



# This Week in Lansing

MHSA • Muchmore Harrington Smalley & Associates, LLC

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

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**JUVENILE JUSTICE REFORMS SEE DISCUSSION IN SENATE COMMITTEE** – On Tuesday of this week, members of the *Senate Judiciary Committee* began discussions on a package of bills dealing with reforms to the juvenile justice system. Among other topics included in the package, the issue of no longer sentencing 17-year-olds as adults was addressed, with multiple groups providing cards in opposition to or in support of the legislation. The divide, among both committee members and interested organizations, seemed to be along the same line as the one plaguing the Michigan *House*, one that involves the amount of money such legislation would cost the state and local governments if signed into law. Michigan is one of only seven states in the nation that continues to prosecute 17-year-olds as adults, something those in opposition to the legislation believe does not need to be altered right at this point due to the state's lack of preparation and resources for the switch.

*Elizabeth Gorz* from the *Michigan Association of Counties (MAC)* told members that while organization acknowledges that the state eventually needs to make the switch, *MAC* is opposed to the legislation being passed currently for three ultimate reasons: ensuring adequate resources and capacity, timing, and the need for proper information regarding the change. Noting that most counties would need time to get ready for the shift once more information was collected, *Ms. Gorz* also told panel members the requirement of public oversight and monitoring of youth should be considered as well, another aspect that would call for more resources and capacity that some counties do not currently have available.

However, when *House* members took up the bills, changes were made to the effective date of the new requirements so that the true cost of change and regulation could be determined, putting the law, if passed, effective in 2018 at the soonest. *House Representative Harvey Santana* (D-Detroit) spoke to the *Senate* committee on that topic, saying that though there is not currently much information or resources readily available for the switch, it would be in the best interest of those tried and prosecuted, as they are in danger of physical or psychological harm when placed with adults. According to *Mr. Santana*, youth in adult systems are more likely to be attacked, sexually assaulted or suicidal. The likelihood of reoffending also increases when youth are placed in these systems, *Mr. Santana* noted, creating a perpetual cycle of poverty in some areas.

*Kristen Staley* from the *Michigan Council on Crime and Delinquency* agreed with the representative, saying, "It is very harmful in the system to treat youth as adults. Our system is not set up for it." *Ms. Staley* also told panel members that the mental health and educational needs of youth in adult systems are not met, mostly due to the current statute's requirements on how adult prisoners spend their time versus youth prisoners. The bills were not reported from committee as members noted more information and discussion was necessary before making a decision.

**ENERGY PACKAGE GETS BOOST** – The *Michigan Chamber of Commerce* announced Thursday of this week its support for newly revised versions of bills included in the energy package that has been stalled for months on the *Senate* floor. *Senator Mike Nofs* (R-Battle Creek), lead *Senator* on the package of bills, circulated an updated version of substitute *S-6* late Wednesday night on which an agreement was reached. That agreement, along with the addition of key *Republican* lawmakers agreeing to raise the requirement for the amount energy utilities must generate from renewable resources from the current 10 percent to 15 percent by 2021, now puts the legislation up for another *Senate* vote come November’s lame-duck session. From the previous substitute, three major changes have been made:

- Dropping threshold for a utility planning to build or acquiring a power plant to go through the certificate of necessity process from any plant generating more than 1,000 megawatts down to 225 megawatts
- Dropping the threshold of granting automatic standing to alternative electric suppliers in a contested case before the *Public Service Commission* involving at least 500 megawatts down to 200 megawatts
- Increasing the renewable portfolio standard of 14 percent by 2018 to 15 percent by 2021

The new version also calls for the protection of the 10 percent of the electric market choosing a provider other than the utilities, something the *Chamber* supports as it will increase reliability. Though the *Chamber* expressed its support, questions regarding electric choice remain among *Senate* members and *House* members, with neither chamber fully ready to make a decision before November 9.

**SHIPPED WINE BILL PASSES SENATE** – *Senate* members unanimously passed *Senate Bill 1088* on Thursday of this week, which calls for the allowance of Michigan retailers to ship wine directly to consumers. The bill, sponsored by *Senate Peter MacGregor* (R-Rockford) focuses on in-state retailers and their ability to ship wine to customers with the hope that more wine will be consumed and the market will become more successful and competitive.

**EPA COULD HAVE ACTED SOONER** – According to *Environmental Protection Agency (EPA) Inspector General Arthur Elkins*, the *EPA* could have moved sooner in providing assistance to *Flint* during its water crisis, saying the agency had information as early as June of 2015. Issuing a “management alert” earlier this week, *Mr. Elkins’* office wished to inform and advise the agency of when it should use its power under the federal *Safe Drinking Water Act* to issue emergency orders.

The *EPA*, reported as not taking action until January of 2016, has undergone scrutiny of its handling in the crisis, something *Mr. Elkins’* report substantiated, saying, “By June 2015, EPA Region 5 had information that the city of Flint exceeded the lead level at which corrosion control is required, and that Flint was not using a corrosion inhibitor. EPA Region 5 also had information that at least four homes had concentrations of lead in household drinking water above the action level of 15 parts per billion. These factors and others indicated that some residents were being exposed to lead-contaminated water, and that exposure to lead-contaminated drinking water was likely to increase as corrosion continued within the distribution system. By June 2015, EPA Region 5 also knew that the state and local authorities were not acting quickly to protect human health.”

The report also focused on the role the *Michigan Department of Environmental Quality (DEQ)* played in the crisis, mainly its incorrect interpretation of the *Lead and Copper Rule* and advising *Flint* it did not need to add corrosion control to the city’s water treatment after switching from *Lake Huron* to the *Flint River* water. Due to the lack of action by both state and federal agencies, *Mr. Elkins’* report called for updated and clarified guidance and regulations in emergency scenarios, noting both must be prepared and able to remedy the situation in a timely and efficient manner. *Flint Mayor Karen Weaver* called the report

“troubling” and noted that *Flint* residents are still dealing with the crisis due to a “man-made water disaster” and that “those responsible must be held accountable.”

### **SENATE PANEL APPROVES USE OF HEROIN OVERDOSE DRUG IN SCHOOLS** –

Members of the *Senate Health Policy Committee* approved legislation this week that calls for the allowance of schools to stock and use *Naxolone (Narcan)*, a medication that helps to combat heroin overdoses. Expanding access to and the use of *Narcan* was a part of a list of recommendations of the *Michigan Prescription Drug and Opioid Abuse Task Force* as it is an antidote used for opioid overdoses in emergency situations. Under *Senate Bills 205* and *206*, specific requirements for schools obtaining the drug would include:

- Two employees within the school district must be trained on how to administer the drug
- The training of said employees must be approved by a licensed professional nurse
- School personnel must call 911 if a pupil is believed to be overdosing
- School personnel must notify parents, or legal guardians of students, who were administered the drug and encourage the parent or guardian to seek substance abuse treatment for the pupil

Drug overdoses are now the leading cause of injury deaths in the *United States* and incidents in Michigan have nearly quadrupled since 1999, according to the *Michigan Department of Health and Human Services (DHHS)*, with four counties (*Monroe, Genesee, Kent* and *Grand Traverse*) reporting higher rates of overdoses than the state average. If the legislation passes, Michigan would become the eighth state to enact such laws, joining *Delaware, Kentucky, Illinois, Massachusetts, New York, Rhode Island* and *Vermont*.

### **FLINT TASK FORCE RELEASES LEGISLATIVE REPORT** –

Changes to Michigan’s *emergency manager (EM)* law, the creation of a citizen oversight commission and investment in water infrastructure across the state were among the over 30 recommendations included in the *Legislative Report* issued to legislators this week by the six-member *Joint Select Committee on the Flint Water Public Health Emergency*. The report, issued Wednesday, is the result of six meetings of the joint committee appointed by *Senate Majority Leader Arlan Meekhof* (R-West Olive) and *House Speaker Kevin Cotter* (R-Mt. Pleasant), along with hours of testimony presented to the committee earlier this year following the *Flint Water Crisis*. According to spokesperson for *Governor Rick Snyder, Anna Heaton*, the governor is reviewing the report currently and “appreciates all the work the committee did and looks forward to working with them on proposals to protect the health of all Michiganders.”

Chair of the *Joint Committee Senator Jim Stamas* (R-Midland) told members of the media that of the approximately 30 recommendations, about 14 could see “immediate action”, while also noting perhaps one of the most important issues raised is infrastructure in *Flint* and throughout the state, an issue that will take time and effort to resolve. The *21<sup>st</sup> Century Infrastructure Commission* was created back in March of this year, with members appointed this week, to oversee the task of analysis of cost and needs for statewide infrastructure improvements via executive order from *Governor Snyder*, with a report on the *Commission’s* findings due to *Mr. Snyder* and the *Legislature* by November 30. Of the over 30 recommendations listed in the report, all fall under the following subjects or areas of interest:

- Improvement of accountability and culture in state government
- Protection and promotion of public health
- Strengthen drinking water laws and rules
- Fortification of water infrastructure and lead abatement efforts
- Provide *Flint* with additional tools toward its recovery
- Reformation of Michigan’s *emergency manager* law

As each recommendation is considered, discussed and moved toward legislation, members of the *Joint Committee* acknowledged that all did not agree on each recommendation, but that each could lead to a discussion and possible policy creation. One issue noted as a point of contention is the recommendation of the creation of a *Department of Environmental Quality (DEQ)* oversight commission, something *Democrats* called for in February of this year. According to the report, the *Commission* could be responsible for the appointment of the director of the *DEQ*; the establishment of general principles and policies to guide the director; the creation of a forum for public review of administrative rules, permits, orders, proposals and other departmental actions; conduction of inquiries, studies, and investigations; holding hearings; and receiving complaints from the public. *Mr. Stamas* noted that though he is not sold on the idea of the oversight commission, he is open to a discussion and possible policy. *Senate Minority Leader Jim Ananich* (D-Flint) was very supportive of the recommendation but noted issues related to public health and citizen oversight could have other suggested solutions. Both senators stated the report was bipartisan and would continue debate and encourage resolution to the crisis, including the section regarding the state's *EM* law.

The report suggests that the Legislature consider replacing the single-person emergency manager with a three-person "*Financial Management Team*", comprised of a financial expert, a local government operations expert and a local ombudsman. *Mr. Stamas* said though this reform itself may not be completed by year's end, a few other recommendations regarding the *EM* law could be, including the suggestion that *EMs* be liable for certain harms they cause and be required to post bonds for the "faithful performance of their duties, which shall be forfeited in cases of gross negligence or willful and wanton misconduct", as written in the report. Bills removing civil immunity for emergency managers were also referenced in the report, including *House Bills 5209* and *5210* and *Senate Bills 1059* and *1057*.

Another topic discussed in the report that could pose an issue for legislators is civil service workers protection, something the report said the state needs to reform so the ability to discipline employees is not restricted and more balanced within state offices and departments. *Representative Jeff Irwin* (D-Ann Arbor), the only other *Democrat* on the *Joint Committee with Mr. Ananich*, did not approve of the civil workers' reform suggestion, along with *Representative Sheldon Neeley* (D-Flint). Both representatives opined that the recommendation transferred blame of the crisis onto state workers only and that the focus should be on all those involved, administration officials included. The 34-page report will be considered and discussed by legislators, with hopes of shaping policy in the near future, if not some by year's end.

**DIRECTOR LYON: NO CHARGES AFTER SUBPOENA RENEGED** – As reported on Tuesday of this week, attorneys representing *Department of Health and Human Services (DHHS)* *Director Nick Lyon* received a subpoena naming the director in an unfiled case from *Attorney General Bill Schuette's* office, naming *Mr. Lyon* along with a charge of "misconduct in office" listed. The subpoena, as told to *Mr. Lyon's* attorneys, was a mistake on the part of *Mr. Schuette's Flint* investigation team headed by *Todd Flood*, something the team apologized for. *Mr. Lyon* has been under investigation in regards to the *Flint Water Crisis* since at least early September and has been noted as a "target" by *Mr. Flood* and his team.

**ODDS & ENDS** – The due date for a draft proposal for combining mental and physical health *Medicaid* payments has been pushed back as groups continue to gather information, setting the new due date at November 28 according to the *Department of Health and Human Services (DHHS)*...*Governor Rick Snyder's 21<sup>st</sup> Century Education Commission* announced last week Friday it will soon be embarking on a public "listening tour" with the intent of collecting comments from around the state on how to improve education, with the first meeting set for November 3 in *Grand Rapids*...all three *Detroit* casinos saw an increase in revenue from September 2015 compared to September 2016 with *Greektown* seeing a .5 percent increase, *MotorCity* seeing a 3.6 percent increase and *MGM Grand* seeing a 7.2 percent increase...the *City*

*of Flint* is set to receive a five year **Resiliency in Communities After Stress and Trauma (ReCAST)** annual grant of \$972,106 from the federal **Substance Abuse and Mental Health Services Administration**...according to the most recent poll from **EPIC-MRA**, taxes are only 3 percent of voters' concerns on a list of 12 issues, with the economy and jobs coming in at the top with 23 percent saying those are their highest priority going into the election...the Michigan **Department of Education** and the **United Dairy Industry of Michigan** have both awarded funds to 45 schools in 18 districts for upgraded food services, totaling roughly \$990,000...the **U.S. Department of Health and Human Services** made a request to have the order blocking the Michigan **Departments of Environmental Quality (DEQ)** and **Health and Human Services (DHHS)** from working with the **Genesee County Health Department** to be dissolved, making the request to file the amicus brief in the **Court of Appeals** last week...**Nancy Duncan**, current chief budget deputy at the **State Budget Office** has announced her retirement for March of 2017 will be succeeded by **Kyle Jen**, after serving in the position since 1998...four insurance companies (**Harbor Health Plan, UnitedHealthcare Community Plan, Priority Health Insurance Co., Alliance Heath and Life Insurance Co.**) announced they will be dropping out of the individual health insurance marketplace in Michigan in 2017, with the first two pulling their **HMO** plans and the other two pulling their **PPO** plans...the **Senate** unanimously passed a package of bills on Tuesday of this week streamlining the state's brownfield redevelopment program with the legislation aiming to clarify what development activities are eligible and in what situation...Michigan has selected its 31<sup>st</sup> state **Christmas** tree from **Sault Ste. Marie** as a nearly 50-foot blue spruce, according to a press release issued on Tuesday of this week...Michigan **Department of Environmental Quality (DEQ)** released on Tuesday of this week its final installment of the **Michigan Water Strategy**, featuring 75 recommendations for the state to consider and implement regarding water sources and monitoring systems throughout the state...according to **Governor Rick Snyder**, 93,000 more Michigan residents are working from September 2015 to September 2016, however the unemployment rate for the state has increased to 4.6 percent...the **Senate Michigan Competitiveness Committee** reported **Senate Bill 1104** on Wednesday of this week that would limit damages for past medical or rehabilitation service expenses to actual damages for medical as a result of an alleged malpractice...**Chief Deputy Attorney General Carol Isaacs** announced her retirement on Wednesday of this week, effective December 31 of this year...on Wednesday of this week the **House** passed a resolution (**HJR TT**) calling for a constitutional convention to impose **Congressional** term limits...the **Senate Transportation Committee** opted not to move **House Bills 4423, 4424, 4425, 4426 and 4427** (the **House** speed limit increase package) on Thursday of this week but did discuss the **Senator Tom Casperson's** (R-Escanaba) of changing the speed on rural two-lane highways from 55 mph to 65 mph...announced on Wednesday of this week, **Wayne County** will now be freed from state oversight as the county will be released from its consent agreement with the state originally triggered by its declared financial emergency in 2015...**Senate Bills 999** and **979** passed the **Senate** on Thursday of this week, which call for assistance to **Flint** for long-term recovery including education and the city's strategies for recovery...as of Thursday, the package of bills ending **Michigan's Health Insurance Claims Assessment (HICA)** is headed to **Governor Rick Snyder** for his signature...according to the **Michigan Gaming Control Board**, the state's Native American tribes shared 1.8 percent less with local governments in 2015 from 2014.

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## 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)

124 West Allegan St., Suite. 1900 | Lansing, MI 48933 | Phone: 517-484-8800 | Fax: 517-484-4442 | Email: [rsmith@mhsa.com](mailto:rsmith@mhsa.com)



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