



## Legislation Text

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### **Update on Potential Reconstitution of Board of Directors and Possible Resumption of Physical Meetings under the Michigan Open Meetings Act**

Agenda of: June 23, 2021  
Item No.: **2021-262**  
Amount: N/A

**TO:** The Honorable  
Board of Directors  
Great Lakes Water Authority

**FROM:** William M. Wolfson  
Chief Administrative and Compliance Officer  
Great Lakes Water Authority

**DATE:** June 20, 2021

**RE: Update on Potential Reconstitution of Board of Directors and Possible Resumption of Physical Meetings under the Michigan Open Meetings Act**

The Michigan Open Meetings Act (OMA) currently allows public bodies to meet virtually pursuant to a local state of emergency declaration. The GLWA Board of Directors is currently meeting virtually pursuant to local public health emergencies declared by Wayne County and the City of Detroit. These state of emergency declarations, which to this point have been renewed prior to their expiration, are currently scheduled to expire on June 30, 2021.

Last week, Michigan Governor Gretchen Whitmer announced that many restrictions related to the COVID-19 pandemic would be lifted on June 22, 2021. While the announcement was clear regarding many aspects, it was unclear as to how it may impact the workplace and if the State is contemplating different rules for public and private workplaces. To further complicate the situation, there is also a potential conflict within the federal government between the U.S. Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA), as well as between OSHA and MIOSHA. Some of these conflicts are likely due to the speed at which both federal and state officials are changing their COVID-19 guidance and the recency of those changes.

At its June 9, 2021 meeting, the Board's Operations and Resources Committee requested that the following update regarding the Board's form of meetings and future calendar be provided to the Board for its June 23, 2021 meeting:

**1. How often is the Board legally required to meet?**

GLWA's Articles of Incorporation, Article 9, A, indicate that the Board is required to meet "at least once during each quarter of each year."

**2. When is the Board next legally required to meet?**

Following its June 23, 2021 meeting, the Board is required to hold its next meeting on or before September 30, 2021.

**3. When is the next meeting of the Board anticipated to take place?**

At this point, staff anticipates canceling the Board meeting currently scheduled for July 14, 2021. This would mean that the next meeting of the Board would take place on Wednesday July 28, 2021 at 2:00 p.m.

**4. Will the next meeting of the Board be in-person or virtual?**

The answer to this question is not yet known. Unless either the Wayne County or the City of Detroit state of emergency is extended, the Board will be required to conduct its next meeting in-person. Previous extensions to the local states of emergency have been put in place less than a week prior to their expiration. Staff will advise the Board as soon as it is able to determine whether the states of emergency are extended.

**5. If the next meeting of the Board is required to be conducted in-person, will Board committee meetings also take place in-person?**

Board committees are advisory and therefore are not subject to the requirements of the OMA. Even if in-person OMA meetings are required as of July 1, 2021, staff anticipates that July 2021 Board committee meetings will still be conducted in a virtual environment. Once in-person OMA meeting requirements are in place, staff will align Board committees with those requirements as much and as quickly as possible.

**6. If the next meeting of the Board is required to be conducted in-person, will all Board members be required to be physically present?**

No. Michigan OMA, MCL15.263(2)(a), allows for Board members to participate in meetings from remote locations. The Act does require if a Board member is participating remotely, they must indicate the city, village, or township and the state from which they are participating.

As prior to the COVID-19 pandemic, GLWA maintains the capability to allow Board members to participate remotely via full duplex speakerphone. Nonetheless, staff is currently working to establish connectivity capabilities to allow hybrid meetings in which certain Board members or staff would be able to participate through video conferencing applications while others are physically present in the 735 Randolph 5<sup>th</sup> floor Boardroom.

**7. If the next meeting of the Board is required to be conducted in-person, will it be**

**conducted in the 735 Randolph Board room?**

In its May 26, 2021 meeting, certain Board Members indicated their preference to have in-person meetings conducted in the 735 Randolph Boardroom rather than at a rented facility. Staff is trying to align with this request while following the provisions of OMA Section 3.a, MCL 15.263(1)(a), which provide:

To the extent feasible under the circumstances, ensure adherence to social distancing and mitigation measures recommended by the U.S. Centers for Disease Control and Prevention for purposes of preventing the spread of COVID-19, including the measure that an individual remain at least 6 feet from anyone from outside the individual's household.

In addition to the OMA requirements which will likely place limits on staff presence and Board seating, the Detroit Fire Marshal has also placed temporary occupancy limits on physical occupancy of various locations within the 735 Randolph building. Moreover, the building was closed to the public earlier in the pandemic. As with the local states of emergency, staff expects further clarification on these limits, if any, in the next two weeks.

**8. If the next meeting of the Board is required to be conducted in-person, will there be anything special that Board members will need to do to prepare for this meeting?**

Yes. In addition to maintaining social distancing. Board members, GLWA staff, and visitors are required to wear face coverings at the meeting. If the meeting is to be held at a GLWA leased facility, Board members will need to advise GLWA's Chief Administrative and Compliance Officer (HIPAA privacy officer) that, regardless of vaccination status, between July 14 and 28, 2021, they have obtained a negative test result for COVID-19.

**9. Regardless of whether the next meeting of the Board is required to be conducted in-person, will you please provide an update on what the Board's schedule looks like for the remainder of 2021 and 2022?**

The Board's adoption of a consent agenda has allowed for greater focus and efficiency in the conduct of its meetings. While it is too early to state with certainty what meetings will be canceled and which ones will take place, staff currently anticipates that at minimum, previously scheduled meetings will be required on July 28, August 25, September 22, October 27, November 18 (Thursday) and December 16 (Thursday) will be required. Staff has not yet determined whether the December 8<sup>th</sup> meeting may be canceled.

Staff will submit a proposed schedule of meetings for 2022 to the Board in November 2021 for action no later than the Board's December meeting, staff currently projects two meetings in January and February and four meetings in March to complete budget deliberations. Assuming the budget is complete and there are not SRF or DWSRF issues, staff believes that only one of two scheduled meetings will be necessary in April and May 2022. Staff is currently projecting one or two meetings in June 2022, with one in July, August, September, October, and November 2002. Finally, staff is projecting at least one but possibly two meetings in December 2022.

**10. If Board meetings are required to be conducted in-person, are there other changes to**

**anticipated?**

The Board currently provides an item on its agenda for consent matters. Because of constraints on the receipt of public comment associated with virtual meetings, “communications” appears both under items for approval by consent and items for discussion on the Board’s agenda. This allows written public comment to be read into the record, received, and filed. With a return to in-person meetings, assuming no further amendments to the OMA, staff should be able to simplify this process.