



# This Week in Lansing

MHSA • Muchmore Harrington Smalley & Associates, LLC

Highlights of the Latest Major Legislative, Administrative and Regulatory Activity in the State Capitol

Volume XXVIII – Issue 33

August 12, 2016

**NCSL CONFERENCE RECAP** – The *National Conference of State Legislatures (NCSL)* convened its annual *Policy Summit* in *Chicago* this week. *MHSA* was in the *Windy City* for the event and a short summary of some of the issues are below. These conferences are useful for *Senators, Representatives* and legislative staff to meet with their peers from other states to compare best practices and trends for public policy issues. *MHSA* participates in a number of these events throughout the year and is happy to assist its clients in evaluating opportunities to attend those events best suited for their policy needs.

**Water Infrastructure** – A panel of experts told lawmakers Wednesday that governments at all levels must step up their investment in water and sewer infrastructure to avoid a reoccurrence of the *Flint Water Crisis*, stressing the need for increased funding for the country’s aging water systems.

Panelist *John Covington*, a financial analyst with the *U.S. Environmental Protection Agency’s Water Infrastructure and Resiliency Finance Center*, commented on the importance of state funding as well as federal saying, “If you’re a legislator, I don’t think I have to tell you your constituents and various interests groups are coming to you every day asking for you to invest in the water and sewer infrastructure. I would encourage you not just look at the federal dollars...but there has to be a state investment. Every level of government is going to have to step up and provide some level of financing for these communities.”

The panel also included former *Representative Chris Kolb*, who co-chaired *Governor Rick Snyder’s Flint Water Advisory Task Force* and is president of the *Michigan Environmental Council*, and *Greg DiLoreto*, who is chair of the *American Society of Civil Engineers Report Card for America’s Infrastructure (ASCE)*. According to *Mr. DiLoreto*, the *ASCE* rates the country’s infrastructure, including water and sewer systems, every four years meaning the last report was in 2013 when a D grade was given. Having been given a D- grade four years prior to 2013, the water and sewer infrastructure improved slightly but *Mr. DiLoreto* added that will not be the case for long, stating, “The fact is all water pipes in America are deteriorating and we have some 240,000 water main breaks a year in this country and that number continues to grow. Those breaks, along with other things, caused us to lose some 2 trillion gallons of water in the last year - so 14-18% of the water we treat.”

*Mr. Kolb* echoed that sentiment and encouraged all state legislators to take advantage of federal funding and to set their allowable lead levels beyond those set as federal thresholds.

**Fantasy Sports Regulation** – Another issue discussed at the policy conference was the unanswered question of whether or not fantasy football leagues should be considered gambling. *Jeremy Kudon*, representing

*DraftKings* and *FanDuel*, said fantasy leagues are games of skill, unlike other forms of gambling and lottery games. *Sarah Rayme* of the *American Gaming Association* noted that though fantasy leagues are complementary to the gaming industry, regulation needs to be set so casinos and vendors can continue to work together. Other fantasy sports vendors and casinos agreed, but said the fee schedule and taxation model for fantasy leagues need to be more flexible than those applied to casinos as the industry, though portrayed as largely wealthy, is not and therefore needs to be regulated accordingly.

Along with regulation and taxation, legislators across all states also run into the issue of geo-fencing when it comes to the primarily online operated fantasy leagues. Geo-fencing, a means of drawing virtual boundaries around internet activity that coincide with the physical boundaries of the respective state, raises concerns about the effect it might have on the seasonal fantasy users that play on their mobile devices wherever they go, in turn crossing boundaries on a regular basis. *Steve Brubaker*, representing the *Small Businesses of Fantasy Sports*, suggested that states should therefore only use geo-fencing for the financial transaction portion of each fantasy league and sport.

Cyber Security – Legislators and other attendees were also presented with the topic of cyber security and attack response. *CBS* correspondent *Ted Koppel* discussed his book regarding the plan, or lack thereof, that governments should have in place in the event of a widespread cyber attack or outage. *Mr. Koppel* noted that the increased networking of electrical grids today allows for much easier access for hackers and, if attacked, could result in a months long outage. Suggesting states need to plan for the possibility of supplying “internal refugees” caused by such a blackout by stocking up food supplies, such as freeze-dried food which lasts for decades. *Meals Ready to Eat (MREs)* are another option, but only have a shelf life of five years which, according to *Mr. Koppel*, makes states hesitant to put forth funding if the supplies may go unused. Commenting on what he thinks a state government should have stocked for such an attack, *Mr. Koppel* said, “I would suggest that the federal government have an adequate supply to amass food supply for 20 to 30 million people for three months, and that would take about two to three years.”

As for public awareness of the planning process, *Mr. Koppel* said if too much information is released, a panic could ensue, therefore governments should be able to keep most of the information exempt from public disclosure laws. Cautioning against the risks that go along with releasing certain information publicly, *Mr. Koppel* referenced a bill introduced in the *U.S. Senate* last year known as the *Cybersecurity Disclosure* bill, which called for publicly-traded companies to state in *SEC* filings what cybersecurity measures the company had in place and also which board member, if any, had cybersecurity expertise. *Mr. Koppel* commented on the law and its possible flaw of releasing too much information publicly, saying, “We are going to end up falling victim to the very freedoms we think protect us.”

State Expenditures – The subject of evaluation of tax expenditures throughout the country was brought to the attendees’ attention Sunday as the *NCSL’s Task Force on State and Local Taxation* presented 15 draft questions state legislators should use when evaluating their state’s tax expenditures. Those questions, presented by the *Workgroup’s* chairman *Representative Jay Kauffman* of *Massachusetts*, include:

- Is the purpose, cost and benefit of each expenditure clear and are there clear metrics to determine its effectiveness?
- Is there a mechanism and protocol in place for determining the purpose, cost and benefit of any newly-proposed tax expenditure?
- Who has the authority and responsibility to conduct an analysis and make this determination? The governor? A non-partisan commission? An auditor? A legislative committee?
- If data is lacking for a thorough analysis, what additional data must be collected?
- What, if any, data sharing agreements, rules, or permissions are needed to ease the secure but effective collection of data? Are legislative or regulatory changes necessary to facilitate sharing?

- Does the analysis consider whether the tax expenditure is consistent with standard principles for effective tax systems, such as *NCSL's "Principles of a High Quality State Revenue System"*?
- Does the analysis undertaken consider alternative approaches to the state goal and compare the impact (cost/benefit) of the tax expenditure relative to other approaches and/or no tax break at all?
- Does the analysis consider unintended effects of the tax expenditure, such as disadvantaging those not receiving the benefits of the expenditure, or the leakage of benefits outside of the state?
- If the goal of a tax expenditure is to change behavior, does the analysis include some perspective on the degree to which the observed changes in behavior are attributable to the tax expenditure?
- Is there a mechanism in place for periodic review and re-approval/modification/elimination of existing tax expenditures?
- Is the frequency of review of each tax expenditure (or sets of similar tax expenditures) related to the revenue impact, amenability to change, provision of sufficient time to gather necessary data, and reflective of the capacity of the reviewing body?
- Should all, most, or many tax expenditures be subject to some kind of sunset provision?
- In the case of discretionarily-awarded, grant-like expenditures, has there been consideration given to a cap on the expenditure and/or a cap on the total amount that might be expended on such awards?
- In the case of discretionarily-awarded, grant-like expenditures, has the state adopted a "best practices" protocol that might include award criteria, sunsets, clawbacks, public disclosure and accountability, and a competitive application process?
- Is the state working with other states to reduce the pressure to make special tax deals that, in the name of economic development, complicate the tax codes and risk creating unfair advantages for some taxpayers within a state while contributing to the zero-sum competition between states?

The last question brought about the most discussion among attendees and panelists, with some asking it to be dropped from the list as competitions between states depends on incentives offered by each state. Others believed it was a discussion worth having and some have already included it into their annual deliberations and budget reports. The committee will finalize the report at its next meeting in November.

**DETROIT SCHOOL BONDS DOWNGRADED** – *Standard and Poor's (S&P)* announced late last week that the *Detroit Public Schools' (DPS)* bonds, recently separated from the rest of the district by newly passed legislation, have been downgraded as there is no formal plan in place to repay bondholders. If said bondholders are not repaid in full, the company noted, the district would be considered as defaulting on its bonds. Putting the bonds on its *CreditWatch* system, *S&P* issued two bond ratings for the district's 2011 and 2012 bonds, downgrading both from BB to BBB and BB- to BBB- respectively. With state aid payments meant to back both bonds, the *Wall Street* rating agency also mentioned concern for the repayments as bonds will not receive state school aid monies as of October 1 for the ***2016-17 Fiscal Year***.

As the old district will no longer have students, the school aid funds are not available and therefore the bond ratings could go down even further if not repaid by the new fiscal year, noted the company. Though the legislature made the decision to allow the new *Detroit* district to begin with no debt from the old district, including a system of bond repayment via property tax revenues, no set plans for repayment have begun at this time. *S&P* officials also noted that even though the other source of possible repayment, the *DPS* general obligation pledge, is still remaining, they do not base ratings on that pledge and therefore any "upward potential" for the district's bond ratings will not be considered.

On Monday of this week, spokesperson for the *State Treasury Department* said the downgrading of the bonds will not have effect on their repayment, contradicting *S&P's* conclusion, noting, "These bonds are an outstanding debt of the old DPS and the Michigan Finance Authority plans to refinance these bonds by October 20." Again, however, details of how the refinanced bonds will be repaid was unclear until the

financing statement is announced.

**REPORT: STATE NEEDS MORE SCHOOL FUNDING** – Members of the *State Board of Education* were presented with the findings of a recent study on Tuesday of this week in which it was concluded that the state is neither providing nor spending its money in the way that is most beneficial and necessary for schools. The study, conducted by *Augenblick, Palaich and Associates*, found that Michigan's minimum funding should be roughly \$8,667 per student with more going towards students with more needs. According to *Justin Silverstein* from *Augenblick, Palaich and Associates*, when it came to performance standards on state assessments, "In the highest-need districts, no district was able to meet the average."

Michigan *Superintendent of Public Instruction Brian Whiston* was also at the presentation and called upon the *Legislature* to reexamine school financing in regards to the study and its finding, even though he and the board members admitted some additional exploration of the findings might be necessary. *Mr. Silverstein* also noted the report did not look much at federal funds in the spending study as the report looked at district-level spending instead of building-level spending, causing his team to not look at charter schools for the study for relatively similar reasons.

*Mr. Whiston* commented on the report and the current funding formula, noting its crucial role in placing the state in the top 10 in years, saying, "We can't just pour our money into the current way of doing things. We can invest more generously into our education system, and in exchange, build a better system that offers a longer school year; more learning opportunities for students; more targeted professional development for educators; and needed wraparound services for English language learners and children in poverty."

**SOUTHEAST REGIONAL TRANSIT PROPOSAL WILL BE ON BALLOT** – As of Thursday last week, the heavily discussed \$4.7 billion, 20-year transit millage will appear on the ballots of four *Southeast Michigan* counties, including *Oakland* and *Macomb*. A compromise was reached after the aforementioned counties expressed serious concerns regarding the *Regional Transit Authority's (RTA)* governing system and pulled all support from the plan. With the deadline for ballot language submissions being August 14<sup>th</sup>, the *RTA Board* worked with *Oakland* and *Macomb County* executives, *L. Brooks Patterson* and *Mark Hackel* respectively, to reach an agreement of where revenue will be allocated and the amount of control counties have over that money.

The *Board* agreed to require that all allocation decisions and any changes to the master plan must receive at least one vote from each *RTA* county as well as the *City of Detroit*. Also a part of the compromise is the reallocation of millions of dollars in *Oakland County* to services for the disabled and other on-demand services for remote areas of the county that do not have access to regular bus routes. Control of the highly scrutinized *QLINE* streetcar in *Detroit* will also not be turned over to the *RTA* until 2027, three years after the originally proposed date of 2024.

Both *Mr. Hackel* and *Mr. Patterson*, along with *RTA Board* members that supported the original plan, applauded the compromise, with members noting it was worthwhile and necessary to work with the two counties and agree to said concessions. Though both county leaders were satisfied with the changes, neither have endorsed the master plan and have said the issue will be left up to their voters to decide. Praise of the compromise also came from *Governor Rick Snyder*, the *Detroit Regional Chamber* and the *Michigan Environmental Council*, all of which released statements of support after the agreement was announced that morning.

**ODDS & ENDS** – According to a recent poll commissioned by the *Detroit News* and completed by *Glengariff Group* shows *Democratic* presidential nominee *Hillary Clinton* having a 9 percentage point

lead over **Republican** presidential nominee **Donald Trump** in Michigan...**Attorney General Bill Schuette** announced last week that the **State of Michigan** is set to receive approximately \$3.4 million from pharmaceutical manufacturer **Cephalon** as the company delayed a generic version of the drug **Provigil** which in turn forced customers to pay higher costs than they needed to...officials in **Gogebic County** will see funds from the **Federal Highway Administration's Emergency Relief Program** in the near future, according to **Governor Rick Snyder**, to assist in repairing roads and culverts that were damaged by a July storm in the county...comments on **Enbridge Energy's** application for a permit to replace line supports on the company's **Line 5** pipeline under the **Straits of Mackinac** will be accepted through August 28<sup>th</sup> according to an announcement from the **Michigan Department of Environmental Quality** released Monday...contracts for **CareerStaff Unlimited** and **Maxim Health Care Services** were approved Tuesday of this week by the **State Administrative Board's Finance and Claims Committee** to provide certified nurse assistants to the **Grand Rapids Home for Veterans** after a harsh audit of the home found staffing requirements to be failing 81 percent of the time...the **Michigan Agency for Energy** and the **Michigan Public Service Commission** sent a letter to the **Midcontinent Independent System Operator** asking the company to conduct a study of the overall reliability of the state's electric grid...**Democratic** presidential nominee **Hillary Clinton** spoke in **Macomb County** on Thursday, focusing on economic issues...an issue paper recently released by the **Senate Fiscal Agency** could possibly result in separation of power issues as it addressed the roles of the **State Legislature** and the **Joint Committee on Administrative Rules** in the law and rules making processes...**Representative Brian Banks** (D-Harper Woods) was bound over for trial at the **36<sup>th</sup> District Court** in **Wayne County** on Tuesday this week facing charges of habitual offense as he has been convicted of several felonies and one misdemeanor...**Attorney General Bill Schuette** announced Tuesday that all **Department of Health and Human Services** and **Department of Environmental Quality** defendants involved in his **Department's** cases against state employees involved in the **Flint Water Crisis** will all attend one probable cause hearing after consolidation, which will allow one judge to hear witnesses with overlapping testimony...according to a report released by the **House Fiscal Agency** this week, state revenues for July 2016 were up by \$19.8 million compared to July 2015...the three **Detroit Casinos** saw a 9.1 percent increase in revenue from June to July of this year and a 3.2 percent increase from July 2015 to July 2016...25 candidates who ran for state office have still not filed campaign finance reports after over a week having passed since the elections and the reports due July 22...after a drone was spotted flying over the **Ionia Correctional Facility** last week, the **Michigan Corrections Organization** is supporting legislation that seeks to make it a felony to fly drones within 1,000 feet of a correctional facility...the **Michigan Department of Health and Human Services** will receive \$4.5 million from the **U.S. Substance Abuse and Mental Health Services Administration** to serve homeless, mentally ill and substance abuse populations in the areas of **Lansing, Berrien County** and **Detroit**...according to the **Pew Center's** recently released **Elections Performance Index**, Michigan had the second-highest voter registration rate for the 2014 elections among all 50 states and **District of Columbia**...approximately one in six participants of **Healthy Michigan**, the state's expanded **Medicaid** program, have qualified for incentives to encourage them to learn and exhibit healthy behaviors, according to the state's recently released report...the **Flint City Council** probation deadline has been extended to December of this year as of Thursday this week, the decision having been made by the state-appointed **Receivership Transition Advisory Board**...state legislators attending the **NCSL** conference this week in **Chicago** discussed the issue of police body cameras, with some states, including Michigan, having already passed legislation requiring officers to wear them at all times.

---

## MHSA • Muchmore Harrington Smalley & Associates, LLC

Patrick Harrington [pharrington@mhsa.com](mailto:pharrington@mhsa.com) | Jon Smalley [jsmalley@mhsa.com](mailto:jsmalley@mhsa.com) | Sandra Jones - [sjones@mhsa.com](mailto:sjones@mhsa.com)  
Adrian Cazal [acazal@mhsa.com](mailto:acazal@mhsa.com) | Bret Marr [bmarr@mhsa.com](mailto:bmarr@mhsa.com) | Evelyn Zois Sweeney [esweeney@mhsa.com](mailto:esweeney@mhsa.com)



---

This message and any attachments are solely for the use of the intended recipient (s) and may contain information that is privileged, proprietary and/or confidential. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify by return email and delete this message from your system.