

Briefly

A Publication of the Government Law Section of the State Bar of Michigan

Amicus Edition December 2019 ■ Gregory Stremers, Chair ■ Helen Lizzie Mills & Jacob P. Fox, Editors

Message from the GLS Chair, Gregory Stremers

To Our Members

On behalf of the Government Law Section Council, I want to express our many thanks for your continued support of our Section. We have over 600 members and we appreciate *your* membership.



Gregory Stremers

Who are the Government Law Section's Members?

- We are ethical and principled.
- We are versed in the constitution, charters, and home rule acts that provide for self-governance.
- We provide apolitical advice.
- We provide a guiding hand applying legal principals to local officials, councils, boards, commissions.
- We provide the legal foundations for the economic and financial structure to those who provide for the health, safety and welfare of our communities.
- We apply the laws of open government and freedom to access public records.
- We protect the public interest.
- We work together to educate and mentor our members.

Education and Support of Our Members

- The Government Law Section (GLS) provides biannual education and networking opportunities for members.
- GLS-MAMA list serve is a valuable resource to ask questions of members.
- Amicus briefs in precedential cases are provided free to members on our section web page.
- Our publication, **Briefly**, provides current topics in municipal law.

Mark Your Calendars - Annual Seminars

Winter Seminar - The Henry Dearborn February 7, 2020

This seminar will focus on the employment setting in municipal government, including investigation and handling of sexual harassment investigations. [Register](#) by February 4, 2020.

Agenda

8:30-9:00 a.m.

Registration/Continental Breakfast

Morning Session

9:00-10:45 a.m.

So You've Been Served with a Potential Class Action Complaint

Speakers: *Mary Massaron and Patrick Lannen*
Plunkett Cooney

Class Actions: Key Defenses, Procedural Pitfalls, Essential Discovery, and Appellate Options

Case Specifics: Building/inspection fees, utilities, tire marking and prisoners

10:45-11:00 a.m.

Morning Break

11:00-11:45 a.m.

Municipal Management of Marihuana: Lessons from Lansing, MI

Speakers: *Heather Sumner and Amanda O'Boyle*
Office of the City Attorney, City of Lansing

11:45-12:00 p.m.

Questions and Answers

12:00-1:30 p.m.

Lunch

Afternoon Session

1:30-3:15 p.m.

#MeToo is Here—Are you ready?

Internal Investigations: The Who, What, When & How

Speaker: *Laura S. Amtsbuechler*

Rosati, Schulz, Joppich & Amtsbuechler, PC

Discipline: Post-Incident and Remedial Measures, the Aftermath Management of Employees, and Litigation Tips

Speaker: *Audrey J. Forbush*

Plunkett Cooney

3:15-3 30 p.m.

Afternoon Break

3:30-4:15 p.m.

Facilitation: Trends, Costly Mistakes and the Impact of Attorney Fees

Speaker: *Kathleen Bogas*

Bogas & Koncius PC

4:15-4:30 p.m. Questions and Answers

4:30 p.m. Networking in the Tria Bar

For participants seeking overnight accommodations, reservations are available February 6-7 at The Henry, located at 300 Town Center Drive, Dearborn MI 48216. Reservations are limited and must be made no later than January 16, 2020. Make sure to reference code number M-IF94H08 to secure the event rate of \$130.

**Summer Seminar - Grand Traverse Resort
June 26-27, 2020**

Topics will include economic development, code enforcement, and many areas of interest to municipal attorneys.

Amicus Brief Activity of the Government Law Section

The Section fulfills a vital public service by drafting amicus briefs on various cases concerning Michigan municipal law. Our membership's diverse experiences and expertise provides the unique opportunity to educate the judiciary on issues involving government law from a depth not generally available to individual attorneys or firms. Through the support of our membership, in the form of yearly dues and their expertise, the Government Law Section was able to draft or join the following amicus briefs.

Fiscal Year 2018-2019:

Michigan Marihuana Activity

The legalization of both medical and recreational marihuana in Michigan have launched a dialogue in Michigan Courts about the extent that municipal governments can regulate the sale of marihuana. Individuals opposing municipal regulation argue that local regulation curbs access to Marihuana without regard to the voter approval of its sale and use in Michigan. Believing that voters have a right to determine what type of community they want to live in, the Government Law Section has filed amicus briefs supporting local regulation.

People of the City of Warren v. Clayton Jamers Bezy, Case No. 341639 (to the Michigan Court of Appeals). The GLS filed an amicus brief to defend municipal authority to adopt ordinances regulating Marihuana. Despite the best efforts of the City of Warren and GLS, the Michigan Court of Appeals held that the Michigan Medical Marihuana Act preempts local ordinances. Thomas Schultz at Rosati, Schultz, Joppich & Amtbuechler PC authored the brief.

Christie DeRuiter v Township of Byron, Case No. 158311 (to the Michigan Supreme Court). The GLS wrote in favor of Byron Township, which is facing challenges to its local ordinance on the grounds that the Michigan Medical Marihuana Act preempts local ordinances. In its amicus brief, the GLS explains why local communities ought to be allowed to self-regulate to meet the needs of their community. Thomas Schultz at Rosati, Schultz, Joppich & Amtsbuechler PC and Robert Thall at Bauckham, Sparks, Thall, Seeber & Kaufman, P.C. co-authored the brief.

Assorted Amicus Briefs by the Government Law Section

One of the most rewarding aspects of practicing government law is that it exposes practitioners to the great variety of topics faced by local government. Municipal governments rely on legal practitioners to navigate diverse issues including questions of governmental immunity, tax law, and interpretation of zoning ordinances to name a few. The GLS is proud that our membership offered their collective expertise to assist in the following cases.

Ryan S Nixon v. Webster Township, Case No. 343505 (to the Michigan Court of Appeals). Interpretation of zoning ordinance; pending before the Michigan Court of Appeals on application for leave to appeal that was granted. Amicus brief submitted on behalf of Webster Township. Robert Thall at Bauckham, Sparks, Thall, Seeber & Kaufman, P.C. authored the brief. Oral argument scheduled for January 7, 2020.

Oakland County Water Resources Commission (OCWRC) et al. v. Michigan Department of Environmental Quality, Case 2018-000259-MZ (to the Michigan Court of Claims). Amicus brief submitted to the Michigan Court of Claims and supported OCWRC and other plaintiffs (City of Livonia and City of Detroit) in arguing that the lower court ruling was invalid, violated Michigan law and was arbitrary and capricious. Steve Joppich at Rosati, Schultz, Joppich & Amtsbuechler P.C. authored the brief. Plaintiff municipal entities did not prevail before the Michigan Court of Claims. The Michigan Court of Claims found that the Michigan Department of Environmental Quality's revised lead and copper rule was valid, comported with law, and was not arbitrary or capricious.

Decided Cases

The following decisions were reached in Fiscal Year 2018-2019 for many cases in which the GLS submitted amicus briefs in a prior fiscal year. Prevailing in several cases, the Section's expertly crafted amicus briefs undoubtedly played an integral role in helping the judiciary navigate complex issues.

Michigan Association of Home Builders et al. v. City of Troy, Case No. 156737 (Decision on July 11, 2019). The GLS submitted an amicus brief to the Michigan Supreme Court, supporting the City of Troy in arguing that costs incurred to reimburse the general fund could be recovered through building fee. The Michigan Supreme Court held that the City's building fee violated terms of the Construction Code Act because it was used to pay monies owed to the general fund in contravention of clear language in the Construction Code Act that limits what costs could be covered by fee. Plaintiff had no standing to pursue Headlee claim. The case was remanded to trial court for further findings consistent with the ruling. Soni Mithani at Miller Canfield authored the brief. City of Troy did not prevail on appeal to the Michigan Supreme Court.

Taxpayers for Michigan Constitutional Government v. State of Michigan, Case No. 334663 (Decision on July 30, 2019). The GLS submitted an amicus brief to the Michigan Court of Appeals, arguing that certain state requirements violated Michigan's constitution. The Michigan Court of Appeals ruled consistently with the GLS' position, holding that state funds directed to local governments for new state mandates may not be counted towards the proportion of state funds required under Const. Art 9, Section 30. Dennis Pollard of Secrest Wardle authored the brief. Plaintiffs prevailed in part before the Michigan Court of Appeals.

Rita Kendzierski v. County of Macomb, Case No. 156086 (Decision on May 30, 2019). Writing on behalf of Macomb County, the Government Law Section's amicus brief argued that a collective bargaining agreement unambiguously did not create a vested right to unaltered healthcare benefits. The Michigan Supreme Court reversed a prior Court of Appeals holding and remanded the case to trial court for entry of summary disposition to the defendant County, finding the collective bargaining agreement was clear and unambiguous. Clifford Taylor, Richard Warren and Brian Schwartz of Miller Canfield authored

the brief. The County prevailed before the Michigan Supreme Court.

Dwayne Wigfall v. City of Detroit, Case No. 156793 (to the Michigan Supreme Court). The GLS submitted an amicus brief to the Michigan Supreme Court, supporting the City of Detroit in stating that appropriate notice of claim was not provided by the plaintiff. The Michigan Supreme Court held that the plaintiff properly notified the City of the claim when it notified the city law department (as opposed to City Attorney), and thus, governmental immunity did not bar claim. Mary Massaron, Hilary

Ballentine and Josephine DeLorenzo at Plunkett Cooney authored the brief.

Therese Shaw v City of Dearborn, Case No. 341701 (to the Michigan Court of Appeals). Defending local governments' ability to charge reasonable sewer fees, the GLS filed an amicus brief on behalf of the City of Dearborn. The brief argued that Dearborn's sewer fees were neither unlawful taxes under the Headlee Amendment, nor unreasonable. Soni Mithani at Miller Canfield authored the brief. The City of Dearborn prevailed on appeal to the Michigan Court of Appeals. The motion for reconsideration was recently denied.

Legislative Update

By Kester K. So, Eric A. McGlothlin, Laura M. Bassett, and Jessica L. Wood, Dickinson Wright PLLC

Budget maneuvering continued to occupy legislative attention through late summer and into fall, culminating with an 11th-hour fiscal year 2020 budget. Some spending line items were reassigned by the State Administrative Board in early October. Since then, several supplemental budget measures have been introduced, though most have not advanced. In early November, it appeared that a supplemental budget deal would be struck, but that deal hit a snag and stalled by the end of the first week of November. The following are summaries of additional legislation that concern municipal interests and that have been enacted or introduced this fall.

Enacted Legislation

- **Property tax.** [HB 4121 \(2019 PA 35\)](#) extends the time period for a county treasurer to enter into tax foreclosure avoidance agreements. Amends sec. 78q of 1893 PA 206 (MCL 211.78q).
- **Economic development.** [HB 4101 \(2019 PA 29\)](#) allows a municipality's chief executive officer to designate

someone from the municipality's governing body to serve on DDA board in chief executive officer's place. Amends section 204 of 2018 PA 57 (MCL 125.4204).

- **Economic development.** [HB 4077 \(2019 PA 44\)](#) amends the Commercial Rehabilitation Act to modify the effective date of a commercial rehabilitation exemption certificate under certain circumstances. Amends secs. 6 and 8 of 2005 PA 210 (MCL 207.846 and 207.848).
- **Economic development.** [HB 4190 \(2019 PA 91\)](#) amends the Michigan Economic Growth Authority Act to make changes to the authorization of business tax credits and to allow eligible business entities to transfer certain tax credits to other business entities as authorized by the Michigan Strategic Fund (MSF). Amends sec. 8 of 1995 PA 24 (MCL 207.808). TIE BAR WITH: [HB 4189](#), [HB 4191](#)
- **Land use.** [HB 4055 \(2019 PA 23\)](#) amends the Land Division Act to add a requirement for certification of payment of taxes to approve a land division. Amends section 109 of 1967 PA 288 (MCL 560.109).

- **Libraries.** [HB 4119 \(2019 PA 24\)](#) amends the Charter Township Act to allow a charter township that met certain requirements provided by the Act to re-establish and maintain under the Act a free public library established as a township library under a repealed act that served the charter township. Amends sec. 13a of 1947 PA 359 (MCL 42.13a).
- **Property tax.** [HB 4209 \(2019 PA 129\)](#) amends the General Property Tax Act to allow a township treasurer's designee to act on his or her behalf for tax collection purposes. Amends sec. 44 of 1893 PA 206 (MCL 211.44).
- **Libraries.** [HB 4367 \(2019 PA 39\)](#) creates a new act providing for administration of opioid antagonists by library employees. Creates new act and repeals 2014 PA 462 (MCL 28.541 - 28.544). See also [SB 0200 \(2019 PA 36\)](#), [SB 0282 \(2019 PA 37\)](#), and [SB 0283 \(2019 PA 38\)](#).
- **Civil rights.** [HB 4688](#) amends the Elliott-Larsen Civil Rights Act to include sexual orientation and gender identity or expression as protected categories. Amends the title and multiple provisions of 1976 PA 453 (MCL 37.2101 – 37.2804).
- **Construction.** [HB 4175](#) amends the “Stille-DeRossett-Hale Single State Construction Code Act” to revise definition of “lead-free” pipes and pipe fittings to federal safe drinking water act language. Amends section 13b of 1972 PA 230 (MCL 125.1513b).
- **Counties.** [SB 322](#) eliminates the sunset on authority of a county board of commissioners to transfer functions of a county road commission to the county board of commissioners or submit the question to the qualified electors of such county. Amends section 11 of 1851 PA 156 (MCL 46.11). See also [SB 323](#).
- **Counties.** [HB 4937](#) and [4938](#) amends 1966 PA 261, which prescribes the manner of election for county boards of commissioners, to provide that commissioners elected at or after the 2022 general election would serve four-year terms and would add a complementary provision to 1966 PA 293, the charter counties act, to extend commissioners' terms to four years beginning January 1, 2023. Amends sections 10 and 12 of 1966 PA 261 (MCL 46.410 and 46.412). TIE BARRED.

Pending Legislation

- **Aeronautics.** [HB 4852](#) prohibits local regulations of unmanned aircraft systems that are more restrictive than state law. Amends section 5 of 2016 PA 436 (MCL 259.305).



- **Drains.** [HB 4692](#) amends the Governmental Immunity Act to specify rainfall levels and what constitutes a sewage system defect in connection with liability for overflow or backups. Amends sections 16, 17 and 19 of 1964 PA 170 (MCL 691.1416 et seq.) and adds section 20.
- **Economic Development.** [SB 299](#) amends 1987 PA 231 to increase the population thresholds in cities and villages for eligibility to receive certain transportation and economic development funds. Amends section 9 of 1987 PA 231 (MCL 247.909).
- **Economic Development.** [SB 432](#) amends the Michigan Strategic Fund Act to revise the criteria under which certain nonprofit research and development enterprises would be exempt from taxation under the General Property Tax Act. Amends section 74 of 1984 PA 270 (MCL 125.2074).
- **Economic Development.** [SB 455](#) amends the General Property Tax Act to specify that, for taxes and assess-

- ments levied after December 31, 2016, eligible data center property located at the site of a renaissance zone that was approved in 2016 by the Michigan Strategic Fund (MSF) with a minimum investment of \$100 million would be exempt from certain assessments and taxes. Amends section 7ff of 1893 PA 206 (MCL 211.7ff).
- **Economic Development.** [SB 493](#) and [SB 494](#) amend the Commercial Rehabilitation Act to extend from December 31, 2020, to December 31, 2025, the sunset date after which a new commercial rehabilitation certificate may not be granted. Amends section 16 of 2005 PA 210 (MCL 207.856) and amends section 18 of 1978 PA 255 (MCL 207.668).
 - **Economic Development.** [HB 4650](#) amends the Obsolete Property Rehabilitation Act to modify the definition of core community. Amends section 2 of 2000 PA 146 (MCL 125.2782).
 - **Economic Development.** [HB 4816](#) creates the Regional Event Center Financing Act to allow certain municipalities to levy an assessment on hotel guests to finance event center projects. Creates new act.
 - **Elections.** [SB 0117](#) allows a member of a uniformed service on active duty who is absent on the day of an election to return a voted absentee ballot electronically if using Department of Defense Common Access Card and U.S. military issued email address. Amends section 759a of 1954 PA 116 (MCL 168.759a).
 - **Environmental protection.** [HB 4691](#) creates a new act entitled “Stormwater Utility Act” to provide for and authorize fees for connection to and use of municipal stormwater utilities.
 - **Local government.** [HB 4433](#) grants to the Public Service Commission the power to set and regulate rates for certain water and sewer systems. Amends secs. 6 and 6a of 1939 PA 3 (MCL 460.6 and 460.6a) and adds sec. 6aa.
 - **Local government.** [HB 4752](#) amends 2012 PA 436, the Local Financial Stability and Choice Act, to provide for the appointment of a financial management team as an alternative to an emergency manager. Adds section 9a.
 - **Marihuana.** [SB 0416](#) (also introduced as [HB 5030](#)) provides a process for the expungement of certain marihuana offenses. Amends sec. 1 of 1965 PA 213 (MCL 780.621).
 - **Marihuana.** [HB 4126](#) requires marihuana products sold in Michigan to be labeled with health warnings. Amends sec. 8 of 2018 IL 1 (MCL 333.27958).
 - **Property tax.** [HB 4926-4930](#) amend the Local Stabilization Authority Act to revise the rules for calculating local community shared revenue for local governments. Amends secs. 13, 14, 16a, 17 and 18 of 2014 PA 86 (MCL 123.1353, 123.1354, 123.1356a, 123.1357 and 123.1358).
 - **Public employees and officers.** [SB 0019](#) raises the maximum population of local governments in which a public servant may serve as a firefighter or emergency medical service provider and that may perform additional services for a local government. Amends sec. 3a of 1968 PA 317 (MCL 15.323a).
 - **Taxation.** [HB 4554](#) creates new Michigan short-term rental promotion act providing for registry of short-term rentals. See also [HB 4555](#) – [4563](#).
 - **Taxation.** [HB 4963](#) creates a new act providing for local option fuel excise taxes levied by counties if approved by voters, which local option fuel excise taxes would be centrally collected by the state treasury department and 50% of moneys collected would be distributed to local road agencies in levying county based on proportionate population and 50% of moneys collected would be distributed to local road agencies in levying county based on proportionate local mileage.
 - **Torts.** [SB 33](#) and [SB 34](#) clarify that Governmental Immunity Act applies to county road commissions. Amends section 2 of 1964 PA 170 (MCL 691.1402).
 - **Torts.** [HB 4975](#) amends the Governmental Immunity Act to impose liability for governmental agencies that maintain gun or weapon-free zones. Adds section 6b to 1964 PA 170 (MCL 691.1401 - 691.1419). TIE BAR WITH: [HB 4976](#).
 - **Torts.** [HB 4976](#) establishes liability of a person (which includes a government entity) for safety of individuals in a designated weapon-free zone. Adds section 40 to 1846 RS 66 (MCL 554.131 - 554.139). TIE BAR WITH: [HB 4975](#).
 - **Transportation.** [HB 4966](#) and [HB 4968](#) modify the return of road money distribution to city and village managers and county road commissions, respectively, to remove 75% primary/25% local expenditure

restriction, so long as an asset management plan has been approved. Amends, respectively, sections 13 and 12a of 1951 PA 51 (MCL 247.663).

- **Transportation.** [SB 521](#) requires local agencies to develop an estimate of the lifetime cost for maintenance and capital need for new roads or extensions of existing roads and to identify funding sources for such costs.
- **Vehicles.** [HB 4964](#) amends the Michigan vehicle code to allow counties to charge an additional local option registration fee on vehicle registrations issued to residents of that county, if approved by the county's electors, which local option registration fees would be collected by the secretary of state and 50% of moneys collected would be distributed monthly

to county local road agencies based on proportionate population and 50% of moneys collected would be distributed monthly to county local road agencies based on proportionate local mileage. Amends title of 1949 PA 300 (MCL 257.1 - 257.923) and adds section 801k.

- **Water.** [SB 14](#) provides for maximum contaminant levels allowed with respect to PFOS and PFOA under the safe drinking water act. Amends section 6 of 1976 PA 399 (MCL 325.1006).
- **Water.** [SB 400](#) requires disclosure of lead service line by water suppliers to customers and by landlords to tenants. Amends section 21 of 1976 PA 399 (MCL 325.1021) and adds section 19d.

Moving? Changing Your Name?

Don't forget to update your member record. In order to safeguard your member information, changes to your member record must be provided in one of the following ways:

- [Login to SBM Member Area](#) with your login name and password and make the changes online.
- [Complete contact information change form](#) and return by email, fax, or mail. Be sure to include your full name and P-number when submitting correspondence.
- [Name Change Request Form](#)— Supporting documentation is required

