

# Briefly

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

February 2022 ■ Helen Lizzie Mills, Chair ■ Jacob P. Fox & Sean C. Rucker, Editors

## A Word from the Chair

GLS Members,

As perhaps many of us do at the start of any new year, your GLS Council has been working hard to reflect and look forward to determine what great new adventures to tackle in 2022 and beyond. We intend to reinvigorate a Membership Committee and Social Media Committee. We are also excited to establish an entirely new Strategic Planning Committee who will build on 2021 developments while clarifying and embarking toward new, big goals for the Section. We'll kick off with our Winter Seminar, entitled *Local Government Whack-a-mole: The Pounding, Preempting, and Constricting of Municipal Legal Authority in Michigan*. We are thrilled to be hosting this event in a hybrid capacity: it will be held both live on-site at Summit on The Park in Canton Township and in a virtual format on **February 11, 2022**. (Take a peek at this great facility using the 360° look [here](#)). You can register for this event by clicking [here](#).



Helen Lizzie Mills

In addition, we'll be rejoining our colleagues of the Michigan Association of Municipal Attorneys (MAMA) in a joint Summer Conference at the Grand Traverse Resort on **June 24 and June 25, 2022**. The discussion will address Diversity, Equity, and Inclusion topics related to our service as members of the Bar, service to our clients, and commitment to our own communities. We can't wait to tell you more about this as the details come together, but we'll have a national speaker, a Michigan Supreme Court Justice, and very talented practitioners there to share their wisdom with us. More to come on registration and room reservations, but please mark your calendars now!

The GLS Mission Statement is:

To serve its members and the community at large by fostering public trust in the law, advancing the competent, civil, and ethical practice of governmental law, providing education, training, communication and support among its members, advancing government law understanding before all branches of government, and proactively encouraging public service.

As we march through this new year, please reach out if you are interested in serving on any committee, publication, or serving our great Section in any way. We are always eager to hear new ideas, meet new faces, and celebrate what more we can learn from broadened perspectives at the Council table and in our events.

Thank you for everything you do for our governmental clients and for this Section!

A handwritten signature in cursive script that reads "Helen Lizzie Mills".

Helen Lizzie Mills  
Government Law Section Chair

# Hope to See You There!

## Government Law Section Winter Conference

### *Local Government Whack-a-mole: The Pounding, Preempting, and Constricting of Municipal Legal Authority in Michigan*

**When:** February 11, 2022

**Where:** In Person: Summit on the Park, 46000 Summit Parkway, Canton, MI 48188; or, remotely through electronic attendance.

**Register:** You can register for this event by clicking [here](#). Please indicate whether you will be attending in person or remotely when you register.

### Conference Agenda

**8:00 am Registration and Check-In**

Continental Breakfast from Zingerman's

**8:45 am Welcome & Introductions**

SPEAKER: *Lizzie Mills*, Fahey Schultz Burzych Rhodes, PC,  
GLS Section Chair

#### Morning Sessions:

**9:00 am ARPA: What You Need to Know to Answer Your Clients' Questions**

SPEAKERS: *Sarah Ahn*, Associate General Counsel, GLWA  
*Maggie Pallone*, Vice-President, Public Sector Consultants  
*Chris Hackbarth/John LaMacchia*, State & Federal Affairs, Michigan Municipal League

**9:45 am 1<sup>st</sup> Amendment Auditors, Petitioners, Political Rallies, Religious Meetings, and Other Public Facility Use Legal Issues & Policy Considerations**

SPEAKER: *Steven P. Joppich*, Rosati Schultz Joppich Amtsbuechler, PC

**10:45 am Networking Break**

**11:00 am Handling Stormwater Issues in a Time of Historic Rain Events—A Maelstrom of Competing Legal, Regulatory & Funding Issues**

SPEAKERS: *Kelsey Cooke, Esq.*, General Counsel and Special Projects Manager Oakland County Water Resources Commissioner's Office  
*Elmeka Steele, Esq.*, Deputy Director/Drain Commissioner, Wayne County Public Services  
*Scott Petz, Esq.*, Dickinson Wright, PLLC

**12:00 pm Luncheon by Zingerman's**

#### Afternoon Sessions:

**1:00pm Charter Amendment Procedural Updates & Novel Preemption Issues**

SPEAKERS: *Lauren Tribble-Laucht*, City Attorney, Traverse City  
*George Elworth*, Assistant Attorney General, State Operations Division

- 1:45 pm**      **Right to Farm Act: Local Zoning is Preempted, But Where's the Beef & Backyard Chickens?**  
SPEAKERS:    *Catherine Mullhaupt*, Staff Attorney, Michigan Townships Association  
*Michael Wozniak*, Manager, Michigan Department of Agriculture & Rural Development  
*Ryan Coffey Hoag*, Extension Educator, Government & Community Vitality, Michigan State University Extension
- 2:30 pm**      **Networking Break**
- 2:45pm**      **What Is the Impact of F.P. Development v Canton on Tree Preservation Ordinances and Other Municipal Permitting?**  
SPEAKERS:    *Dr. Richard K. Norton*, JD, Professor, Urban & Regional Planning Program, University of Michigan  
*Kristin Bricker Kolb*, Corporation Counsel, Charter Township of Canton  
*Emily Palacios*, Associate General Counsel, University of Michigan
- 3:45 pm**      **Cracker Barrel**
- 4:00 pm**      **Adjournment**

\*\*\* The Council of the Government Law Section will hold its Section Council meeting at a nearby location immediately after the close of the Program. Directions will be provided during the Program. All GLS Members are invited to attend.

## ***Coming Events***

**23rd Annual GLS/MAMA Education Seminar, Grand Traverse Resort, June 24, 2022**

**Mark Your Calendars Now!!!**



# Michigan Election Law Reform: Status of the 2021 Michigan Election Reform Package

By Sean C. Rucker and Erica Y. Auh

The Michigan Senate introduced a 39-bill reform package (later expanded) on March 24, 2021 “to ensure transparency, integrity, and confidence in Michigan’s election process.”<sup>1</sup> The bills have received much attention and triggered substantial reaction. Republicans tend to say that the reforms “will help ensure that our elections are free, fair, and secure,”<sup>2</sup> while Democrats have described the package as a “reprehensible rollback of the right to vote.”<sup>3</sup>

While some bills propose to make technical changes—such as allowing more challengers for larger absent voter (“AV”) counting boards (SB 279) and requiring a voter to attest to being registered in one place only and affirm a statement in the voter registration that voting more than once at the same election is a felony (SB 302)—others seek to change policy and law in greater magnitudes. A handful of the latter type have been passed by both chambers and presented to Governor Gretchen Whitmer.

Of the bills presented to the Governor, the key bill is SB 303, one of a number of bills dealing with voter identification. The original bill as introduced eliminates the current statutory provision allowing a voter without a photo ID to sign an affidavit to that effect and obtain a ballot, subject to challenge; instead mandating the issuance of a provisional ballot, which would be tabulated only if the voter verifies his or her identity with the local clerk within six days of the election. Since introduction, numerous amendments have been made to SB 303.

The final version of SB 303 passed by both chambers has grown into a bill embedding provisions from several other controversial bills in the reform package, especially pertaining to absentee voting. The final version, hence, not only retains the provisional ballot requirement for a voter without a photo ID, but also includes the following provisions from five additional bills:

(1) Requiring identification verification for an AV ballot application by requiring an AV ballot ap-

plicant to provide his or her driver license number, state ID number or the last four digits of his or her Social Security number on the application, or to present an original or copy of a photo ID to a clerk (failing to meet the requirement results in the issuance of a provisional ballot) (originally SB 285);

- (2) Prohibiting the Secretary of State or other government officials from sending an AV ballot application to an unsolicited voter (SB 310);
- (3) Setting an AV ballot drop box deadline to 8:00 p.m. on the election day (SB 286);
- (4) Prohibiting accepting money from third-party entities to conduct or administer an election (SB 284); and
- (5) Requiring only the board of county canvassers to tabulate provisional ballots and requiring the Secretary of State to promulgate rules to establish tabulating procedures for the board of county canvassers (the House substitute of SB 304).

Governor Whitmer vetoed the amended bill, along with two other bills tie-barred to SB 303, expressing concerns that the bills would disenfranchise the voters.<sup>4</sup> The tie-barred bills are SB 304, a notice requirement mirroring provisions in SB 303, and HB 5007, eliminating a \$10 fee for an initial issuance and renewal of an official state ID card.

Two other bills have reached the Governor’s desk, both similarly having been vetoed by the Governor. One requires county clerks to update the State’s Qualified Voter File to cancel the voter registration of the deceased voters every month, and weekly within 16-45 days of the election, then daily within 15 days of the election (SB 277). The other is an initiative petition bill requiring the Board of State Canvassers to complete the canvass of an initiative petition within 100 days of it being submitted to the Secretary of State, and no later than 100 days be-

fore a general November election if filed with the Secretary of State at least 160 days before that general November election (SB 280).

There are other less controversial bills that have been reported out of the Senate Committee on Elections, but they are at various stages and have not yet been approved by the full Senate. These bills include greater training for challengers (SB 292), allowing U.S. military service members to vote electronically using a Common Access Card (SB 311), and setting additional AV ballot drop box requirements, including approval by the Secretary of State and the county board of canvassers, among others. Discussion on these bills is ongoing as of January 2022. Although the fate of the bills is unclear, a group calling itself the “Secure MI Vote Committee” has announced and is undertaking an initiative petition containing essentially the same provisions as SB 303 as amended and subsequently vetoed. If the petition obtains 340,047 signatures and the approval of the Legislature, the initiative would become law, successfully circumventing Governor Whitmer’s vetoes. Whether the petition obtains the necessary signatures should be known later in 2022.

### About the Authors



**Sean Rucker** is an associate in Miller Canfield’s Public Finance Group. His experience includes a wide variety of public law matters ranging from traditional bond financings to economic development projects and various tax increment finance matters.

Sean is a graduate of Wayne State University Law School and previously interned with the General Motors Student Corps and the Detroit Police Department Board of Commissioners. He also worked as a law clerk for the Honorable Victoria A. Roberts in the United States District Court for the Eastern District of Michigan.



**Erica Y. Aub** is a third-year student at Northwestern Pritzker School of Law, where she is an articles editor of the Northwestern University Law Review. She was a judicial extern for the Honorable Judith E. Levy of the U.S. District Court for the Eastern District

of Michigan and a summer associate at Miller Canfield. She plans to join the firm in the fall.

Erica holds a BA in economics from Wellesley College and earned a Master’s and doctorate in social welfare from UC Berkeley. Before studying law, she was a National Institute of Mental Health (NIMH) postdoctoral fellow and worked as an assistant professor, teaching and researching social welfare policy and international social welfare.

### Endnotes

- 1 Outman sponsors bills as part of comprehensive election reform in Michigan, MI Senate GOP (March 24, 2021), <https://www.misenategop.com/outman-sponsors-bills-as-part-of-comprehensive-election-reform-in-michigan/>.
- 2 Ruth Johnson, Opinion: Reforms would ensure free, fair and secure elections, Bridge Michigan (March 30, 2021), <https://www.bridgemi.com/guest-commentary/opinion-reforms-would-ensure-free-fair-and-secure-elections>.
- 3 Dave Boucher & Clara Hendrickson, Michigan GOP senators file 39 election reform bills Democrats call racist, based on lies, Detroit Free Press (March 24, 2021, 3:50 PM), <https://www.freep.com/story/news/politics/elections/2021/03/24/michigan-senate-gop-election-reform-laws/6963314002/>.
- 4 Clara Hendrickson, Whitmer vetoes election bills aimed at overhauling voter ID rules, Detroit Free Press (October 29, 2021, 6:00 PM), <https://www.freep.com/story/news/local/michigan/detroit/2021/10/29/whitmer-vetoes-election-bills/8520215002/>.



# Opinions of the Attorney General Dana Nessel

By Assistant Attorney General George M. Elworth

**CONST 1963, ART 2, § 4:  
CONST 1963, ART 4, § 53:  
CONSTITUTIONAL LAW:  
ELECTIONS:** Auditor General's authority to audit post-election processes and access election records and equipment

While the Auditor General may subject the Michigan Bureau of Elections to a performance audit concerning the Bureau's procedures for conducting post-election audits under MCL 168.31a, article 4, § 53 of Michigan's Constitution does not authorize the Auditor General to audit county clerks or other local units of government to facilitate his audit of the Bureau of Elections.

The Secretary of State, in her role as the Chief Elections Officer, may exercise supervisory authority over local elections officials responding to a request for election records by the Auditor General by issuing directions for the review of such records in order to protect the physical integrity and security of the records consistent with state and federal law.

The Secretary of State, in her role as the Chief Elections Officer, may exercise supervisory authority over local elections officials responding to a request for access to voting equipment by the Auditor General by issuing directions that access to voting equipment should not be permitted, given the need to protect the physical integrity and security of the equipment consistent with state and federal law.

Opinion No. 7316

August 6, 2021

**The DOG LAW:  
COUNTY BOARDS OF  
COMMISSIONERS:**

**County regulation of the keeping of livestock and poultry on residential land.**

The Dog Law of 1919, 1919 PA 339, MCL 287.261 et seq., does not authorize a county to adopt an animal control ordinance regulating the keeping of livestock and poultry.

The county's general ordinance-making power of MCL 46.11(j) does not authorize a county board of commissioners to adopt a countywide ordinance regulating the keeping of livestock and poultry on residential land.

Opinion No. 7314

July 22, 2021

**MCL 324.5901 et seq.  
AIR POLLUTION CONTROL  
FACILITY; TAX EXEMPTION:**

**Agency responsibilities regarding applications for tax exemption certificates.**

The State Tax Commission, taking into consideration the Department of Environment, Great Lakes, and Energy's findings whether machinery, equipment, or structures are a "facility" under Part 59 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.5901 et seq., determines both the amount a tax exemption "shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any air pollution control facility" under MCL 324.5902(2), and "the total acquisition cost of the facility entitled to exemption" under MCL 324.5904(3).

Whether a cost is an "acquisition cost of the facility entitled to exemption" under MCL 324.5904(3) is a fact-specific inquiry that should be addressed through the administrative application and hearing process



established in Part 59 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.5901 et seq., with the burden of proof on the claimant seeking the exemption, and because the Department of Environment, Great Lakes, and Energy's guidance document is inconsistent with this principle and is otherwise inaccurate, it should be revised or withdrawn.

The Department of Environment, Great Lakes, and Energy's responsibility to make a finding under MCL 324.5903 and its responsibility to respond to a request for approval from the State Tax Commission under MCL 324.5902(2), refer to different stages of the statutory process created by Part 59 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.5901 et seq., and the Department's finding is a necessary precursor to its approval.

The State Tax Commission is responsible under Part 59 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.5901 et seq., for initially determining whether an application is complete and, based on its preliminary review, for communicating with the applicant if more information is needed. The Department of Environment, Great Lakes, and Energy is obligated to inform the Commission when an application the Commission preliminarily found complete is, in fact, incomplete because technical information needed by the Department is missing. The Commission is responsible for informing an applicant that they need to submit the

additional information identified by the Department to submit a complete application. The Department may also communicate directly with the applicant.

Opinion No. 7315

July 22, 2021

**CONST 1963, ART 4, § 6:  
INDEPENDENT CITIZENS  
REDISTRICTING  
COMMISSION:**

**The Independent  
Citizens  
Redistricting  
Commission's  
authority to go  
into a closed  
session.**

Presuming that the Independent Citizens Redistricting Commission's October 27, 2021, closed session was held to discuss memoranda that provided Commission members with certain legal parameters and historical context that should be considered in developing, drafting, and adopting the redistricting plans, then the memoranda must be disclosed under Const 1963, art 4, § 6(9) and the discussion should have been held at an open meeting.

Opinion No. 7317

November 22, 2021

**About the Author**

*Assistant Attorney General George M. Elworth of the State Operations Division and a member of the Publications Committee furnished the text of the headnote of the opinion. The full text of the opinion may be accessed at [www.mi.gov/ag](http://www.mi.gov/ag).*



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