



# Municipal Law News

March 2012

## **HB 5335: A PROPOSED CHANGE TO THE OMA TO PROHIBIT VOTING BY TELEPHONE AND VIDEO CONFERENCE**

- Anne M. Seurync

On February 28, 2012, the House passed HB 5335, an amendment that will change an over 25 year old Open Meetings Act interpretation by the Michigan Court of Appeals about telephone participation at public meetings. HB 5335 has not yet been adopted as law but has been referred to the Committee on Local Government and Elections.

Specifically, HB 5335 proposes to amend the OMA to prohibit voting by phone, video conference or other electronic means as follows: "A meeting is not open to the public if a member of the public body casts his or her vote on a decision of the public body without being physically present at the meeting." (Proposed addition to MCL 15.263(2)). Further, HB 5335 proposes changing the definition of "quorum" to include only those members physically present. MCL 15.263(3). Thus, only the members who physically attend at the meeting can vote and be counted as part of the quorum.

In the House Fiscal Analysis of HB 5335, the Legislature acknowledged that telephone and video conferencing did not violate the OMA based on case law and Attorney General opinions. Immediately after the adoption of the OMA, in 1977, the Attorney General opined that conference calls violated the Michigan Open Meetings Act ("OMA"). OAG, 1977-1978, No. 5783, p. 21 (March 8, 1977). However, the Michigan Court of Appeals later disagreed with that opinion. In *Goode v Dep't of Social Services*, 143 Mich App 756; 373 NW2d 210 (1985), the Court found that holding hearings via telephone conference did not per se violate the OMA. The Court noted that the hearings would be held through speaker phone and audible to everyone in the room. The Attorney General later opined that video conferences also did not per se violate the OMA. OAG, 1995-1996, No. 6835, p. 10 (January 13,

1995). The Attorney General concluded that a public body may conduct a meeting under the OMA without all the participants being physically present in the room: "The use of interactive television enhances the public's access to the meeting." The Attorney General also found that videoconferencing can be more desirable than telephone conferencing because representatives and members of the public can be seen as well as heard.

The OMA was originally enacted in 1976, and does not address many issues involved with new technology, such as videoconferencing or Skype. However, instead of adapting and taking advantage of the new means of communication, the House has proposed to prohibit its use entirely. For some municipalities, this new law may not impact their typical meetings. However, there are some public bodies in Michigan with legal jurisdictions that encompass one or more counties. With such a vast service area, telephone and video conferencing have been an important part of their operations. This may particularly affect authorities and other public bodies that provide joint service to a number of different municipalities. Thus, your public body should consider how this proposed new law would impact its operations and board meetings if finally adopted. ■■



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## **UPDATE: LOCAL MUNICIPALITIES RECENTLY ENABLED TO PROSECUTE "SUPER DRUNK" DRIVERS**

- Nichole Jongsma Derks

In February, 2012, Gov. Rick Snyder signed into law legislation that allows Michigan cities, townships, and villages to prosecute "super drunk drivers"—drivers whose blood alcohol levels exceed .17. Generally, local ordinances may not impose penalties beyond 93 days in jail or a \$500 fine. But the new legislation allows local prosecution of the Super Drunk Law to impose penalties of a maximum jail sentence of 180 days and a fine of up to \$700.00. So local municipalities can

enforce the Super Drunk law if it already has an ordinance (or if it adopts an ordinance) that adopts the Michigan Motor Vehicle Code (which includes the "Super Drunk" law MCL 257.625(1)(c)). If your municipality is already prosecuting drunk driving offenses, there is likely no need to update your current offense ordinance as long as it adopts the Michigan Motor Vehicle Code. But even if your municipality has adopted the Motor Vehicle Code, it will be necessary for ■►

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your municipality to specifically adopt the increased penalty of 180 days in jail and a fine of up to \$700.00 for violation of the ordinance corresponding to MCL 257.625(1)(c).

If it takes the right underlying steps, then a municipality has two options:

1. It can prosecute "Super Drunk" drivers under the new law and enforce the steeper penalties that go with it, or
2. It can refer those cases to their respective county prosecutors.

Should you have any questions about the Super Drunk law or municipal prosecutions, please contact [Nichole Derks](#) in our Lansing office. ■■



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## FOSTER SWIFT FREE WEBINARS

### Millages: What You Need to Know About Drafting Proposals and Placing Them on the Ballot

April 19, 2012: 11am - 12pm  
Presenter: Anne Seurync

Many municipalities are contemplating millages this year in order to properly fund municipal services. However, placing a millage proposal on the ballot can be an exciting but stressful time for a municipality.

This webinar will focus on the authority of a public body to place a millage on the ballot, the legal requirements for the ballot language and the legal aspects of running a millage campaign. Time will be scheduled to respond to your questions.

**REGISTRATION LINK**  
[www.gotomeeting.com/register/137150648](http://www.gotomeeting.com/register/137150648)

### An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities

June 6, 2012: 12pm - 1pm  
Presenters: Michael Blum & Johanna Novak

In 2011, the Legislature passed the Publicly Funded Health Insurance Contribution Act and the Municipal Partnership Act, and amended the Public Employment Relations Act (PERA). These changes in the law will significantly impact public sector finances, and limit the topics for bargaining between public sector unions and management.

This webinar will discuss the new legal requirements and restrictions required under these new laws, and the impact they likely will have on Michigan municipalities. Time will be scheduled to respond to your questions.

**REGISTRATION LINK**  
[www.gotomeeting.com/register/505813664](http://www.gotomeeting.com/register/505813664)

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