



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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HOUSE REMEMBERS PETTALIA – Third-term *Republican Representative Peter Pettalia* (R-Presque Isle) was tragically killed in a motorcycle accident on Monday evening in *Montmorency County* at the age of 61. Survived by his wife Karen and two adult children, *Mr. Pettalia* was the Chair of the *House Transportation and Infrastructure Committee* as well as Caucus Chair of the *House Republicans*. Having been a resident of *Presque Isle* since 1977, *Mr. Pettalia* ran an auto repair business for 33 years while also serving as a *Presque Isle Township Supervisor* for 16 years. *Mr. Pettalia* also served as a volunteer firefighter in his hometown, something his colleagues say shows his commitment to his community and willingness to help others.

Commenting on the loss, *House Speaker Kevin Cotter* (R-Mount Pleasant) noted *Mr. Pettalia's* passion for nature and time with family, saying, “We are all devastated to hear the news today about Rep. Pettalia. Pete was a dear friend and long-time colleague who was well-known for his expertise, his hard work, and his love for the great outdoors. His fellow Republican representatives elected him last year into a leadership position in our caucus and everyone from both parties looked up to him as a senior member of the state House. We will all remember his passion for Northern Michigan and the stories he would tell of family vacations and trips into the wilderness with friends and neighbors.”

Governor Rick Snyder also commented on the news, saying he and his wife Sue were “heartbroken” and that *Mr. Pettalia* “will be missed by many people here in Lansing as well as his long-term home in Presque Isle.” Michigan *Attorney General Bill Schuette* and *U.S. Representative John Moolenaar* (R-Midland) expressed condolences to *Mr. Pettalia's* family as well.

In respect of the *Representative's* death, the *House* did not take any votes on Tuesday of this week and the agenda was postponed. *House* committees continued throughout the morning, however as session convened, memorials and words of remembrance were spoken about *Mr. Pettalia*. *Gideon D'Assandro*, spokesperson for *House Republicans*, released a statement announcing that a celebration of life will be held at the new *Presque Isle Lighthouse* on Friday of this week, slated for midday with a memorial service commencing at 3:00 p.m.

DPS STUDENTS FILE SUIT AGAINST STATE LEADERS – In a federal class action suit filed Tuesday of this week, seven students from the five lowest-performing *Detroit Public Schools' charters* and schools argue the state has failed the students of *Detroit* by not providing adequate literacy programs. The suit asks that the *U.S. District Court* for the *Eastern District* of Michigan to order the state to implement a statewide accountability system for its literacy programs and to ensure appropriate literacy education opportunities are available for all students in *Detroit*. Alleging said programs were not available to the students or were simply unable to be taught due to the conditions of the schools, the students argue that the

state's overlooking of the district and its need was essentially racist.

A number of state leaders are named in the suit, including *Governor Rick Snyder*, *Superintendent of Public Instruction Brian Whiston*, *Department of Technology, Management and Budget Director David Behen*, *School Reform/Redesign Officer Natasha Baker* and eight members of the *State Board of Education*. According to the filing, "Decades of state disinvestment in and deliberate indifference to Detroit schools have denied Plaintiff schoolchildren access to the most basic building block of education: literacy. The abysmal conditions and appalling outcomes in Plaintiffs' schools are unprecedented. And they would be unthinkable in schools serving predominantly white, affluent student populations."

The filing goes on to address the overall issue of the state's control and oversight of the entire district, or lack thereof, as well as new requirements for the state to abide by in regards to *Detroit* schools and literacy issues overall. Along with the accountability system, the suit asks that the state provide evidence-based literacy programs in all schools, including a screening to discover and assist those who may need additional training, as well as remedial education programs to former students affected by the lack of programs during their time with the schools.

CHALLENGE TO STATE'S EM LAW DISMISSED – Concluding *Michigan's Emergency Manager (EM)* law does not violate the *U.S. Constitution's Equal Protection Clause*, the *U.S. 6th Circuit Court of Appeals* held Monday of this week that a state has the sole power to determine the structure of local governments and therefore there is no fundamental constitutional right for individuals to vote for local government officials. The unanimous decision upheld previous rulings in the *Detroit U.S. District Court* and held that states have absolute discretion in regards to which officials are elected and which are appointed in local governments, including emergency managers. The challengers, including residents and elected officials from cities in which emergency managers have been named (*Detroit, Benton Harbor, Pontiac, Flint and Redford*), charged the *EM* law violated their rights to elect local officials under the *Due Process* clause, the *Equal Protection* clause and the constitutional guarantee of a republican form of government. Addressing the issue of voting rights violation claims and the position of the emergency manager within local governments, the decision stated, "The emergency manager's powers may be vast, but so are the problems in financially distressed localities, and the elected officials of those localities are most often the ones who – through the exercise of their powers – led the localities into their difficult situations. A rational relationship to a legitimate governmental purpose is all that is required for a law to pass this low form of scrutiny."

MENTAL HEALTH INFORMATION SHARING/FUNDING DISCUSSED BY HOUSE PANEL – *House Bill 5782* calls for the allowance of more information sharing between mental and physical health providers, something *House Health Policy* members discussed on Tuesday. Supporters of the legislation claim under the current system, physicians may not be aware their patient is taking medications for mental health reasons as that information is not shared, causing potentially dangerous situations. *Linda Zeller*, Director of Behavioral Health within the *Department of Health and Human Services (DHHS)*, noted that the language in this bill essentially echoes that of the federal *Health Insurance Portability and Accountability Act*, and could also provide a more smooth and productive billing process for insurers as both types of care would have the same information sharing processes. *Ms. Zeller* also noted that patients would have to give consent for certain mental health information to be shared and that any psychiatric notes would be exempt from the shared information as they are not simply confidential but instead labeled as privileged. Opponents of the bill, however, claim that the simple notification of a patient also seeking mental health assistance to their physician is a violation of privacy and that patient consent for the release of all mental health related information should still be required as well.

Health Policy members also saw the issue of funding for mental health in the state come across

their desks on Wednesday, when *House Bill 5118* was brought to the committee's attention. *Representative Aaron Miller* (R-Sturgis), sponsor of the bill, told members the current funding system for the state's mental health programs is unequal with 38 counties receiving inequitable distribution and 8 receiving the most monies. *HB 5118* calls for the *Michigan Department of Health and Human Services (DHHS)* to work with actuaries to update funding methods to create a more equal formula. *Ms. Zeller* was in attendance for this meeting as well and told the panel that *DHHS* officials have been attempting to find a solution administratively for the past 15 years. Commenting on the department's role in fixing the issue, *Ms. Zeller* noted *DHHS* officials would look at census data and unemployment and poverty levels to set the funding formula. The committee also heard testimony from *Elizabeth O'Dell* from the community mental health center in *St. Joseph* who noted that having the assistance of *DHHS* employees in local buildings for free, as most local programs pay to have state employees in their centers, would be helpful to communities across the state as well. The committee did not vote on the legislation.

FIREFIGHTER CANCER FUND TO BE FILLED BY MEDICAL MARIJUANA SALES –

Sales from regulated medical marijuana throughout the state would be funneled into the *First Responder Presumed Coverage Fund* according to the most up to date version of *House Bill 4209* as a part of the package of bills passed by the *Senate* last week. The newly added provision adds a regular stream of funding into the fund created in 2014 to reimburse costs of treatment for firefighters diagnosed with cancers connected to hazards from day-to-day work. Also under the new provision, the *Michigan State Police* and the *Michigan Commission on Law Enforcement Standards (MCOLES)* and county sheriffs would now see five percent each from the medical marijuana tax, an increase from the originally proposed 3 percent. With that change in percentage, counties in the state will see a cut to 30 percent from 40; municipalities will see 25 percent instead of 30 and the state will see an increase to 30 percent from 25 percent. The now five-bill package does not impact the caregiver-to-patient model currently in place but will halt the sale of extra plants by unregulated growers to provisioning centers. Other amendments the package includes are as follows:

- allowing out-of-state individuals or businesses to get a medical marijuana business license in Michigan;
- prohibiting tobacco products being sold in provisioning centers;
- allowing the *Department of Licensing and Regulatory Affairs (LARA)* 360 days (as opposed to 180) to prepare the licenses necessary for individuals or corporations interested in joining the medical marijuana business;
- notifying the appropriate municipality within 10 days of an applicant applying for a medical marijuana growing, selling, transporting or testing license;
- prohibiting physicians from conducting a medical exam or issuing a medical certification at a provisioning center;
- Licensees participating in any of the five allowed practices cannot make a business profit in any of the other four (processing, growing, selling, transporting or testing);
- ensuring that any entity looking to be involved in the medical marijuana business is covered with a \$100,000 insurance policy; and
- charging the medical marijuana advisory panel with making any recommendations and expanding from 15 to 17 members;

The *House* passed *HB 4209* along with two others in the package, which are now on their way to *Governor Snyder's* desk for signature. The other bills rounding out the package include *House Bills 4210* and *4287* which create a seed-to-sale tracking system for marijuana.

PRESCRIPTION DRUG/OPIOID ABUSE COMMISSION: FIRST APPOINTMENTS –

Governor Rick Snyder announced the first appointments of the 21 member *Michigan Prescription Drug*

and Opioid Abuse Commission on Monday of this week. The commission is tasked with reviewing findings and recommendations issued by a task force and to develop and propose policies to address the increasing issue of prescription drug and opioid abuse in the state. The appointments as follows are subject to the advice and consent of the *Senate* and expire September 1, 2018:

- *Stephen Bell* of *Carleton*, osteopathic doctors
- *Vincent Benivegna* of *Okemos*, dentists
- *Rebecca Cunningham* of *Ann Arbor*, allopathic doctors
- *Richard Dettloff* of *Rockford*, pharmaceutical manufacturers
- *Lisa Gigliotti* of *East Lansing*, chronic pain sufferers
- *Timothy Hurtt*, law enforcement officers
- *Stephen Lazar* of *Marshall*, psychologists
- *Paula Nelson* of *Riley*, substance abuse treatment providers
- *Melissa Owings* of *Clarklake*, veterinarians
- *Michael Paletta* of *Northville*, Michigan hospice organizations
- *Gretchen Schumacher* of *Belmont*, registered professional nurses
- *Mary Sclabassi* of *Novi*, law enforcement officers
- *Patrick Shannon* of *Mackinac Island*, general public
- *Roy Soto* of *Bloomfield Hills*, Michigan medical schools
- *Larry Wagenknecht* of *Haslett*, statewide pharmacy associations
- *Laurie Wesolowicz* of *Northville*, pharmacists
- *Adam Wilson* of *Petoskey*, physician's assistants

LEADERS TO ASK SCHUETTE FOR OPINION ON DPS SCHOOL CLOSURES – *House Speaker Kevin Cotter* (R-Mt. Pleasant) and *Senate Majority Leader Arlan Meekhof* (R-West Olive) officially asked *Attorney General Bill Schuette* for his judgement as to whether or not current law allows the *School Reform/Redesign Office (SRO)* to close failing schools in the newly established *Detroit Community School District* before 2019. Sending a joint letter to *Mr. Schuette* Friday of last week, the two leaders are seeking his formal legal opinion on the matter noting the intent of *Detroit* school closures was clear in the *Detroit* school bill package passed by the *Legislature* earlier this year. Last month, *Governor Rick Snyder's* administration announced it would agree with a memo released by the *Miller Canfield* law firm in which the firm concluded that the *SRO* is not approved to close *Detroit* schools until they have been on the state's priority list and have been in existence for at least three consecutive years. In their letter to the attorney general, both *Republican* leaders state that the memo from *Miller Canfield* ignores the *Legislature's* intent and attempts to rewrite the law into their own interpretation and view, noting that in the firm's interpretation, charter schools in *Detroit* can still be closed immediately but public, traditional schools cannot. Spokesperson for *Mr. Schuette*, *Andrea Bitely*, said the office has received the letter and is currently reviewing it. *House Democrats* do not agree with the appeal for *Mr. Schuette's* opinion, claiming by doing so they are bringing the issues of the previous *Detroit Public Schools* district into the newly formed one.

ONTARIO ON BOARD FOR U.P. ELECTRIC STUDY – Announced last week Friday by the *Michigan Agency for Energy (MAE)*, the *Canadian* province of *Ontario* will be teaming up with the agency and *Governor Rick Snyder* in their attempt to have a study done on the possible expansion of electric generation in the *Upper Peninsula*. *Mr. Snyder* and the *MAE* submitted a request in mid-August to the *Midcontinent Independent System Operator (MISO)* asking the operator to study the near and long-term benefits of electric transmission between the *Upper* and *Lower Peninsulas* as well as *Sault Ste. Marie, Ontario*. *MISO*, which oversees electric transmission in 15 other states and *Manitoba*, responded to the announcement of the letter saying that it was too early to say if the group would conduct the study or not and that a review and discussion was necessary first. Also in the letter, the state asked *MISO* to give an

assessment on possible declining generation resources available in Michigan in the case of an emergency. **MAE Executive Director Valerie Brader** commented on the addition of **Ontario** to the state's cause, saying, "MAE looks forward to working together with Ontario in a cooperative and collaborative manner to examine the impact of interconnections that will move us toward adaptable, reliable, affordable and environmentally protective energy for Michigan's future. MAE and Ontario's Independent Electricity System Operator stand ready to provide support as requested by MISO to assist with this stud." Spokesperson for **MISO**, **Jay Hermacinski**, noted in a statement that **MISO** is in talks with the state to determine expectations and timeframes for the study request and held that the operator still has not yet made a decision of whether or not to conduct the study.

FULL HOUSE TO SEE PUBLIC SAFETY OFFICER BENEFITS BILL – Members of the **House Appropriations Committee** reported out legislation last week intended to cover the families of public safety officers in the event of their death in the line of duty. **Senate Bill 218**, sponsored by **Senator Wayne Schmidt** (R-Traverse City), carries a death benefit of up to \$25,000 for the families of police officers, corrections officers, ambulance crew members, firefighters and rescue squad members should they lose their lives on the job. As written, the **Michigan Department of Technology, Management and Budget's Office of Retirement Services** would hold responsibility for determining eligibility and administering the health plans. The bill was approved unanimously by the **Senate** in April of 2015 and now moves forward to the full **House** for consideration and, as **Mr. Schmidt** noted in a statement, quick approval.

BEER IN MICHIGAN: WHERE TO SELL? TAX INCREASE? – Multiple issues surrounding the sale and taxation of alcoholic beverages in Michigan have been discussed in recent legislation, with those issues crucial to the growing industry in Michigan. Last year, **Senate Bill 929** was approved by the **Senate**, sent to the **House**, referred to the **House Regulatory Reform Committee**, and finally rested in the **House Commerce and Trade Committee** where it has remained until Tuesday of this week when committee members re-referred it to their **Regulatory Reform** counterparts. The issue surrounding the bill is that it calls for the allowance of the **Michigan Liquor Control Commission (MLCC)** to issue special designated merchant (**SDM**) licenses without a previously installed \$250,000 inventory requirement threshold for gas stations seeking to sell alcohol.

The bill also creates a one license per 1,000 people in a city or township quota for said gas station seeking to sell alcohol. The effectiveness of the quota, however, was questioned by members as the bill also states that those seeking the **SDM** licenses but were previously barred due to inventory restrictions are able to apply within 60 days of the bill taking effect and will not count toward the quota; stores already holding **SDM** licenses will not count toward the quota either. **Andy Deloney**, chair of the **MLCC**, said the group supports the bill because it eliminates the inventory requirement but noted the commission did not ask for the quota language. Addressing concerns regarding local ordinances and the **SDM** license, **Mr. Deloney** told members the **MLCC** does not enforce local ordinances and even if a license is provided, it is not seen as a "get out of jail free card" as the local community can still enforce said ordinances.

As gas stations around the state await movement on **SB 929**, beer industry officials await the response to newly introduced **House Bill 5873**, which would increase the state's tax on beer, something that has not changed since 1966. Also sent to the **House Regulatory Reform Committee**, the bill would increase the excise tax on beer in the state from \$6.30 to \$21.70 per barrel, equating to five cents per 12 ounces. The bill was introduced by **Representative Tom Hooker** (R-Byron Center) and was met with opposition from multiple organizations. According to the **Michigan Alcohol Policy Promoting Health and Safety**, who expressed support for **Mr. Hooker's** bill, excessive alcohol consumption cost the state \$3.5 billion in 2006, something **Mr. Hooker** believes the tax will help to alleviate.

Commenting on where the funds from the increase would go and the benefits they would hold, **Mr.**

Hooker told members, “This is to help fund health and treatment programs associated with the consumption of alcohol, as well as lead to a decrease in crimes tied to alcohol. With fewer state General Fund dollars dedicated today than 20 years ago toward prevention, treatment and legal programs involving alcohol abuse, we need to address this growing problem.” Speaking in opposition to the legislation, the **Michigan Chamber of Commerce**, the **Michigan Beer and Wine Wholesalers Association** and the **Michigan Freedom Fund** all noted the extreme effect the tax would have on craft brewers, distributors, retailers and the industry as a whole.

AUDIT: ISSUES IN ADULT PROTECTIVE SERVICES REMAIN – According to a follow-up audit released Wednesday by the **Legislative Auditor General**, most of the issues found in regards to **Adult Protective Services** over two years ago have yet to be corrected. Those issues still in need of a solution as found in 2014 include:

- Failure to conduct monthly face-to-face contacts with **Adult Protective Services** clients as required;
- Failure to complete client service plans;
- Failure to ensure caseworkers addressed all allegations identified;
- Failure to fully develop a process to evaluate its **Adult Protective Services** intervention services;
- Failure to consistently review closed cases, as required, as well as effectively detect caseworker shortcomings; and
- Failure to promptly begin **Adult Protective Services** investigations, to make contact within 24 hours of a case assignment and within 72 hours with the adult alleged to have been abused, neglected or exploited;

Auditors also found in the follow-up that officials failed to comply with the recommendations of the previous audit but complied with the recommendation to address all allegations.

ODDS & ENDS – Revenues from the state’s largest taxes were up in August by \$117.9 million from those in August 2015 as announced by the **House Fiscal Agency**...38 more homes in **Flint** have had their service lines replaced as of Friday of last week, with the final goal being 200-250 homes around the city...**Governor Rick Snyder** ordered state and federal flags to be flown at half-staff on Sunday of last week in honor of **Patriot Day**, the 15th anniversary of the September 11, 2001 terrorist attacks...the 3rd annual **Capitol 5k** raised \$11,300 for two charities on Thursday of last week, \$5,500 for a **Flint** children health and development fund and \$5,800 for **Special Olympics**...Nine of Michigan’s 15 universities saw an increase in enrollment going into the **2016-2017 Fiscal Year** according to a report from **Business Leaders for Michigan**...according to the **Michigan Public Service Commission’s** annual report, net metering continues to grow in the state with a 20 percent increase in the program’s size reported over that of 2014...the **Michigan Department of Natural Resources** reported on Monday another deer has been suspected of carrying chronic wasting disease and was taken out by a sharpshooter in **Meridian Township**...protestors crowded the **Capitol** steps on Monday in an effort to raise the state’s minimum wage to \$15 per hour...data released Tuesday by the **U.S. Census Bureau** reported that roughly 6 percent of Michigan’s population was without health insurance in 2015, down from the roughly 12 percent in 2014...**Standard & Poor’s** announced Tuesday of this week the lowering of the bond rating on a series of borrowing made by the former **Detroit Public Schools** to B from BB- and BB...Michigan’s **School Aid** and **General Funds** saw a 5.9 percent increase in revenues from August 2015 to August 2016 according to the **Senate Fiscal Agency’s** monthly revenue report, with revenues totaling \$1.9 billion in August of this year...the state’s 3 casinos saw revenue increases over a year as reported by the **Gaming Control Board** with **MGM** seeing an 17.9 percent increase, **MotorCity** seeing a 2 percent increase and **Greektown** seeing a .3 percent increase...the **Michigan State Board of Education** approved a new guidance for school districts earlier this week on a 6-2 vote to address the accommodations for **LGBTQ** students...**Corinne Miller**, retired former state epidemiologist, plead no contest this week to one of three charges brought by **Attorney General Bill Schuette** as a result of the **Flint Water Crisis** and the outbreak of **Legionnaire’s Disease** in **Genesee County**...the seasonally

adjusted unemployment rate for Michigan is below the national August average of 4.9 percent according to **Governor Rick Snyder**, coming in at 4.5 percent.

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