expire on July 21, 2020, consistent with Michigan Supreme Court Admin. Order No. 2020-11.	2020-63
April 29, 2020	Affirming anti-discrimination policies and requiring certain health care providers to develop equitable access to care protocol	Issues order affirming anti-discrimination policies in provision of medical care and establishing procedures intended to ensure equitable allocation of medical resources during pandemic.	2020-64
April 30, 2020 (7:20 pm)	Provision of K–12 education during the remainder of the 2019–2020 school year; Rescission of Executive Order 2020-35	Extends and clarifies E.O. No. 2020-35's suspension of in-person instruction in K-12 schools for remainder of school year and clarifies its applicability to Teachers' Tenure Act and Great Start Readiness Program; rescinds E.O. No. 2020-35.	2020-65
Expiration of as-extended declaration of state of emergency and disaster			
April 30, 2020 (7:29 pm)	Termination of the states of emergency and disaster declared under the Emergency Management Act in Executive Order 2020-33	Terminates states of emergency and disaster declared under EMA in E.O. 2020-33.	2020-66
April 30, 2020 (7:30 pm)	Declaration of state of emergency under the Emergency Powers of the Governor Act, 1945 PA 302	Declares a statewide emergency under MCL 10.31, effective through May 28, 2020.	2020-67
April 30, 2020 (7:30 pm)	Declaration of states of emergency and disaster under the Emergency Management Act, 1976 PA 390	Declares a state of emergency and a state of disaster across the state pursuant to EMA.	2020-68
April 30, 2020 (9:27 pm)	Temporary Restrictions on the use of places of public accommodation; Rescission of Executive Order 2020-43	Extends through May 28 restrictions on ingress, egress, use, and occupancy of places of public accommodation (restaurants, bars, theaters, libraries, museums, fitness centers/gyms, etc.); rescinds E.O. No. 2020-43.	2020-69
May 1, 2020	Temporary requirement to suspend activities that are not necessary to sustain or protect life; Rescission of Executive Order 2020-59	Enacts Fourth "Stay Home, Stay Safe" order, effective through May 15, 2020	2020-70
May 2, 2020	Temporary safety measures for food-selling establishments and pharmacies and temporary relief from requirements applicable to the renewal of licenses for the food-service industry	Extends and clarifies relief under E.O. No. 2020-60 with respect to safety measures for restaurants, grocery stores, convenience stores or other "food-settling establishments" and pharmacies and suspension of requirements regarding renewals of licenses for transitory temporary foot units for 2020-2021 licensing year; rescinds E.O. No. 2020-60	2020-71
May 3, 2020	Temporary restrictions on entry into health care facilities, residential care facilities, congregation care facilities, and juvenile justice facilities. Rescission of Executive Order 2020-37	Extends restrictions under 2020-37 regarding entry into healthcare facilities, residential care facilities, congregation care and juvenile justice facilities; rescinds 2020-37	2020-72

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EXHIBIT 11

SOCIAL DISTANCING LAW PROJECT:
ASSESSMENT OF LEGAL AUTHORITIES

Social Distancing Law Project

Michigan Department of Community Health

Assessment of Legal Authorities

Introduction

This report provides an assessment of Michigan's legal readiness to address pandemic influenza. This assessment includes both legal authority for pharmaceutical and non-pharmaceutical (social distancing) measures. As set out in the CDC's *Interim Pre-pandemic Planning Guidance*[1], at the beginning of an influenza pandemic, the most effective mitigation tool (i.e., a well-matched pandemic strain vaccine) will probably not be available. Therefore, Michigan must be prepared to face the first wave of the pandemic without vaccine and, possibly, without sufficient quantities of influenza antiviral medications. Instead, Michigan must rely on an early, targeted, layered application of multiple, partially effective, non-pharmaceutical measures. These include restrictions on the movement of people and "social distancing measures" to reduce contact between individuals in the community, schools, and workplace.

This report focuses on the ability of Michigan to implement social distancing measures to prevent and control the spread of pandemic influenza, both when an emergency has been declared and in the absence of a declared emergency. Communicable disease surveillance, investigation, or outbreak control may involve the following potential public health procedures or social distancing measures, based upon the current Michigan Department of Community Health All Hazards Response Plan and Pandemic Influenza Plan:

- Travel alerts, warnings, or bans
- Communicable disease surveillance at borders
- Border closures
- Individual or group isolation
- Individual or group quarantine
- Altered work schedules or environmental controls to be enacted in workplaces
- Cancellation of public gatherings
- Identification of buildings for community isolation or quarantine
- Monitoring of isolated or quarantined individuals or groups

In its Pandemic Influenza Plan, MDCH addresses social distancing and other measures to be implemented, as appropriate, for each WHO phase / federal government response

[1] *Interim Pre-pandemic Planning Guidance: Community Strategy for Pandemic Influenza Mitigation in the United States – Early, Targeted, Layered Use of Nonpharmaceutical Interventions*, which can be found at http://www.pandemicflu.gov/plan/community/community_mitigation.pdf

stage of a pandemic. MDCH's current plan (Draft 3.1, May 2007) is posted on the Internet at http://www.michigan.gov/documents/mdch/MDCH_Pandemic_Influenza_v_3.1_final_draft_060107_2__198392_7.pdf. Social distancing interventions can and should be undertaken voluntarily. However, this report covers establishment and enforcement of social distancing means by state and local authorities if necessary to protect public health. This report also covers inter-jurisdictional cooperation and mass prophylaxis readiness.

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Assessment of Legal Authorities

The following definitions apply to terms used in this report:

1. "Jurisdiction" refers to Michigan, which is one of the 18 jurisdictions selected for review in the study.
2. "Legal authority" means any provision of law or regulation that carries the force of law.

3. "Procedures" means any procedures established by the jurisdiction relating to the legal question being researched, regardless of whether the procedures have the force of law.
4. "Restrictions on the movement of persons" means any limit or boundary placed on the free at-will physical movement of adult natural persons in the jurisdiction.
5. "Closure of public places" means an instruction or order that has the effect of prohibiting persons from entering a public place. "Public place" means a fixed space, enclosure, area, or facility that is usually available for entry by the general public without a specific invitation, whether possessed by government or private parties.
6. "Curfew" means an order or regulation prohibiting persons from being in certain public places at certain times.
7. "Person" [unless indicated otherwise] means a natural person, whether or not individually identified.
8. "Public health emergency" means any acute threat, hazard, or danger to the health of the population of the jurisdiction, whether specific or general, whether or not officially declared.
9. "Superior jurisdiction" means the federal government in respect to a state, or a state in respect to a locality.
10. "Inferior jurisdiction" means a state in respect to the federal government, or a locality in respect to a state government.

Exclusions:

1. This assessment excludes federal law.
2. This assessment excludes the closure of schools, which will be covered by another project of the CDC Public Health Law Program. However, the issue of school closures will likely come up during discussions at the legal consultation meetings in response to the overall fact pattern. The CDC Public Health Law Program will make the results of the CDC project on school closure available for the Legal Consultation Meeting associated with this project.

I. Restrictions on the Movement of Persons

A. *Legal powers/authorities to restrict movement of persons during a declared public health emergency – What legal powers or authorities exist that could enable, support, authorize, or otherwise provide a legal basis for any restrictions on the movement of persons during a declared public health emergency? List all legal powers, authorities, and procedures (including but not limited to police powers, umbrella powers, general public health powers, or emergency powers or authorities) that could be used to authorize specific movement restrictions. (Examples: state's legal powers, authorities, or doctrines for quarantine (see also subsection I-C below), isolation, separation, or other orders for persons to remain in their homes.)*

The Michigan Emergency Management Act, 1976 PA 390, MCL 30.401 *et seq.*, provides for planning and response to disasters and emergencies within the state. The Emergency Management Act distinguishes between a disaster and emergency as follows: a disaster is defined as "an occurrence or threat of widespread or severe

damage, injury, or loss of life or property resulting from a natural or man-made cause, including but not limited to, …radiological incident, …epidemic, air contamination…." MCL 30.402(e). An emergency is defined as "any occasion or instance in which the governor determines state assistance is needed to supplement local efforts and capabilities to save lives, protect property and the public health and safety, or to lessen or avert the threat of a catastrophe in any part of the state." MCL 30.402(h). The governor is required to issue an executive order or proclamation declaring a state of disaster or emergency if she finds a disaster or emergency has occurred or the threat of a disaster or emergency exists.

This question includes all provisions of law or procedure that:

1. *Regulate the initiation, maintenance, or release from restrictive measures, including, but not limited to:*

   a. *Who can declare or establish such restrictions?*

   In a declared state of emergency the governor "is responsible for coping with dangers to this state or the people of this state presented by a disaster or emergency." MCL 30.403(1). Among the express powers, is the authority to "utilize the available resources of the state and its political subdivisions, and those of the federal government made available to the state, as are reasonably necessary to cope with the disaster or emergency." MCL 30.405(1)(b). The governor is also authorized to "prescribe routes, modes, and destinations of transportation in connection with an evacuation," to "control ingress and egress to and from a stricken or threatened area, removal of persons within the area, and occupancy of premises within the area" and to "suspend a regulatory statute, order or rule prescribing the procedures for conduct of state business…except for criminal process and procedures." MCL 30.405(1)(a), (f), (g). In addition to those powers expressly granted under the Emergency Management Act, the governor may "direct all other actions which are necessary and appropriate under the circumstances." MCL 30.405(1)(j).

   b. *Who can enforce such restrictions?*

   If the declaration is of a public health emergency, the governor may direct the Michigan Department of Community Health (MDCH) to coordinate all matters pertaining to the response of the state to a public health emergency. MCL 30.408. Accordingly, the MDCH director or his or her designee could issue an order for quarantine. In addition, should the governor issue the order, enforcement could be by any law enforcement officer, since a violation of the governor's emergency orders is a misdemeanor. MCL 30.405(2).

   c. *What are the legal powers and authorities for group quarantine?*

   Under the Emergency Management Act, the governor has broad power to issue such orders which are "necessary and appropriate under the circumstances."

Thus, if necessary and appropriate, a group quarantine order may be issued. Anyone violating the order would be guilty of a misdemeanor.

d. What are the legal powers and authorities for area quarantine?

The governor has broad authority under the Emergency Management Act to eliminate any obstacles to implementation of necessary population control measures in a public health emergency.

e. What are the penalties for violating movement restrictions?

A violation of an executive order issued by the governor following the declaration of a disaster or emergency is punishable as a misdemeanor. MCL 30.405(2). In such circumstances, the maximum penalty is 90 days in jail and/or a fine of $500. MCL 750.504.

2. *Provide any due process measures for a person whose movement is restricted.*

   Because a violation of an order is a criminal offense, all due process measures attendant to a deprivation of liberty attach to an individual who violates an executive order restricting movement. In addition, any individual who can demonstrate the requisite standing could bring a civil action to challenge the propriety of the declaration or the application of the executive order to the petitioner.

3. *Relate to how long such measures can last, whether and how they can be renewed, and the authority/process/notice requirements for ending the measures.*

   The Emergency Management Act provides that the governor's declaration of an emergency or disaster can last for up to 28 days. After 28 days, any extension would require a joint resolution of both houses of the legislature. MCL 30.403.

4. *May create liability for ordering the restriction of movement of persons.*

   Any order that results in an illegal arrest or deprivation of civil rights is actionable under state or federal law. As a general rule, civil liability is limited under state law by governmental immunity. Health officials rendering services during a declared emergency are "not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained," willful acts and omissions excepted. MCL 30.411.

5. *Would otherwise tend to limit the legal basis of the jurisdiction.*

   None known.

B. *Sufficiency of powers/authorities – Discuss the sufficiency of the authorities and powers to restrict the movement of persons during a declared emergency, and any potential gaps or uncertainties in those powers and authorities.*

1. *Potential gaps?*

   The Emergency Management Act is broad and provides sufficient authority for the governor to issue any order necessary to restrict movement of persons during an emergency or disaster.

2. *Uncertainties?*

   None known.

3. *Legal provisions that could inhibit, limit, or modify the jurisdiction's legal basis to restrict the movement of persons? (Examples: state administrative practice acts, specific provisions in law related to movement restrictions.)*

   As discussed under "D" (page 7) below, the penalty for violating an order of MDCH's director is a misdemeanor punishable by six months in jail and/or a fine of $200. Violating the governor's order is punishable by 90 days in jail and/or a fine of $500. Michigan's legislature might consider increasing the jail term for violating an order of the governor to six months. In Michigan, if the penalty for a misdemeanor is greater than 92 days imprisonment, law enforcement can arrest based on reasonable cause. If the penalty is 92 days or less, then law enforcement must obtain an arrest warrant or have witnessed the violation. MCL 764.15(1)(d).

C. *Legal powers/authorities specifically related to quarantine enforcement – Specifically related to quarantine orders, identify all state and/or local powers and authorities to enable, support, authorize, or otherwise provide a legal basis for enforcement of quarantines during a public health emergency.*

1. *What are the legal powers and authorities authorizing law enforcement to enforce quarantine orders issued by the jurisdiction?*

   The Emergency Management Act provides criminal penalties for any violation of an emergency executive order. Accordingly, any law enforcement officer may be called upon to enforce the order. In addition the governor may ask the attorney general to seek civil enforcement. State agencies, such as MDCH may be directed to take administrative action to enforce the order.

2. *What are the legal powers and authorities prohibiting or inhibiting the use of law enforcement to enforce a quarantine order issued by the jurisdiction?*

   None known.

3. *What are the legal powers and authorities authorizing law enforcement to enforce a federal quarantine order?*

   If a violation of the federal order is subject to a criminal penalty, law enforcement

officers in the state of Michigan may assist in the enforcement of the order.

4. *What are the legal powers and authorities prohibiting or inhibiting the use of law enforcement to enforce a federal quarantine order?*

   The only question will be whether the officer is enforcing a criminal law of the United States.

5. *What are the legal powers and authorities prohibiting or inhibiting the use of law enforcement to assist the federal government in executing a federal quarantine order?*

   If a violation of the federal order is subject to a criminal penalty, law enforcement officers in the state of Michigan may assist in the enforcement of the order. In this regard, the Michigan Attorney General has opined that peace officers of the state may enforce violations of federal laws and regulations, at least when a criminal penalty attaches. OAG, 1967-1968, No 4631, p 194 (March 5, 1968). However, Michigan law provides no authority for law enforcement officers to enforce federal civil quarantine orders.

   Potentially, if the governor declares a state of emergency or disaster, she can issue an executive order expanding the powers of the various police agencies to assist federal and state agencies in enforcing quarantine and isolation orders (MCL 30.405). Alternatively, this gap might be addressed by developing a process to appoint local and state police federal agents (much as they are sometimes appointed deputy marshals), in which case they would be acting pursuant to their federal appointment and authority. The governor or the MDCH could also accomplish enforcement by issuing quarantine orders that mirror the federal government's. State and local police could then enforce a violation of the governor's or MDCH's orders as a criminal act.

D. *Sufficiency of powers/authorities to enforce quarantine – Discuss the sufficiency of the authorities and powers to enforce quarantine orders and any potential gaps or uncertainties in those powers and authorities.*

1. *Potential gaps?*

   The most prominent gap is the lack of authority by law enforcement to enforce a quarantine order, short of making an arrest. Law enforcement may benefit by the passage of legislation giving law enforcement specific authority to enforce public health orders for communicable diseases. Public health also needs to explore the options available for law enforcement in the manner of enforcement of public health orders. An individual who is ordered into isolation because he is ill would be taken to a treatment facility, however, the noncompliant subject of a quarantine order is another question. If police officers arrest and incarcerate people violating quarantine or round up and detain people who refuse an order not to congregate they will likely undo the effects the social distancing measures were intended to bring about.

2. *Uncertainties?*

   None known.

3. *Are there any other legal provisions not previously listed in I-C above that could inhibit, limit, or modify the jurisdiction's legal basis to restrict the movement of persons? (Examples: state administrative practice acts, specific provisions in law related to quarantine.)*

   None known.

E. *Legal powers/authorities to restrict movement of persons <u>in the absence</u> of a declared public health emergency – What legal powers or authorities exist that could enable, support, authorize, or otherwise provide a legal basis for any restrictions on the movement of persons in the absence of a declared public health emergency? List all legal powers, authorities, and procedures that could be used to authorize specific movement restrictions in the absence of an emergency declaration. (Examples: the state's legal powers, authorities, or doctrines for quarantine, isolation, separation, or other orders for persons to remain in their homes.)*

   MDCH has broad and flexible powers to protect the public health, welfare and safety of persons within the state. These powers are set out in the Public Health Code, which is to be liberally construed for the protection of the health, safety, and welfare of the people of Michigan. MCL 333.1111(2). MDCH is required to generally supervise the interests of the health and life of Michigan's residents, implement and enforce public health laws, prolong life, and promote public health through organized programs. It is also specifically responsible for preventing and controlling disease; making investigations and inquiries as to the cause of disease, especially of epidemics; and the causes, prevention, and control of environmental health hazards, nuisances, and courses of illness. MDCH may exercise authority to safeguard properly the public health, prevent the spread of diseases and the existence of sources of contamination, and implement and carry out the powers and duties vested by law in the department. MCL 333.2226(d).

   Michigan's Supreme Court has long recognized the authority of health officers to issue reasonable orders or regulations to control the spread of disease under their general statutory authority to prevent the spread of infection. *People v Board of Education of City of Lansing*, 224 Mich 388 (1923) (local board of health has authority to issue regulation to exclude unvaccinated children from schools, over the objection of the school board, while 17 cases of smallpox still existed in the city), *Rock v Carney*, 216 Mich 280 (1921) (health officer has quarantine power when sufficient reasonable cause exists to believe that a person is afflicted with a venereal disease).

   In addition to a general grant of authority, the Public Health Code grants the state health director specific power to issue orders to address an emergency, as described in "1" (pages 9-10) below.

Most public health activities, including the prevention and control of communicable diseases, are carried out by Michigan's 45 local health departments. Local health departments, acting through their local health officers, hold the general powers described above. Further, both state and local health departments are granted "powers necessary or appropriate to perform the duties and exercise the powers given by law … and which are not otherwise prohibited by law." MCL 333.2221(2)(g), MCL 333.2433(2)(f). Local health officers are also authorized to issue emergency orders, warning notices, and bring court actions, concerning residents within their jurisdictions. The organization and powers of local health departments are set out in MCL 333.2401 – 333.2498.

This question includes all provisions of law or procedure that:

1. *Regulate the initiation, maintenance, or release from restrictive measures, including, but not limited to:*

   a. *Who can declare or establish such restrictions?*

   If the state health director determines that conditions anywhere in the state constitute a menace to the public health, she is authorized to take full charge of the administration of applicable state and local law, rules, regulations, and ordinances. MCL 333.2251(3). Additionally, the Public Health Code grants the state health director (and local health officers) power to issue the following orders to address an emergency:

   - **Imminent Danger Orders**. Upon determining that an "imminent danger" to the health or lives of individuals exists in this state, the director shall inform the individuals affected by the imminent danger and issue an order. The order shall be delivered to a "person" authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. MCL 333.2251(1). "Person" includes an individual, any type of legal entity, or a governmental entity. MCL 333.2251(4)(b). "Imminent danger" is defined as "a condition or practice [that] could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement proceedings otherwise provided." MCL 333.2251(4)(a). In her order, the director shall incorporate her findings and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger

   - **Orders to Control an Epidemic.** Upon determining that the control of an epidemic is necessary to protect the public health, the director, by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure

continuation of essential public health services and enforcement of health laws. MCL 333.2253. "Epidemic" means "any increase in the number of cases, above the number of expected cases, of any disease, infection, or other condition in a specific time period, area, or demographic segment of the population." R 325.171(g).

- **Orders to Abate a Nuisance.** The director may issue an order to avoid, correct, or remove, at the owner's expense, a building or condition that violates health laws or which the director reasonably believes to be a nuisance, unsanitary condition, or cause of illness. MCL 333.2455.

Finally, the Public Health Code provides for the involuntary detention and treatment of individuals with hazardous communicable disease. MCL 333.2453(2). Upon a determination by a representative of MDCH (or the local health department) that an individual is a "carrier" and is "a health threat to others," MDCH's representative shall issue a warning notice to the individual requiring the individual to cooperate with MDCH or the local health department in efforts to prevent or control transmission of "serious communicable diseases or infections." The warning notice may also require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier.

A "carrier" is "an individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease." MCL 333.5201(1)(a). "Health threat to others" means that the individual "has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection." MCL 333.5201(1)(b).

A warning notice:

- Must be in writing (may be verbal in urgent circumstances, followed by a written notice within 3 days).
- Must be specific and individual, cannot be issued to a class of persons.
- Must require the individual to cooperate with the health department in efforts to control spread of disease.
- May require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify carrier status.
- Must inform the individual that if the individual fails to comply with the warning notice, the health department shall seek a court order.

If the individual fails or refuses to comply with the warning notice, the health department must petition the circuit court (family division) for an order requiring testing, treatment, education, counseling, commitment, isolation, etc., as appropriate.

In an emergency, the health department may go straight to court (without first issuing a warning notice). Upon filing of affidavit by the health department, the court may order that individual be taken into custody and transported to an appropriate emergency care or treatment facility for observation, examination, testing diagnosis, treatment, or temporary detention. The court's emergency order may be issued *ex parte*; however, the court must hold a hearing on the temporary detainment order within 72 hours (excluding weekends and holidays).

b. Who can enforce such restrictions?

MDCH would need to rely on law enforcement and courts to enforce its orders. Violation of an order of the director is a misdemeanor, punishable by six months in jail or $200, or both. MCL 333.2261. In Michigan, if the penalty for a misdemeanor is greater than 92 days imprisonment, law enforcement can arrest based on reasonable cause (i.e., without an arrest warrant or witnessing the violation), pursuant to MCL 764.15(1)(d).

While violation of the director's order is a misdemeanor, there is no parallel provision in the Public Health Code for violation of a local health officer's order. State law provides that a violation of a local health regulation is a misdemeanor. Therefore, this gap can be addressed by each local government adopting a regulation requiring persons to comply with a lawful order of the local health officer. Failure to comply with an order of the local health officer would be a violation of the regulation and punishable as a misdemeanor under state law. In some circumstances, a local health department may be able to seek enforcement under a provision of the Public Health Code that states it is a misdemeanor to willfully oppose or obstruct a representative of MDCH, the state or a local health officer, or any other person charged with enforcement of a health law in the performance of that person's legal duty to enforce that law. MCL 333.1291.

Finally, MDCH (and local health officers) can go to court to seek enforcement of its orders. MCL 333.2251(2), MCL 333.2451(2). The court could punish civilly or criminally via contempt. MDCH (and local health officers) may also maintain injunctive action "to restrain, prevent, or correct a violation of a law, rule, or order which the department [local health officer] has the duty to enforce or to restrain, prevent, or correct an activity or condition which the department believes adversely affects the public health." MCL 333.2255, MCL 333.2465.

c. What are the legal powers and authorities for group quarantine?

"Group quarantine" is not explicitly addressed in the Public Health Code. However, MDCH's director and local health officers have the authority to issue an imminent danger order, and require "group quarantine" as action required to avoid, correct, or remove the imminent danger. Alternatively, the director or local health officer could issue an emergency order to control an epidemic and require group quarantine as a procedure to be followed during the epidemic.

d. What are the legal powers and authorities for area quarantine?

"Area quarantine" is not explicitly addressed in the Public Health Code. However, MDCH's director and local health officers have the authority to issue an imminent danger order, and require "area quarantine" as action required to avoid, correct, or remove the imminent danger. Alternatively, the director or local health officer could issue an emergency order to control an epidemic and require area quarantine as a procedure to be followed during the epidemic.

e. What are the penalties for violating movement restrictions?

Violation of the order of MDCH's director is a misdemeanor, punishable by six months imprisonment, $200 fine, or both.

2. Provide any due process measures for a person whose movement is restricted.

Both the U.S. and the Michigan Constitution prohibit depriving a person of liberty without due process of law. Const 1963, Art I, § 17. Due process is flexible; what process is due depends on the nature of the proceedings, the risks and costs involved, and the private and governmental interests affected. *By Lo Oil Co v Dept of Treasury*, 267 Mich App 19 (2005).

There are no statutory provisions, rules, or procedures with regard to the process for review of imminent danger orders or orders to control an epidemic. Fundamental fairness requires that orders directed toward individuals must be served on the individuals and orders directed toward groups or the general public must be sufficiently publicized to provide notice to individuals of required or prohibited conduct.

Violation of an order by MDCH's director is a criminal offense. Thus, all due process measures attendant to a deprivation of liberty attach to a person who violates an order of the director that restricts movement. In addition, any person who can demonstrate the requisite standing could bring a civil action to challenge the propriety of the director's order or the application of the order to the petitioner.

The Public Health Code sets out procedures for enforcement of a warning notice issued by MDCH's director or a local health officer against a carrier who is a health threat to others. The individual has the right to an evidentiary hearing and the health department must prove the allegations by clear and convincing evidence. Before committing an individual to a facility, the court must consider the recommendation of a commitment panel, and the commitment order must be reviewed periodically. An individual who is the subject of either emergency proceedings or a petition on a warning notice has the right to counsel at all stages of proceedings. An indigent individual is entitled to appointed counsel. The

individual also has the right to appeal and review by the Michigan Court of Appeals within 30 days. MCL 333.2453(2), MCL 333.5201 – 333.5207

3. *Relate to how long such measures can last, whether and how they can be renewed, and the authority/process/notice requirements for ending the measures.*

   There is no time limit on any of the state or local health officers' orders; nor is there a renewal requirement. The health officer who issued an emergency order would be responsible for monitoring the conditions that warranted the order, and respond as appropriate by modifying or rescinding the order as conditions change. Notice of any modifications, or rescission, would need to be sufficient to reasonably notify individuals or groups who are subject to the order.

4. *May create liability for ordering the restriction of movement of persons.*

   MDCH and its employees and volunteers have governmental immunity from tort damages when engaged in a governmental function, absent "gross negligence" that is the proximate cause of the injury or damage. MCL 691.1407. Note: this section does not apply with respect to providing medical care or treatment to a patient with some exceptions. However, if an emergency were declared, the Emergency Management Act, MCL 30.411, would provide protection from liability. Additionally, MDCH's director, or an employee or representative of MDCH is not personally liable for damages sustained in the performance of departmental functions, except for wanton and willful misconduct. MCL 333.2228. The same provision applies to local public health. MCL 333.2465(2).

5. *Would otherwise tend to limit the legal basis of the jurisdiction.*

   None known.

F. *Sufficiency of powers/authorities – Discuss the sufficiency of the authorities and powers to restrict the movement of persons <u>in the absence</u> of a declared emergency, and any potential gaps or uncertainties in those powers and authorities.*

1. *Potential gaps?*

   Staff from MDCH and local health departments have participated in several activities to evaluate the sufficiency of the authorities and powers to restrict the movement of persons in the absence of a declared emergency. These activities include participation in the Turning Point Collaborative[2], table top and other facilitated exercises, and a roundtable discussion by a group of public health and legal experts on Michigan law. For the most part, the consensus of both state and local public health is that the Public Health Code provides broad and flexible powers that are sufficient for prompt and effective response to a public health emergency. While it is tempting to seek legislation that authorizes specific measures that might be imposed, there is a risk that public health's authority

[2] The Michigan Association for Local Public Health obtained an assessment of Michigan laws through the Turning Point Collaborative.

would be narrowed by too much specificity and detail under the principle *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of all others).

As discussed above, one gap in enforcing restrictions of movement is the lack of a criminal penalty for violation of an emergency order of a local health officer. Another potential gap is the absence of provisions for due process where orders issued by MDCH or local health officers deprive individuals of liberty. This could be addressed either through legislation or by MDCH promulgating rules consistent with Michigan's Administrative Procedures Act. MCL 24.231 *et seq*. However, care is essential in establishing procedures to avoid binding the state and local health departments to a process or procedures beyond legal requirements that unnecessarily restrict their ability to act promptly and effectively to protect the public health.

While MDCH has addressed most social distancing measures in its Pandemic Influenza Plan, it has not addressed mass transit usage limits. MDCH needs to review this for inclusion as a potential social distancing measure to reduce spread of disease from close proximity of individuals typical of crowded mass transit.

2. *Uncertainties?*

   Under Michigan's Constitution, Michigan's public universities constitute a "branch" of state government, autonomous within their own spheres of authority. Const 1963, Art VIII, §§ 5, 6, *National Pride at Work, Inc v Governor*, 274 Mich App 147 (2007), and cases cited therein. University governing boards might question whether the state health department has authority to issue orders that affect the operation of the university, such as orders to quarantine dorm students or prohibit class attendance. However, universities are not exempt from all regulation. MDCH needs to obtain advice from the Department of Attorney General regarding the parameters of its authority over university campuses, and the authority (if any) of local health departments. MDCH should engage the universities to develop memoranda of understanding and procedures for coordinating an effective response to pandemic influenza or other disease outbreaks.

3. *Legal provisions that could inhibit, limit, or modify the jurisdiction's legal basis to restrict the movement of persons? (Examples: state administrative practice acts, specific provisions in law related to movement restrictions.)*

   While MDCH is authorized to implement its police and statutory powers, there are limits on the exercise of these powers. These limitations include constitutional rights to substantive and procedural due process and equal protection under the laws. MDCH must act in good faith, and must not abuse its discretion in restricting the movement of individuals.

In *Rock v Carney*, *supra*, the Michigan Supreme Court upheld the authority of public health boards to determine what constitutes a dangerous communicable disease and take measures to prevent the spread. However,

> the method adopted or exercised to prevent the spread thereof must bear some true relation to the real danger, and be reasonable, having in mind the end to be attained, and must not transgress the security of the person beyond public necessity.

216 Mich 280, 296.

In the *Rock* case, the Supreme Court held that the health officer abused his discretion by refusing home isolation and placard notice for a young woman with venereal disease, and instead removed the woman from her home and committed her to a hospital for twelve weeks.

Other limitations on exercising authority to restrict movement of persons:

Tribal boundaries, tribal entities. MDCH is in the process of drafting provisions for its pandemic influenza plan that address limitations on the exercise of authority on Indian land or concerning federally recognized tribes. Its All Hazards and Pandemic Influenza Plans currently provide:

- **State-Tribal Borders:** Public health emergencies occurring on tribal land are the responsibility of the tribal organization. Some Mutual Aid Agreements (MAAs) have been developed between local or state health or emergency agencies and tribes. In instances where pre-arranged MAAs have not been developed, Local or State Health organizations may provide services on tribal land *upon the invitation of the tribe.* (Emphasis in original).

Foreign Diplomats: In Attachment 18 of its Pandemic Influenza Plan, MDCH addresses its limitations to impose quarantine or other restrictions on foreign diplomats and their families and honorary counsels, and procedures to be followed in the event of a disease outbreak. Attachment 18 is attached to this assessment as Appendix 2.

Federal land, including military bases and V.A. hospitals. MDCH needs to research and address limits on its jurisdiction over federal lands. MDCH needs to coordinate with federal authorities to develop procedures and emergency communications protocol in the event of a pandemic influenza or other disease outbreak.

II. Curfew

A. Legal powers/authorities for curfew during a <u>declared</u> public health emergency – What legal power, authorities, or procedures exist that that could enable, support, authorize, or otherwise provide a legal basis for curfew during pandemics, when a public health emergency has been declared?

1. What are the powers and authorities to institute curfews? Can local governments institute their own curfews under state and/or local law?

The governor is specifically empowered to proclaim a state of emergency and designate the area involved "[d]uring times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, when public safety is imperiled." After making the proclamation or declaration, the governor may promulgate reasonable orders, rules, and regulations necessary to protect life and property or bring the emergency situation with the affected area under control. The orders, rules, and regulations, may include curfew, as well as other measures. MCL 10.31.

Additionally, under the Emergency Management Act the governor has broad power to take any action that is necessary and appropriate during a declared emergency or disaster and may issue a curfew order. Local governmental units may declare a local state of emergency and take action to "provide for the health and safety of persons and property…." Notice is required. The Emergency Management Act provides that the order shall be" disseminated promptly by means calculated to bring its contents to the attention of the general public." MCL 30.403. The order must also be filed with the secretary of state.

2. Who can order curfew, and, if different, who makes the decision to institute curfew?

Under the Emergency Management Act, the governor would issue the order. The chief executive official of the county or municipality would issue local orders. MCL 30.410.

3. What is the process for mobilizing public health/law enforcement of curfew?

There is no process set out in the Emergency Management Act for mobilizing public health/law enforcement of curfew. The director of the State Police is charged with implementing the orders and directives of the governor. MCL 30.407.

4. Who can enforce curfew?

Again, because violations of the governor's emergency orders are misdemeanors, any law enforcement officer may enforce the order.

5. *Penalties for violating curfew?*

   Penalties are 90 days imprisonment, or $500, or both. MCL 10.33, MCL 30.405(2), MCL 750.504.

6. *How long can a curfew last?*

   The curfew order could remain in effect for 28 days unless extended by joint resolution of the legislature.

7. *How can it be renewed?*

   A curfew order can be renewed only by joint resolution of the legislature.

8. *Describe the authority/process/notice requirements for ending a curfew.*

   The governor may rescind the order at any time. This can be done through issuance of an executive order in which case prompt public notice is required.

B. *Sufficiency of powers/authorities – Discuss the sufficiency of the authorities and powers to institute or maintain curfew during a <u>declared</u> emergency, and any potential gaps or uncertainties in those powers and authorities.*

1. *Potential gaps?*

   None known.

2. *Uncertainties?*

   None known

3. *Legal provisions that could inhibit, limit, or modify the jurisdiction's legal basis to institute or maintain curfew? (Examples: state administrative practice acts, specific provisions in law related to curfew.)*

   None known.

C. *Legal powers/authorities for curfew <u>in the absence</u> of declared public health emergency – What legal power, authorities, or procedures exist that that could enable, support, authorize, or otherwise provide a legal basis for curfew during pandemics, in the absence of a declared public health emergency?*

1. *What are the powers and authorities to institute curfews? Can local governments institute their own curfews under state and/or local law?*

   MDCH's Director, or local health officers within their jurisdictions, could order curfew under their broad authority, provided curfew is a reasonable measure to address an imminent health danger or to control an epidemic. MCL 333.2251, 333.2253, 333.2451, 333.2453. However, a state or local health officer's authority does not include issuing orders (such as curfew) as general safety measures to manage disturbances or protect property.

2. *Who can order curfew, and, if different, who makes the decision to institute curfew?*

   MDCH's director would make the decision to institute curfew, and would issue an order imposing curfew that could cover all or any area of the state. The local health officer would make the decision and issue an order imposing curfew for the local health department's jurisdiction.

3. *What is the process for implementing curfew?*

   The Public Health Code does not set out a process, and one has not been developed by MDCH.

4. *What is the process for mobilizing public health/law enforcement of curfew?*

   The Public Health Code does not set out a process, and one has not been developed by MDCH.

5. *Who can enforce curfew?*

   Any law enforcement officer could enforce curfew imposed by an order of MDCH's director since it is a misdemeanor to violate an order of MDCH. MCL 333.2261. There is no parallel provision for violation of a local health officer's order, so enforcement would most likely depend on local regulations.

6. *Penalties for violating curfew?*

   Violation of an order of MDCH is a misdemeanor punishable by six months in jail, a fine of $200, or both.

7. *How long can a curfew last?*

   There is no time limit on any of the state or local health officers' orders.

8. *How can it be renewed?*

   There is no renewal requirement.

9. *Describe the authority/process/notice requirements for ending a curfew.*

   If the state or a local health officer has the authority to impose curfew, then they have the authority to modify or end curfew. The health officer who issued an emergency order would be responsible for monitoring the conditions that warranted the order, and respond as appropriate by modifying or rescinding the order as conditions change. Notice of any modifications, or rescission, would need to be sufficient to reasonably notify individuals or groups who are subject to the curfew.

D. Sufficiency of powers/authorities – Discuss the sufficiency of the authorities and powers to institute or maintain curfew <u>in the absence</u> of a declared emergency, and any potential gaps or uncertainties in those powers and authorities.

1. Potential gaps?

No known gaps in powers or authorities. However, MDCH does not address the use of curfew as a public health measure in its All Hazards Response Plan or any of its other plans. MDCH's response plans should be reviewed for possible inclusion of curfew.

2. Uncertainties?

None known.

3. Legal provisions that could inhibit, limit, or modify the jurisdiction's legal basis to institute or maintain curfew? (Examples: state administrative practice acts, specific provisions in law related to curfew.)

As discussed in I above, exercise of state and local health authority must be in good faith, reasonable, and consistent with constitutional rights to substantive and procedural due process and guarantees of equal protection.

III. Inter-jurisdictional Cooperation and Restricting Movement of Persons

A. Legal provisions/procedures for inter-jurisdictional cooperation on restricting the movement of persons during a <u>declared</u> public health emergency – What provisions or procedures under law apply to giving and receiving assistance and otherwise working with other jurisdictions regarding restrictions of movement of persons during a declared public health emergency?

1. Provisions or procedures governing the relationships among superior jurisdictions? Among inferior jurisdictions?

The Michigan Emergency Management Act, and plans thereunder, contain provisions requiring or authorizing inter-jurisdictional cooperation among superior jurisdictions and inferior jurisdictions.

The Emergency Management Act authorizes the governor to enter into a reciprocal aid agreement or compact with another state, the federal government, or a neighboring state or province of a foreign country, with the following limitations:

> A reciprocal aid agreement shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; the services of the national guard when not mobilized for federal

> service or state defense force as authorized by the Michigan military act, … MCL 32.501 to 32.851 … and subject to federal limitations on the crossing of national boundaries by organized military forces; health, medical, and related services; fire fighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; and other necessary equipment, facilities, and services. A reciprocal aid agreement shall specify terms for the reimbursement of costs and expenses and conditions necessary for activating the agreement. The legislature shall appropriate funds to implement a reciprocal aid agreement.

MCL 30.404(3).

The Emergency Management Act requires the emergency management division of the state police to prepare and maintain a comprehensive emergency management plan that covers mitigation, preparedness, response, and recovery for the state. MCL 30.407a. The Emergency Management Act further requires the director of each department of state government to participate in emergency planning for the state, serve as emergency management coordinator for his or her respective department, and provide an annex to the Michigan emergency management plan providing for the delivery of suitable emergency management activities. MCL 30.408. The Michigan emergency management plan describes the roles, responsibilities, and assignments of state departments, and provides the framework for state and local entities to work together under an incident command structure to address various types of emergencies. Under the emergency management plan, MDCH is the lead agency responsible for public health and mental health issues. Assigned responsibilities include:

- Coordinate the investigation and control of communicable disease and provide laboratory support for communicable disease diagnostics.
- Coordinate the allocation of medications essential to public health, including acquisition of medications from federal pharmaceutical stockpiles.
- Issue health advisories and protective action guides to the public.
- Coordinate appropriate medical services, providing support to hospitals, pre-hospital and alternate care settings in the medical management of mass casualty incidents.
- Provide technical assistance in the coordination of emergency medical services.
- Coordinate with local health departments, community mental health agencies, and state operated inpatient facilities.
- Provide liaison to federal emergency health and medical programs and services.
- Coordinate with the National Disaster Medical System.
- Ensure health facilities have emergency procedures.

As required by the Emergency Management Act, MDCH has provided and continuously updates response plans and annexes related to protecting the public's health. With regard to communicable disease, these include the Strategic National Stockpile Support Plan, Mass Fatality Plan, MDCH's All Hazards Response Plan, Communicable Disease Annex, and the Pandemic Influenza Plan. Module IX of the MDCH All Hazards Response Plan, Communicable Disease Annex, and Pandemic Influenza Response Plan address International and Border Travel Issues. Of note, many of the actual actions would be federal, although the MDCH director could implement orders to control intra-state movement, or recommend to the governor various actions. Public health procedures included in the plans include communicable disease surveillance at borders and travel alerts, warnings or bans.

The Emergency Management Act also promotes assistance during a disaster or emergency among local units of government. It provides that municipalities and counties may enter into mutual aid or reciprocal aid agreements or compacts with other counties, municipalities, public agencies, federally recognized tribal nations, or private sector agencies, or all of these entities. A compact entered into under this provision is limited to the exchange of personnel, equipment, and other resources in times of emergency, disaster, or other serious threats to public health and safety. The arrangements shall be consistent with the Michigan emergency management plan. MCL 30.410(2).

There are no provisions or procedures for inter-jurisdictional cooperation that specifically cover restrictions on the movement of persons during a public health emergency. However, there are numerous agreements for mutual aid or assistance that facilitate response to a public health emergency and could provide resources to implement social distancing measures if needed. These include provisions for sharing personnel, equipment, data, providing notification of disease threats, and providing facilities for treatment or mass prophylaxis.

These agreements include:

- **Emergency Management Assistance Compact (EMAC).** In 2001, Michigan adopted EMAC, which allows Michigan to operate as a part of the Interstate Mutual Aid Compact. See MCL 3.1001 (covering personnel) and MCL 3.991 (covering equipment). Consequently, once an emergency has been declared, Michigan has the authority to assist other states in an emergency and seek assistance from other states. This is of particular importance because the Interstate Mutual Aid Compact gives the state providing assistance a right to seek compensation for the services/assistance that it provides to the requesting state.

- **Michigan Emergency Management Assistance Compact (MEMAC).** Under the Emergency Management Act, MCL 30.410(2), Michigan has developed a mutual aid agreement for adoption by local units of governments

known as the Michigan Emergency Management Assistance Compact that may be found at http://www.michigan.gov/documents/MEMACFINAL7-3-03_69499_7.pdf MEMAC is entered into between the Michigan State Police Emergency Management and Homeland Security Division on behalf of the State of Michigan, and by and among each county, municipality, township, federally recognized tribal nation and interlocal public agency that executes the agreement and adopts its terms and conditions. MEMAC is designed to help Michigan's local governments share vital public safety services and resources more effectively and efficiently. MEMAC covers serious threats to public health and safety of sufficient magnitude that the necessary public safety response threatens to overwhelm local resources and requires mutual aid or other assistance. Typically, there would be a local, state or federal declaration of emergency or disaster; however, a declaration is not required.

- There are 1,858 local governments in the State of Michigan.[3] This includes 83 counties, 1,242 townships, 272 cities, and 261 villages. As of July 25, 2007, the number of local governments that have adopted resolutions to participate in MEMAC is 104, including:

  - Counties – 25 (30%)
  - Townships – 41 (3%)
  - Cities – 32 (18%)
  - Villages – 6 (2%)

See Appendix 3 for a list of local jurisdictions within Michigan that participate in MEMAC.

- **Mutual Aid Agreements within Regional Medical Biodefense Networks**. The State of Michigan has organized eight (8) regional medical biodefense networks that include hospitals, medical control authorities, life support agencies, and other health care facilities. As part of their disaster planning objectives, the regions have been working to develop mutual aid agreements. To date, regions 1, 5 and 8 have adopted agreements. The other five regions continue to work on this.

- **Mutual Aid Agreements among Local Health Departments.** There are 45 local health departments in the State of Michigan, including:

  - 30 single-county health departments
  - 14 multi-county, district health departments
  - 1 city health department

In addition to their participation in MEMAC, by virtue of their governing entity's participation, some local health departments have also executed mutual aid

[3] This number excludes school districts, intermediate school districts, planning and development regions and special districts and authorities. This information is from the *Michigan Manual*, p. 711.

agreements with neighboring local health departments. These agreements vary widely in terms of their scope and content. For example, the Southeast Michigan Local Health Department Mutual Aid Consortium Agreement is a relatively comprehensive mutual aid agreement. It was designed for participation by seven single-county health departments and one city health department.

- **Mutual Aid for Police Assistance.** Under MCL 123.811 *et seq*.**,** two or more counties, cities, villages, or townships, whether adjacent to each other or not, may enter into agreements to provide mutual police assistance to one another in case of emergencies. (Individuals preparing this report do not know the extent of agreements between law enforcement agencies under this law).

2. *Provisions or procedures governing the relationships between superior and inferior jurisdictions? (Include relationships among all levels of government and the federal government. See also section I-C above specifically related to quarantine orders.)*

   The Emergency Management Act requires that the Department of State Police establish an emergency management division for the purpose of coordinating within the state the emergency management activities of county, municipal, state, and federal governments. The division is responsible for the Michigan emergency management plan, shall propose and administer statewide mutual aid compacts and agreements, and shall cooperate with the federal government and any public or private agency or entity in achieving emergency management activities. MCL 30.407a.

3. *What is the legal authority of the jurisdiction to accept, utilize, or make use of federal assistance?*

   The Emergency Management Act provides that "upon declaring a state of disaster or emergency, the governor may seek and accept assistance, either financial or otherwise, from the federal government, pursuant to federal law or regulation." MCL 30.404(2). Further, the emergency management division of the State Police "shall receive available state and federal emergency management and disaster related grants-in-aid and shall administer and apportion the grants according to appropriately established guidelines to the agencies of this state and local political subdivisions." MCL 30.407a.

   The Emergency Management Act also states that the governor may enter into a reciprocal aid agreement or compact with the federal government, subject to the limitations described in 1, above (page 20). MCL 30.404(3).

B. *Sufficiency of powers/authorities to cooperate with other jurisdictions during a declared public health emergency – Discuss the sufficiency of the authorities and powers to cooperate with other jurisdictions during a declared public health emergency, and any potential gaps or uncertainties in those powers and authorities.*

1. *Potential gaps?*

   There are liability, workers compensation, and reimbursement questions outstanding. Current emergency response plans for communicable disease do not include provisions for limiting the usage of mass transit.

2. *Uncertainties?*

   Liability, workers compensation, and reimbursement questions.

3. *Legal provisions that could inhibit, limit, or modify the jurisdiction's legal basis to cooperate with other jurisdictions? (Examples: state administrative practice acts, specific provisions in law related to inter-jurisdictional cooperation.)*

   The approval of the state administrative board is required for the governor to enter into a reciprocal aid agreement or compact under the Emergency Management Act, MCL 30.404(3).

C. *Legal provisions/procedures for inter-jurisdictional cooperation on restricting the movement of persons in the absence of a declared public health emergency – What provisions or procedures under law apply to giving and receiving assistance and otherwise working with other jurisdictions regarding restrictions of movement of persons in the absence of a declared public health emergency?*

1. *Provisions or procedures governing the relationships among superior jurisdictions? Among inferior jurisdictions?*

   Subject to provisions of general law, the Michigan Constitution authorizes the state, any political subdivision, any governmental authority, or any combination thereof to enter into agreements for the performance, financing or execution of their respective functions, with any one or more of the other states, the United States, the Dominion of Canada, or any political subdivision thereof unless otherwise provided in Michigan's Constitution. Const 1963, Art III, § 5. Additionally, any unit of government is authorized to enter into an interlocal agreement under Michigan's Urban Cooperation Act, MCL 124.501 *et seq*., to exercise jointly with any other public agency of this state, another state, a public agency of Canada, or with any public agency of the U.S. government any power, privilege, or authority that the agencies share in common and that each might exercise separately. MCL 124.504.

   The Public Health Code authorizes both the state and local health departments to "[e]nter into an agreement, contract, or arrangement with governmental entities or other persons necessary or appropriate to assist the department in carrying out its duties and functions." MCL 333.2226(c), MCL 333.2435(c)(e).

Under PA 89 of 1935, MCL 798.101 *et seq*., the governor has the power to enter into interstate compacts with other states to address criminal behavior. The governor is authorized to enter into agreements or compacts with other states, for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of the penal laws and policies of the contracting states and to establish agencies, joint or otherwise, as may be deemed desirable for making effective such agreements and compacts. MCL 798.103. The intent and purpose of this act is to grant to the governor administrative power and authority if and when conditions of crime make it necessary to bind the state in a cooperative effort to reduce crime and to make the enforcement of the criminal laws of agreeing states more effective. Any interstate compact must not be inconsistent with the laws of Michigan, the agreeing states, or of the United States.

Agreements may be developed and implemented under these laws, whether or not an emergency has been declared. Additionally, with the exception of EMAC, all of the agreements described in Section III on inter-jurisdictional cooperation may be implemented in the absence of a declared public health emergency, as well as during a declared emergency. With regard to state and local health departments, declaration of an emergency or disaster does not relieve any state or local official, department head, or agency of its normal responsibilities. Nor does declaration limit or abridge the power, duty, or responsibility of the chief executive official of a county or municipality to act in the event of a disaster or emergency except as expressly set forth in the Michigan Emergency Management Act. MCL 30.417(e),(f). However, if the governor has declared an emergency or disaster, each state department and agency must cooperate with the state's emergency management coordinator and perform the services that it is suited to perform in the prevention mitigation, response to, or recovery from the emergency or disaster, consistent with the state emergency management plan. MCL 30.408.

Current agreements among superior or inferior jurisdictions include:

- **Great Lakes Border Health Initiative (GLBHI).** MDCH is a member of the GLBHI, along with the state health departments of Minnesota, New York, Ohio, Pennsylvania, and Wisconsin, and the Ontario Ministry of Health and Long-Term Care. GLBHI is funded by the Centers for Disease Control and Prevention's Early Warning Infectious Disease Surveillance (EWIDS) project, and aims to formalize relationships between U.S. and Canadian public health and emergency preparedness agencies responsible for communicable disease tracking, control and response. The member jurisdictions of Michigan, Minnesota, New York, Wisconsin, and Ontario have entered into a data sharing agreement, which is intended to improve early warning and infectious disease surveillance by facilitating the sharing of infectious disease information and establishing a protocol for communications. Ohio and Pennsylvania are expected to join the agreement once outstanding questions

have been answered. Mutual assistance agreements for equipment, specialized personnel, and services may be developed in the future.

- **Agreements with Indian Tribes.** A Memoranda of Understanding has been signed between one of Michigan's local health departments and a federally-recognized tribe to use a tribal facility as a Strategic National Stockpile dispensing facility. Two of Michigan's federally recognized tribes (Sault St. Marie Chippewa and Bay Mills Indian Community) have entered into mutual assistance agreements with the Chippewa County Health Department regarding notification of an occurrence of disease that may cause widespread illness. The Chippewa County Health Department and the Sault Ste. Marie Tribe of Chippewa Indians have also signed a mutual aid agreement regarding use of tribal property to provide mass health care in an emergency.

2. *Provisions or procedures governing the relationships between superior and inferior jurisdictions? (Include relationships among all levels of government and the federal government. See also section I-C above specifically related to quarantine orders.)*

   Under the Public Health Code, MDCH and local health departments have concurrent authority over the prevention and control of diseases within the local health department's jurisdiction. Both have powers to issue emergency orders and take other action as appropriate to address an imminent danger, epidemic, or other public health emergency. In exercising their authority, the state and local health departments must cooperate and coordinate their responses. MDCH has jurisdiction statewide. If MDCH's director determines that conditions anywhere in the state constitute a menace to the public health, she has the authority to take full charge of the administration of applicable state and local health laws, rules, regulations, and ordinances. MCL 333.2251(3). Further, while disease prevention and control programs are primarily the responsibility of local public health, MDCH's director can take primary responsibility as warranted by circumstances. MCL 333.2235(2).

3. *What is the legal authority of the jurisdiction to accept, utilize, or make use of federal assistance?*

   MDCH and local health departments are authorized to receive grants from the federal government, in accordance with the law, rules and procedures of the state (and local governing unit with regard to local health departments). MCL 333.2226(e), 333.2435(e). As discussed above, the Public Health Code authorizes both the state and local health departments to enter into an agreement, contract, or arrangement with other governmental entities, which would include the federal government.

D. *Sufficiency of powers/authorities to cooperate with other jurisdictions <u>in the absence</u> of a declared public health emergency – Discuss the sufficiency of the authorities and powers to cooperate with other jurisdictions in the absence of a declared public*

health emergency, and any potential gaps or uncertainties in those powers and authorities.

1. *Potential gaps?*

   None

2. *Uncertainties?*

   With the exception of EMAC, individuals preparing this report do not know whether Congress has given its consent to the state entering into agreements with other states or provinces. Further, it is not always clear when Congressional consent is required.

   Individuals preparing this report do not know the extent of inter-jurisdictional agreements that concern law enforcement and the existence of other agreements not discussed in this report that are relevant to inter-jurisdictional cooperation regarding a serious communicable disease outbreak.

3. *Legal provisions that could inhibit, limit, or modify the jurisdiction's legal basis to cooperate with other jurisdictions? (Examples: state administrative practice acts, specific provisions in law related to inter-jurisdictional cooperation.)*

   None known.

E. *Interagency/inter-jurisdictional agreements on restricting movement of persons – Where available, identify and provide copies of all interagency and inter-jurisdictional agreements (both interstate and intrastate) relating to restrictions on the movement of persons during public health emergencies and the enforcement of such restrictions*

As discussed above, there are no provisions or procedures for inter-jurisdictional cooperation that specifically cover restrictions on the movement of persons during a public health emergency. However, the laws and agreements discussed above would facilitate response to a public health emergency and could provide resources to support social distancing measures if needed.

IV. Closure of Public Places

A. Legal powers/authorities to order closure of public places during a declared public health emergency – What are the powers, authorities, or procedures to enable, support, authorize, or otherwise provide a legal basis for closure by state or local officials of public places (e.g., public facilities, private facilities, and business) during a declared public health emergency? For each of the jurisdiction's legal powers, authorities, and procedures including, but not limited to, umbrella, general public health, or emergency powers or authorities, that could be used to authorize, prohibit, or limit closure, please address the following issues:

1. What are the powers and authorities authorizing closure?

The governor is empowered to declare a disaster or emergency under circumstances where there is the threat or occurrence of widespread loss of life or injury. If the declaration involves a health emergency, an important component of mitigation would be limiting the exposure of well persons to those carrying the disease. Inasmuch as people may be infectious before they are symptomatic, closing places where large numbers of people gather in close proximity to one another may be the single most effective mitigation measure to be undertaken by the department. Accordingly, the governor, under the authority of the Emergency Management Act to direct such action "which are necessary and appropriate under the circumstances," may order the closure of public places and cancellation of public gatherings if the closures and cancellations are needed to protect the public health from spread of pandemic influenza.

2. What are the powers and authorities prohibiting closure?

None known. But, there may be compensation issues.

3. Who can declare or establish closure?

Under the Emergency Management Act, such orders are issued by the governor.

4. Who makes the decision to close a public place?

Same as above.

5. What is the process for initiating and implementing closure?

No specific process is provided in the Emergency Management Act once a declaration is made.

6. What is the process for enforcing closure and who enforces it?

Violations of executive orders are crimes and may be enforced by any law enforcement officer.

7. *What are the penalties for violating closure?*

   Violation is a misdemeanor punishable by 90 days jail, a $500 fine, or both.

8. *What are the procedural and due process requirements for closure?*

   The requirements depend on whether an order requiring closure is considered a "taking" of property, requiring due process and compensation. See D.1. below (pages 32-33).

9. *Is compensation available for closure? If so, what is it?*

   Not specifically provided. But some question exists. See MCL 30.406, which addresses compensation for property and services, providing "compensation for property shall be paid only if the property is taken or otherwise used in coping with a disaster or emergency and its use or destruction is ordered by the governor or the director. A record of all property taken or otherwise used under this act shall be made and promptly transmitted to the office of the governor."

10. *How long can a closure last?*

    28 days unless extended by joint resolution of the legislature.

11. *How can it be renewed?*

    By joint resolution of the legislature.

12. *Describe the authority/process/notice requirements for ending a closure.*

    If ended by executive order, notice of termination is same as order of closure; by such means calculated to bring it to the attention of the general public.

B. *Sufficiency of powers/authorities to authorize closure of public places during a <u>declared</u> public health emergency – Discuss the sufficiency of the authorities and powers to authorize closure of public places during a declared public health emergency, and any potential gaps or uncertainties in those powers and authorities.*

1. *Potential gaps?*

   Compensation is the main question.

2. *Uncertainties?*

   Same as above.

3. *Legal provisions that could inhibit, limit, or modify the jurisdiction's authority to close public places? (Examples: state administrative practice acts, specific provisions in law related to closure.)*

   None known.

C. *Legal powers/authorities to order closure of public places <u>in the absence</u> of a declared public health emergency – What are the powers, authorities, or procedures to enable, support, authorize, or otherwise provide a legal basis for closure by state or local officials of public places (e.g., public facilities, private facilities, and business) in the absence of a declared public health emergency? For each of the jurisdiction's legal powers, authorities, and procedures that could be used to authorize, prohibit, or limit closure, please address the following issues: What are the powers and authorities authorizing closure?*

1. *What are the powers and authorities prohibiting closure?*

   None known. There may be compensation issues.

2. *Who can declare or establish closure?*

   MDCH's director and local health officers have the authority to issue an imminent danger order, and require closure of public places as action required to avoid, correct, or remove the imminent danger. Alternatively, the director or local health officer could issue an emergency order to control an epidemic and require closure of public places as a procedure to be followed during the epidemic.

3. *Who makes the decision to close a public place?*

   MDCH's director or the local health officers for their own jurisdictions.

   The MDCH Pandemic Plan as well as the Michigan Pandemic Influenza State Operational Plan addresses the potential closure of public places in a moderate (1957-like) or severe pandemic:

   - School dismissals or closures (including daycares and colleges and universities
   - Faith-based organizations
   - Closure of public and private facilities
   - Dismissal of entertainment activities/sports venues, etc
   - Canceling of public gatherings

4. *What is the process for initiating and implementing closure?*

   No specific process is set out in the Public Health Code. The process is the same as for issuing any other emergency order.

5. *What is the process for enforcing closure and who enforces it?*

   Violation of the orders of MDCH's director is a misdemeanor, enforceable by any law enforcement officer. Additionally, MDCH (and local health officers) can go to court to seek enforcement of its orders. MCL 333.2251(2), MCL 333.2451(2). The court could punish civilly or criminally via contempt. MDCH (and local health officers) may also maintain injunctive action "to restrain, prevent, or correct a violation of a law, rule, or order which the department [local health

officer] has the duty to enforce or to restrain, prevent, or correct an activity or condition which the department believes adversely affects the public health." MCL 333.2255, MCL 333.2465.

6. *What are the penalties for violating closure?*

   Violation of an order of MDCH's director is a misdemeanor, punishable by six months in jail or $200, or both. MCL 333.2261. Enforcement and penalties for violation of a local health officer's order depends on local law.

7. *What are the procedural and due process requirements for closure?*

   As discussed under "gaps" below (pages 32-33), MDCH needs to consult with the Department of Attorney General on constitutional parameters.

8. *Is compensation available for closure? If so, what is it?*

   No. This issue needs to be reviewed and addressed as a legal and a policy issue.

9. *How long can a closure last?*

   There is no time limit on any of the state or local health officers' orders; nor is there a renewal requirement. The health officer who issued an emergency order would be responsible for monitoring the conditions that warranted the order, and respond as appropriate by modifying or rescinding the order as conditions change. Notice of any modifications, or rescission, would need to be sufficient to reasonably notify individuals or groups who are subject to the order.

10. *How can it be renewed?*

    See answer to 9 above. There is no renewal requirement.

11. *Describe the authority/process/notice requirements for ending a closure.*

    Closure is ended the same way it is commenced. An order is issued terminating the prior order closing public places, with notice sufficient to reasonably notify the public.

D. *Sufficiency of powers/authorities to authorize closure of public places <u>in the absence</u> of a declared public health emergency – Discuss the sufficiency of the authorities and powers to authorize closure of public places in the absence of a declared public health emergency, and any potential gaps or uncertainties in those powers and authorities.*

1. *Potential gaps?*

   Closing public places, and related prohibitions on gatherings, raise several issues under the United States and Michigan Constitutions. Under the Michigan Constitution, these include:

- No person shall be deprived of liberty or property without due process of law. Const 1963, Art I, §17.
- Freedom of assembly, free speech, and religion. Art I §§3, 4, 5.
- Eminent domain; private property shall not be taken for public use without just compensation. Const 1963, Art X, §2

MDCH will need to obtain legal advice from the Department of Attorney General on constitutional parameters for closing public places, prohibiting gatherings, and measures to restrict movement. Procedures and process need developed based both on legal and policy considerations.

2. *Uncertainties?*

   See answer above.

3. *Legal provisions that could inhibit, limit, or modify the jurisdiction's authority to close public places? (Examples: state administrative practice acts, specific provisions in law related to closure.)*

   Only those already noted.

V. Mass Prophylaxis Readiness

A. *Legal powers/authorities for issuance of blanket prescriptions and use of other mass prophylaxis measures during a <u>declared</u> public health emergency – If it became necessary during a declared public health emergency to issue blanket prescriptions or order the use of other mass prophylaxis measures to enable emergency mass distribution of medical countermeasures (e.g., antivirals, vaccines), what legal powers, authorities, and procedures could enable, support, authorize or otherwise provide a legal basis for doing so? List all legal powers and authorities, policies, and procedures that could be used to authorize blanket prescriptions or other mass prophylaxis measures. For each of the powers and authorities listed, please address:*

1. *Who would make the decision to issue the blanket prescriptions or use other mass prophylaxis measures?*

   In a declared state of emergency the governor can suspend the regulatory statutes and regulations that would in any way hinder or delay necessary action in coping with the emergency or disaster. MCL 30.405(1)(a). The governor is further authorized to utilize all available resources of the state government and each political subdivision of the state as reasonably necessary to cope with the emergency or disaster. MCL 30.405(1)(b). Under a declared state of disaster or emergency the governor could authorize a suspension of the statutory and regulatory requirements for prescriptions. The governor could directly authorize for mass prescribing and dispensing of vaccines, antivirals and other medications by others such as nurses, dentists, veterinarians and Emergency Medical Technicians (EMT).

2. *Who has the authority to issue the blanket prescriptions or order the use other mass prophylaxis measures?*

   Under the Emergency Management Act, the power to order the use of mass prophylaxis is given to the governor. Since the governor does not meet the licensing requirements for a "prescriber," she cannot issue blanket prescriptions unless she suspends the statutory and regulatory requirements for prescriptions. The Director of MDCH also has the legal authority to order the use of mass prophylaxis, and the Chief Medical Executive for MDCH has the authority to issue blanket prescriptions. Under the Michigan Emergency Management Plan (MEMP), which is consistent with the National Response Plan, MDCH is the lead agency for Emergency Support Function (ESF) #8. ESF #8 concerns the public health and mental health needs of the community, and includes coordinating the allocation of medications essential to public health and appropriate medical services. Thus, decisions regarding mass prophylaxis will most likely be made by the MDCH Director, with advice from the Chief Medical Executive, in addition consultation from the OPHP Director, the State Epidemiologist, and other Executive Staff or subject matter experts.

3. *How would the countermeasures be distributed?*

   The Emergency Management Act does not specifically address distribution of countermeasures. However, detailed distribution plans for countermeasures for each federal stage/WHO phase are part of the MDCH Pandemic Influenza Plan and the MDCH Strategic National Stockpile Plan. Response includes:

   - Receipt, storage and distribution of Strategic National Stockpile to local jurisdictions (carried out by MDCH's Office of Public Health Preparedness, as set out in the SNS Plan)
   - Coordinating local health department mass vaccination clinics
     Monitoring of antiviral or vaccine administration with the Michigan Care Improvement Registry (MCIR)[4]
     Monitoring of vaccine administration with MCIR
     Monitoring of adverse effects (VAERS, AERS)
   - Dispensing of antibiotics for post-exposure prophylaxis (CME's Standing Orders/ local medical directors Standing Orders) from bioterror or communicable disease agent
   - Dispensing of KI in a nuclear emergency
   - Dispensing chemical or biological agent remedies
     MEDDRUN is a state resource
     Chempack is a federal resource for chemical response

   Distribution will depend upon the event. Mobilization of the SNS requires a

[4] Effective April 4, 2006, Michigan amended its law that created the Michigan Child Immunization Registry to expand it to a "care improvement registry" that could include immunization information on adults and be used during in an emergency to monitor antiviral or vaccine administration. MCL 333.9207.

Governor's Order, but local and state resources have to be depleted first. Before that MEDDRUN and CHEMPACK can be mobilized emergently within the first 24-48hours of an event. SNS Plans and the MEPPP address the procedures for such counter measures. Mass Dispensing Plans and Mass Vaccination Plans are outlined for every Local Health Department. Vaccine and antiviral countermeasure distribution plans are in place within the SNS Plan for Pandemic influenza, and distribution will occur pre-event; that is, in WHO Phases 4 and 5, so as to pre-position resources.

B. *Sufficiency of authorities/procedures to issue blanket prescriptions or order the use of other mass prophylaxis measures during a <u>declared</u> public health emergency – Discuss the sufficiency of the authorities and powers to issue blanket prescriptions or order the use of other mass prophylaxis measures during a declared public health emergency, and any potential gaps or uncertainties in those powers and authorities.*

1. *Potential gaps?*

   None known.

2. *Uncertainties?*

   None known.

3. *Legal provisions that could inhibit, limit, or modify the jurisdiction's authority to issue blanket prescriptions or order the use of other mass prophylaxis measures? (Examples: state administrative practice acts, specific provisions in law related to blanket prescriptions/mass prophylaxis.)*

   None known.

C. *Legal powers/authorities for issuance of blanket prescriptions and use of other mass prophylaxis measures <u>in the absence of</u> a declared public health emergency – If it became necessary in the absence of a declared public health emergency to issue blanket prescriptions or order the use of other mass prophylaxis measures to enable emergency mass distribution of medical countermeasures (e.g., antivirals, vaccines), what legal powers, authorities, and procedures could enable, support, authorize or otherwise provide a legal basis for doing so? List all legal powers and authorities, policies, and procedures that could be used to authorize such blanket prescriptions or order the use of other mass prophylaxis measures. For each of the powers and authorities listed, please address:*

1. *Who would make the decision to issue the blanket prescriptions or use other mass prophylaxis measures?*

   State and local public health would operate under the authority of the Public Health Code. The director of MDCH, and the local health officers, would make the decision whether to use mass prophylaxis measures, in consultation with the chief medical executive or medical director. If MDCH's director is not a physician, the director must designate a physician as chief medical executive who

is responsible to the director for the medical content of policies and programs. MCL 333.2202(2). Similarly, if a local health officer is not a physician, a physician must be appointed as medical director "responsible for developing and carrying out medical policies, procedures, and standing orders and for advising the administrative health officer on matters related to medical specialty judgments. R 325.13001.

2. *Who has the authority to issue the blanket prescriptions or order the use other mass prophylaxis measures?*

   The director of MDCH, and the local health officer for his or her jurisdiction, have the authority to order the use of mass prophylaxis measures. Most likely, this would be done as an emergency order to respond to an imminent threat or danger to the public health or as an emergency order to address an epidemic. MCL 333.2251, 333.2253, 333.2451, 333.2453. If the state or local health officer is not a physician, blanket prescriptions would need to be issued by the chief medical executive or medical director. Standing orders for prescriptions and protocols for administering are already in place for pandemic influenza for mass dispensing sites. When MDCH approves a mass immunization program to be administered in the state, health personnel employed by a governmental entity who are required to participate in the program, or any other individual authorized by the director or a local health officer to participate in the program without compensation, are not liable to any person for civil damages as a result of an act or omission causing illness, reaction, or adverse effect from the use of a drug or vaccine in the program, except for gross negligence or willful and wanton misconduct. MCL 333.9203(3)

3. *How would the countermeasures be distributed?*

   Mass vaccination clinics, Points of Distribution sites- see local and State Mass Dispensing/ Vaccination and the SNS plans

D. *Sufficiency of authorities/procedures to issue blanket prescriptions or order the use of other mass prophylaxis measures <u>in the absence of</u> a declared public health emergency – Discuss the sufficiency of the authorities and powers to issue blanket prescriptions or order the use of other mass prophylaxis measures in the absence of a declared public health emergency, and any potential gaps or uncertainties in those powers and authorities.*

1. *Potential gaps?*

   None known.

2. *Uncertainties?*

   None known.

3. *Legal provisions that could inhibit, limit, or modify the jurisdiction's authority to issue blanket prescriptions or order the use of other mass prophylaxis measures?*

(Examples: state administrative practice acts, specific provisions in law related to blanket prescriptions mass prophylaxis.)

The Public Health Code recognizes the right of individuals to refuse medical treatment, testing, or examination based on religious beliefs. MCL 333.5113. This right is not absolute, however, and a court may impose certain conditions on a carrier of a serious communicable disease who is a health threat to others under Part 52 of the Public Health Code, MCL 333.5201 *et seq.*

Conclusion

Michigan has many laws, response plans, and agreements in place for effective response to pandemic influenza, including pharmaceutical and social distancing measures. Completing this assessment has been valuable to identify areas of law that require further research, discussion, and development of process and procedures. This is especially true for social distancing measures that implicate constitutional rights of due process, freedom of religion, freedom of speech and assembly, and compensation for private property taken for the common good. Participating in this project has also emphasized the importance of policy and ethical considerations, as well as legal issues, in planning/implementing response measures to pandemic influenza. For example, the closure of businesses results in loss of income to the business owner. This raises legal - as well as policy and ethical questions - about the burden on the business owner for the common good. Similarly, the single mother without sick leave bears the burden of loss of income by home quarantine because she happened to be on a plane with sick passengers.

Completing this assessment has also helped identify potential gaps in response plans involving particular measures (such as mass transit limitations and curfew) and highlighted some logistical challenges (such as enforcement of measures). From this assessment it appears that several areas need to be pursued further with other government partners, namely implementation of social distancing measures involving Michigan's constitutionally created universities, on federal lands, and on Indian land.

VI. Other Issues

A. Other resources (legal powers and authorities, plans, policies or procedures, etc.) that your state might employ or rely upon to assist in pandemic response and the implementation of social distancing measures and/or mass prophylaxis readiness?

In addition to resources described above, the Attorney General's Office is completing a bench book covering public health emergencies.

MDCH's Director issued a memorandum in July 2004 explaining to health care providers that the HIPAA privacy rule does not impact state law requiring that identifiable patient information be provided to public health staff related to the prevention and control of serious communicable disease. This memorandum is in both hard copy and electronic form and widely available to assist public health staff address concerns or refusal to provide requested health information based on HIPAA.

B. Other such resources (e.g., laws, regulations, or policies; money, personnel, research, training) you do not currently have but would like to have? If so, what are they?

It appears that all levels of government have concerns about the source(s) of funding to implement restrictions on movement and social distancing measures.

C. Anything unique to your state in terms of pandemic preparedness and response measures related to social distancing or mass prophylaxis?

Michigan has the second highest person volume crossing (after New York) from Ontario to the United States, including three bridges and one tunnel. In addition to entry through the U.S./Canadian border, Michigan has four international airports.

VII. Table of Authorities

Attach a Table of Authorities as an appendix to the report, listing citations for all relevant legal authorities or procedures, including statutes, regulations, case law, Attorney General opinions, etc. Please list the code section or citation, followed by the text and a hyperlink, if available.

A Table of Authorities is provided as Appendix 1.

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

IN THE STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN HOUSE OF REPRESENTATIVES and MICHIGAN SENATE,

Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity as Governor for the State of Michigan,

Defendant.

Case No. 20- -MZ

Hon.

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EXHIBIT 12

CONSITUTIONAL PROVISIONS AND STATUTES INVOLVED

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

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CONSTITUTIONAL PROVISIONS

Const 1963, art 3, § 2
Sec. 2. The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

Const 1963, art 4, § 1
Except to the extent limited or abrogated by article IV, section 6 or article V, section 2, the legislative power of the State of Michigan is vested in a senate and a house of representatives.

Const 1963, art 4, § 6
(1) An independent citizens redistricting commission for state legislative and congressional districts (hereinafter, the "commission") is hereby established as a permanent commission in the legislative branch. …

Const 1963, art 4, § 51
The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.

Const 1963, art 5, § 1
Except to the extent limited or abrogated by article V, section 2, or article IV, section 6, the executive power is vested in the governor.

Const 1963, art 5, § 2
All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Organization of executive branch; assignment of functions; submission to legislature.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

Const 1963, art 5, § 15
The governor may convene the legislature on extraordinary occasions.

Const 1963, art 5, § 16
The governor may convene the legislature at some other place when the seat of government becomes dangerous from any cause.

Const 1963, art 5, § 17
The governor shall communicate by message to the legislature at the beginning of each session and may at other times present to the legislature information as to the affairs of the state and recommend measures he considers necessary or desirable.

STATUTES

MCL 8.8

References to Michigan Compiled Laws and statutes

(1) As used in this section, "law" means any of the following:

(a) A public act of the legislature.

(b) An initiated law adopted by the people.

(c) An executive order of the governor submitted to the legislature pursuant to section 2 of article 5 of the state constitution of 1963 and having the force of law.

MCL 10.31

(1) During times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, when public safety is imperiled, either upon application of the mayor of a city, sheriff of a county, or the commissioner of the Michigan state police or upon his or her own volition, the governor may proclaim a state of emergency and designate the area involved. After making the proclamation or declaration, 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. Those orders, rules, and regulations may include, but are not limited to, providing for the control of traffic, including public and private transportation, within the area or any section of the area; designation of specific zones within the area in which occupancy and use of buildings and ingress and egress of persons and vehicles may be prohibited or regulated; control of places of amusement and assembly and of persons on public streets and thoroughfares; establishment of a curfew; control of the sale, transportation, and use of alcoholic beverages and liquors; and control of the storage, use, and transportation of explosives or inflammable materials or liquids deemed to be dangerous to public safety.

(2) The orders, rules, and regulations promulgated under subsection (1) are effective from the date and in the manner prescribed in the orders, rules, and regulations and shall be made public as provided in the orders, rules, and regulations. The orders, rules, and regulations may be amended, modified, or rescinded, in the manner in which they were promulgated, from time to time by the governor during the pendency of the emergency, but shall cease to be in effect upon declaration by the governor that the emergency no longer exists.

(3) Subsection (1) does not authorize the seizure, taking, or confiscation of lawfully possessed firearms, ammunition, or other weapons.

MCL 10.32
It is hereby declared to be the legislative intent to invest the governor with sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster. The provisions of this act shall be broadly construed to effectuate this purpose.

MCL 10.33
The violation of any such orders, rules and regulations made in conformity with this act shall be punishable as a misdemeanor, where such order, rule or regulation states that the violation thereof shall constitute a misdemeanor.

MCL 28.6
(1) The commissioner and each officer of the department are vested with the powers of a conservator of the peace. They may also apply to any judicial officer of the state for the issuance of search warrants, warrants of arrest or any other criminal process, or orders necessary when the institution of criminal proceedings for the discovery or punishment of a felony or a misdemeanor of any degree is ordered in writing by the attorney general in any case where the proper prosecuting attorney fails or refuses to act or give his or her approval. The commissioner and each officer of the department have all the immunities and matters of defense available to conservators of the peace or sheriffs, or both, in any action brought against them by virtue of acts done in the course of their employment.

(2) Any member of the department may serve and execute all criminal and civil process, when directed to do so by the governor or the attorney general, in actions and matters in which the state is a party. The commissioner and the department are under the immediate control and direction of the governor, and any member of the department may be employed by the attorney general in any investigation or matter under the jurisdiction of his or her department.

(3) The commissioner may, upon the order of the governor, call upon any sheriff or other police officer of any county, city, township, or village, within the limits of their respective jurisdictions, for aid and assistance in the performance of any duty imposed by this act. Upon being notified or called upon for aid and assistance, the officer concerned shall comply with the order to the extent requested. Refusal or neglect to comply with the order is misfeasance in office, and shall subject the officer refusing or neglecting to comply with the order to removal from office.

(4) The commissioner shall formulate and put into effect plans and means of cooperating with the local police and peace officers throughout the state for the purpose of the prevention and discovery of crimes and the apprehension of criminals. Local police and peace officers shall cooperate with the commissioner in those plans and means. Every telegraph and telephone company operating

within this state shall grant priority of service to the police agencies and to the state police when notified that the service is urgent and in the interests of the public safety.

(5) The commissioner and all officers of the department have all the powers of deputy sheriffs in the execution of the criminal laws of the state and of all laws for the discovery and prevention of crime, and have authority to make arrests without warrants for all violations of the law committed in their presence, including laws designed for the protection of the public in the use of the highways of the state, and to serve and execute all criminal process. The commissioner and all officers of the department also have the authority to exercise the powers of deputy sheriffs in the execution of civil bench warrants issued by a circuit court pursuant to any domestic relations matter and to serve a personal protection order or arrest an individual who is violating or has violated a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a. The commissioner and all officers of the department shall cooperate with other state authorities and local authorities in detecting crime, apprehending criminals, and preserving law and order throughout the state.

MCL 30.401
This act shall be known and may be cited as the "emergency management act".

MCL 30.402
As used in this act:
(e) "Disaster" means an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause, including, but not limited to, fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation, explosion, or hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities, riots, or civil disorders.

* * *

(h) "Emergency" means any occasion or instance in which the governor determines state assistance is needed to supplement local efforts and capabilities to save lives, protect property and the public health and safety, or to lessen or avert the threat of a catastrophe in any part of the state.

MCL 30.403

(1) The governor is responsible for coping with dangers to this state or the people of this state presented by a disaster or emergency.

(2) The governor may issue executive orders, proclamations, and directives having the force and effect of law to implement this act. Except as provided in section 7(2) 1, an executive order, proclamation, or directive may be amended or rescinded by the governor.

(3) The governor shall, by executive order or proclamation, declare a state of disaster if he or she finds a disaster has occurred or the threat of a disaster exists. The state of disaster shall continue until the governor finds that the threat or danger has passed, the disaster has been dealt with to the extent that disaster conditions no longer exist, or until the declared state of disaster has been in effect for 28 days. After 28 days, the governor shall issue an executive order or proclamation declaring the state of disaster terminated, unless a request by the governor for an extension of the state of disaster for a specific number of days is approved by resolution of both houses of the legislature. An executive order or proclamation issued pursuant to this subsection shall indicate the nature of the disaster, the area or areas threatened, the conditions causing the disaster, and the conditions permitting the termination of the state of disaster. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be promptly filed with the emergency management division of the department and the secretary of state, unless circumstances attendant upon the disaster prevent or impede its prompt filing.

(4) The governor shall, by executive order or proclamation, declare a state of emergency if he or she finds that an emergency has occurred or that the threat of an emergency exists. The state of emergency shall continue until the governor finds that the threat or danger has passed, the emergency has been dealt with to the extent that emergency conditions no longer exist, or until the declared state of emergency has been in effect for 28 days. After 28 days, the governor shall issue an executive order or proclamation declaring the state of emergency terminated, unless a request by the governor for an extension of the state of emergency for a specific number of days is approved by resolution of both houses of the legislature. An executive order or proclamation issued pursuant to this subsection shall indicate the nature of the emergency, the area or areas threatened, the conditions causing the emergency, and the conditions permitting the termination of the state of emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be promptly filed with the emergency management division of the department and the secretary of state, unless circumstances attendant upon the emergency prevent or impede its prompt filing.

MCL 30.404

(3) The governor may, with the approval of the state administrative board, enter into a reciprocal aid agreement or compact with another state, the federal government, or a neighboring state or province of a foreign country. A reciprocal aid agreement shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; the services of the national guard when not mobilized for federal service or state defense force as authorized by the Michigan military act, Act No. 150 of the Public Acts of 1967, as amended, being sections 32.501 to 32.851 of the Michigan Compiled Laws, and subject to federal limitations on the crossing of national boundaries by organized military forces; health, medical, and related services; fire fighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; and other necessary equipment, facilities, and services. A reciprocal aid agreement shall specify terms for the reimbursement of costs and expenses and conditions necessary for activating the agreement. The legislature shall appropriate funds to implement a reciprocal aid agreement.

MCL 30.405

(1) In addition to the general authority granted to the governor by this act, the governor may, upon the declaration of a state of disaster or a state of emergency do 1 or more of the following:

(a) Suspend a regulatory statute, order, or rule prescribing the procedures for conduct of state business, when strict compliance with the statute, order, or rule would prevent, hinder, or delay necessary action in coping with the disaster or emergency. This power does not extend to the suspension of criminal process and procedures.

(b) Utilize the available resources of the state and its political subdivisions, and those of the federal government made available to the state, as are reasonably necessary to cope with the disaster or emergency.

(c) Transfer the direction, personnel, or functions of state departments, agencies, or units thereof for the purpose of performing or facilitating emergency management.

(d) Subject to appropriate compensation, as authorized by the legislature, commandeer or utilize private property necessary to cope with the disaster or emergency.

(e) Direct and compel the evacuation of all or part of the population from a stricken or threatened area within the state if necessary for the preservation of life or other mitigation, response, or recovery activities.

(f) Prescribe routes, modes, and destination of transportation in connection with an evacuation.

(g) Control ingress and egress to and from a stricken or threatened area, removal of persons within the area, and the occupancy of premises within the area.

(h) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles.

(i) Provide for the availability and use of temporary emergency housing.

(j) Direct all other actions which are necessary and appropriate under the circumstances.

(2) Subsection (1) does not authorize the seizure, taking, or confiscation of lawfully possessed firearms or ammunition.

(3) A person who willfully disobeys or interferes with the implementation of a rule, order, or directive issued by the governor pursuant to this section is guilty of a misdemeanor.

MCL 30.406

(1) All persons within this state shall conduct themselves and manage their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to cope with the effects of a disaster or an emergency. This obligation includes appropriate personal service and the use or restriction of the use of property in time of a disaster or an emergency. This act neither increases nor decreases these obligations but recognizes their existence under the state constitution of 1963, the statutes, and the common law. Compensation for services or for the taking or use of property shall be paid only if obligations recognized herein are exceeded in a particular case and only if the claimant has not volunteered his or her services or property without compensation.

(2) Personal services may not be compensated by the state, or a subdivision or agency of the state, except pursuant to statute, local law, or ordinance.

(3) Compensation for property shall be paid only if the property is taken or otherwise used in coping with a disaster or emergency and its use or destruction is ordered by the governor or the director. A record of all property taken or otherwise used under this act shall be made and promptly transmitted to the office of the governor.

(4) A person claiming compensation for the use, damage, loss, or destruction of property under this act shall file a claim with the emergency management division of the department in the form and manner prescribed by the division.

(5) If a claimant refuses to accept the amount of compensation offered by the state, a claim may be filed in the state court of claims which court shall have exclusive jurisdiction to determine the amount of compensation due the owner.

(6) This section does not apply to or authorize compensation for either of the following:

(a) The destruction or damaging of standing timber or other property to provide a firebreak.

(b) The release of waters or the breach of impoundments to reduce pressure or other danger from actual or threatened flood.

MCL 30.407

(1) The director shall implement the orders and directives of the governor in the event of a disaster or an emergency and shall coordinate all federal, state, county, and municipal disaster prevention, mitigation, relief, and recovery operations within this state. At the specific direction of the governor, the director shall assume complete command of all disaster relief, mitigation, and recovery forces, except the national guard or state defense force, if it appears that this action is absolutely necessary for an effective effort.

(2) If the governor has issued a proclamation, executive order, or directive under section 3 1 regarding state of disaster or state of emergency declarations, section 5 regarding actions directed by the governor, or section 21 3 regarding heightened state of alert, the director may, with the concurrence of the governor, amend the proclamation or directive by adding additional counties or municipalities or terminating the orders and restrictions as considered necessary.

(3) The director shall comply with the applicable provisions of the Michigan emergency management plan in the performance of the director's duties under this act.

(4) The director's powers and duties shall include the administration of state and federal disaster relief funds and money; the mobilization and direction of state disaster relief forces; the assignment of general missions to the national guard or state defense force activated for active state duty to assist the disaster relief operations; the receipt, screening, and investigation of requests for assistance from county and municipal governmental entities; making recommendations to

the governor; and other appropriate actions within the general authority of the director.

(5) In carrying out the director's responsibilities under this act, the director may plan for and utilize the assistance of any volunteer group or person having a pertinent service to render.

(6) The director may issue a directive relieving the donor or supplier of voluntary or private assistance from liability for other than gross negligence in the performance of the assistance.

MCL 30.408

(1) The director of each department of state government, and those agencies of state government required by the Michigan emergency management plan to provide an annex to that plan, shall serve as emergency management coordinator for their respective departments or agencies. Each director may appoint or employ a designated representative as emergency management coordinator, provided that the representative shall act for and at the direction of that director while functioning in the capacity of emergency management coordinator upon the activation of the state emergency operations center, or the declaration of a state of disaster or emergency. Each department or agency emergency management coordinator shall act as liaison between his or her department or agency and the emergency management division of the department in all matters of emergency management, including the activation of the Michigan emergency management plan. Each department or agency of state government specified in the Michigan emergency management plan shall prepare and continuously update an annex to the plan providing for the delivery of emergency management activities by that agency or the department. The annexes shall be in a form prescribed by the director. The emergency management coordinator shall represent the agency or department head in the drafting and updating of the respective agency's or the department's emergency management annex and in coordinating the agency's or department's emergency management efforts with those of the other state agencies as well as with county and municipal governments.

(2) Upon the declaration of a state of disaster or a state of emergency by the governor, each state agency shall cooperate to the fullest possible extent with the director in the performance of the services that it is suited to perform, and as described in the Michigan emergency management plan, in the prevention, mitigation, response to, or recovery from the disaster or emergency. For purposes of this section, the judicial branch of this state is considered a department of state government and the chief justice of the Michigan supreme court is considered the director of that department.

MCL 30.409

(1) The county board of commissioners of each county shall appoint an emergency management coordinator. In the absence of an appointed person, the emergency management coordinator shall be the chairperson of the county board of commissioners. The emergency management coordinator shall act for, and at the direction of, the chairperson of the county board of commissioners in the coordination of all matters pertaining to emergency management in the county, including mitigation, preparedness, response, and recovery. In counties with an elected county executive, the county emergency management coordinator may act for and at the direction of the county executive. Pursuant to a resolution adopted by a county, the county boards of commissioners of not more than 3 adjoining counties may agree upon and appoint a coordinator to act for the multicounty area.

(2) A municipality with a population of 25,000 or more shall either appoint a municipal emergency management coordinator or appoint the coordinator of the county as the municipal emergency management coordinator pursuant to subsection (7). In the absence of an appointed person, the emergency management coordinator shall be the chief executive official of that municipality. The coordinator of a municipality shall be appointed by the chief executive official in a manner provided in the municipal charter. The coordinator of a municipality with a population of 25,000 or more shall act for and at the direction of the chief executive official of the municipality or the official designated in the municipal charter in the coordination of all matters pertaining to emergency management, disaster preparedness, and recovery assistance within the municipality.

(3) A municipality with a population of 10,000 or more may appoint an emergency management coordinator for the municipality. The coordinator of a municipality shall be appointed by the chief executive official in a manner provided in the municipal charter. The coordinator of a municipality with a population of 10,000 or more shall act for and at the direction of the chief executive official or the official designated by the municipal charter in the coordination of all matters pertaining to emergency management, disaster preparedness, and recovery assistance within the municipality.

(4) A municipality having a population of less than 10,000 may appoint an emergency management coordinator who shall serve at the direction of the county emergency management coordinator.

(5) A public college or university with a combined average population of faculty, students, and staff of 25,000 or more, including its satellite campuses within this state, shall appoint an emergency management coordinator for the public college or university. Public colleges or universities with a combined average population of faculty, students, and staff of 10,000 or more, including its satellite campuses

within this state, may appoint an emergency management coordinator for the public college or university.

(6) A person is not ineligible for appointment as an emergency management coordinator, or as a member of a county or municipal emergency services or emergency management agency or organization, because that person holds another public office or trust, and that person shall not forfeit the right to a public office or trust by reason of his or her appointment as an emergency management coordinator.

(7) A county coordinator may be appointed a municipal coordinator for any municipality within the county and a municipal coordinator may be appointed a county coordinator.

MCL 30.417

This act shall not be construed to do any of the following

* * *

(d) Limit, modify, or abridge the authority of the governor to proclaim a state of emergency pursuant to Act No. 302 of the Public Acts of 1945, being sections 10.31 to 10.33 of the Michigan Compiled Laws, or exercise any other powers vested in him or her under the state constitution of 1963, statutes, or common law of this state independent of, or in conjunction with, this act.

MCL 333.1106

(4) "Person" means an individual, partnership, cooperative, association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity. Person does not include a governmental entity unless specifically provided.

MCL 333.1299

(1) A person who violates a provision of this code for which a penalty is not otherwise provided is guilty of a misdemeanor.

(2) A prosecuting attorney having jurisdiction and the attorney general knowing of a violation of this code, a rule promulgated under this code, or a local health department regulation the violation of which is punishable by a criminal penalty may prosecute the violator.

MCL 333.2221

(1) Pursuant to section 51 of article 4 of the state constitution of 1963, the department shall continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups; development of health care facilities and agencies and health services

delivery systems; and regulation of health care facilities and agencies and health services delivery systems to the extent provided by law.

(2) The department shall:

* * *

(g) Have powers necessary or appropriate to perform the duties and exercise the powers given by law to the department and which are not otherwise prohibited by law.

MCL 333.2224

Pursuant to this code, the department shall promote an adequate and appropriate system of local health services throughout the state and shall endeavor to develop and establish arrangements and procedures for the effective coordination and integration of all public health services including effective cooperation between public and nonpublic entities to provide a unified system of statewide health care.

MCL 333.2226

The department may

* * *

(d) Exercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department

MCL 333.2253

(1) If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.

MCL 333.2261

Except as otherwise provided by this code, a person who violates a rule or order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than $200.00, or both.

MCL 550.1102

(2) It is the intention of the legislature that this act shall be construed to provide for the regulation and supervision of nonprofit health care corporations by the commissioner of insurance so as to secure for all of the people of this state who apply for a certificate, the opportunity for access to health care services at a fair and reasonable price.

La. Stat. 14:329.6

During times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the territorial limits of any municipality or parish, or in the event of reasonable apprehension of immediate danger thereof, and upon a finding that the public safety is imperiled thereby, the chief executive officer of any political subdivision or the district judge, district attorney, or the sheriff of any parish of this state, or the public safety director of a municipality, may request the governor to proclaim a state of emergency within any part or all of the territorial limits of such local government. Following such proclamation by the governor, and during the continuance of such state of emergency, the chief law enforcement officer of the political subdivision affected by the proclamation may, in order to protect life and property and to bring the emergency situation under control, promulgate orders affecting any part or all of the territorial limits of the municipality or parish …