Briefly

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June 2017 ■ Mark E. Nettleton, Chair ■ Steve Joppich & Helen Lizzie Mills, Editors

Editors' Note

On Tuesday, January 24, 2017, our nation learned that Flint, Michigan drinking water is compliant with federal regulations on lead and copper content. Michigan's Department of Environmental Quality indicated that this news is based on monitoring conducted from July to December of 2016. While this news is certainly encouraging, experts in the field of drinking water regulations explain that it could be 6, 12 or more months until the now technically-compliant water is safe for residents to drink from their faucets, due to the ongoing need for replacement of an estimated 20,000 lead-tainted pipes. In addition, questions abound as to when and how infrastructure improvements will be accomplished—and what residents are to do in the interim. When added to the hard reality that more than 1,700 residents are pursuing administrative actions and civil action against the EPA for $744 million over mishandling of the crisis, it is clear that this is an important, and continuing matter deserving of our attention as municipal practitioners. Read on for more on the Lead and Copper Rule that has been front and center in the Flint drinking water crisis.

And don't forget about the upcoming summer conference, June 23-25, 2017 at the Grand Hotel on Mackinac Island. The PCLS Annual Meeting will be held during the conference. Conference registration information is available in this edition of Briefly. We hope to see you there!

The Lead and Copper Rule[1]

By Kevin Kilby

The presence of lead in drinking water is regulated due to the serious health problems it can cause if too much enters the body from drinking water or other sources. The greatest risk of lead exposure is to infants, young children and pregnant women. Lead causes damage to the brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of the body. Scientists have linked the effects of lead on the brain with lowered IQ in children. Adults with kidney problems and high blood pressure can be affected by lead exposure more than healthy adults. Lead typically enters drinking water through the corrosion of a household plumbing system, *i.e.*, lead pipes, brass plumbing fixtures, copper pipes soldered with lead, and the erosion of natural deposits.

In 1991, the Environmental Protection Agency ("EPA") adopted the Lead and Copper Rule ("LCR") to address the health effects that lead and copper have on the human body. The LCR requires that the level of lead in the drinking water be less than 15 parts per billion (ppb), and that the level of copper be less than 1,300 ppb based on the 90th percentile level of tap water samples, as more fully explained below. The LCR is located at 40 CFR 141.80 – 141.91, and is effectuated in Michigan through the Safe Drinking Water Act at MCL 325.1001 *et. seq.*, and the administrative rules located at Mich Admin Code R 325.10101 – R 325.12820.[2]

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1 A previous version of this article appeared in the October 2016 printing of **LACHES**, an Oakland County Bar Association (www.ocba.org): 1760 S. Telegraph Rd., Suite 100, Bloomfield Hills, MI 48302, (248) 334-3400.

2 Although this article focuses on the LCR requirements, it is important to note that in Michigan there are eight different regulations focused on municipal potable water supplies to which municipalities must adhere. The eight regulations are: 1) Act 399, known as the Safe Drinking Water Act; 2) the Safe Drinking Water Rules published by the Michigan Department of Environmental Quality (MDEQ), Office of Drinking Water and Municipal Assistance Supplying Water to the Public; 3) the MDEQ Public Notification Rule; 4) Act 399 Rules Index; 5) MDEQ Current Drinking Water Standards; 6) MDEQ Consumer Confidence Report Rule; 7) MDEQ Revised Total Coliform Rule; and 8) MDEQ Rule Promulgation.

Lead and Copper Sampling Location Determination

Compliance with the LCR generally begins with sampling drinking water. A municipal water supplier is required to identify lead and copper sampling sites. Lead and copper sampling sites are generally located at taps in homes/buildings that are at high risk of lead or copper contamination. The Michigan Department of Environmental Quality ("MDEQ") has provided the following guidance for water suppliers:[3]

- Samples must be collected from **Tier 1** sites, unless
- insufficient Tier 1 sampling sites are available, then **Tier 2** sites must be used, unless
- insufficient Tier 1 and Tier 2 sampling sites are available, then **Tier 3** sites must be used.
- If no Tier 1, 2, or 3 sites are available, sampling sites must be representative of plumbing materials typically found throughout the water system.

TIER 1 SITES–Single family residence with:

- Lead service lines*
- Copper plumbing with lead solder installed after 1982 and before 1989
- Interior lead plumbing
- Multiple family residences (MFR) may be used as Tier 1 sites when MFR comprise at least 20 percent of the total service connections.

TIER 2 SITES–Buildings or MFR with:

- Lead service lines*
- Copper plumbing with lead solder installed after 1982 and before 1989
- Interior lead plumbing

TIER 3 SITES–Single family residence with:

- Copper plumbing with lead solder installed before 1983

OTHER SITES

- Sites representative of plumbing materials commonly found throughout the water supply.

* If a water system has lead service lines (LSL), at least 50 percent of the sampling sites must have an LSL. EPA has clarified that sites with lead goosenecks or pigtails (commonly defined as the publically-owned portion of the service line between the water main and either a connector line or the curb box) should be considered Tier 1 sites. Priority should be placed on sites with full LSLs, followed by partial LSLs, followed by lead goosenecks.

Sampling Requirements and Frequency

Lead and Copper Tap Requirements

In Michigan, water systems are divided into different classifications. A municipal water supply is classified as a Type I water system. For purposes of the LCR, water systems in Michigan are also classified by size as follows:[4]

Supply Size	Definition for Application of the LCR
Large Water Supply	A public water supply that serves more than 50,000 people.
Medium Water Supply	A public water supply that serves between 3,301 – 50,000 people.
Small Water Supply	A public water supply that serves fewer than 3,301 people.

Samples for lead and copper are collected every 6 months for the first year. The table below outlines the number of tap samples that are required to be collected by a water supplier for lead and copper monitoring:[5]

Supply Size (Number of People Served)	Number of Sites (Standard Monitoring)	Number of Sites (Reduced Monitoring)
More than 100,000	100	50
10,001 to 100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
Fewer than 101	5	5

3 http://www.michigan.gov/documents/deq/deq-odwma-water-cdwu-site-selection-criteria_524543_7.pdf

4 Mich Admin Code R 325.10710a(4).

5 Mich Admin Code R 325.10710a(3).

Annually, any size water system that for consecutive six-month monitoring periods (1) meets optimal water quality parameters, (2) reflects optimal corrosion control treatment, and (3) is equal to or less than the lead or copper action levels, may qualify for reduced frequency of lead and copper sampling.

A small or medium-size water supply that is at or below the lead and copper action levels during consecutive six-month monitoring periods may reduce the number of samples and the frequency of sampling to once each year. A small or medium-size water supply collecting fewer than five samples that is at or below the lead and copper action levels during consecutive six-month monitoring periods may reduce the frequency of sampling to once per year. If a small or medium-size water supply remains at or below the lead and copper action levels during 3 consecutive years of monitoring, the frequency in which the supply is required to monitor lead and copper levels may be reduced to once every 3 years.

A water supply that demonstrates in consecutive six-month monitoring periods that the tap water lead level is less than or equal to 0.005 mg/l, and that the copper level is less than or equal to 0.65 mg/l, may reduce the number of samples and the frequency of sampling to once every 3 years.

A small-size water supply may apply to the MDEQ for a reduction in the frequency of lead and copper monitoring to once every 9 years upon meeting certain criteria.

Water Quality Parameter Monitoring Requirements

In addition to the samples that must be collected at the tap for lead and copper monitoring, samples may also be required for water quality parameter testing. This tests water for acceptable levels of pH, alkalinity, calcium, conductivity, orthophosphate, silica and water temperature.

Water quality parameter samples must be collected at taps every 6 months and at entry points to the distribution system prior to the corrosion control treatment process. After a corrosion control treatment has been installed, samples are required every 2 weeks for pH, alkalinity, corrosion inhibitor, and orthophosphate or silica, whichever is applicable. As with the lead and copper tap requirements, the number of samples required is dependent upon the number of individuals served by the water supplier.

Water Quality Parameter Tap Monitoring Requirements[6]

(2 Tap Samples Collected at Each Site)

Supply Size (Number of People Served)	Number of Sites (Standard Monitoring)	Number of Sites (Reduced Monitoring)
More than 100,000	25	10
10,001 to 100,000	10	7
3,301 to 10,000	3	3
501 to 3,300	2	2
101 to 500	1	1
Fewer than 101	1	1

In certain circumstances, a water supplier may qualify for reduced water quality parameter sampling. The table on the following page summarizes the reduced monitoring requirements.[7]

The 90th Percentile Rule

A water supply is considered to have optimized corrosion control treatment if both its tap water and source water monitoring results demonstrate that the difference between the 90th percentile tap water lead level and the highest source water lead concentration is less than the practical quantitation level for lead for consecutive six-month monitoring periods.

The lead action level is exceeded if the 90th percentile lead level is more than 15 ppb in tap water samples collected during a monitoring period. Additionally, the copper action level is exceeded if the 90th percentile copper level is more than 1,300 ppb in tap water samples collected during a monitoring period. The 90th percentile is calculated by multiplying the number of valid samples by 0.9 For example, if 10 samples are taken, that number is multiplied by .09, yielding a result of 9. Accordingly, the sample with the ninth-highest lead and copper test result will have its lead or copper level compared to the action level.[8] For five samples, the 90th percentile rule is calculated by taking the average of the samples with the

6 Mich Admin Code R 325.10710b(3)(a), (7)(a).
7 Mich Admin Code R 325.10710b(9).
8 Mich Admin Code R 325.10604f(1)(c), (2)(b)(iii).

Monitoring Requirements for Water Quality Parameters – Lead, Copper, Corrosion Control

Monitoring Period	Parameters	Location	Frequency
Initial monitoring	pH, alkalinity, orthophosphate or silica, calcium, conductivity, temperature	Taps and at entry points to distribution system	6 months
After installation of corrosion control	pH, alkalinity, orthophosphate or silica, calcium	Taps	Every 6 months
	pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion Control), inhibitor dosage rate and inhibitor residual	Entry point or points to distribution system	At least every 2 weeks
After department specifies Parameter values for optimal Corrosion control	pH, alkalinity, orthophosphate or silica, calcium	Taps	Every 6 months
	pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual	Entry point or points to distribution system	At least every 2 weeks
Reduced Monitoring	pH, alkalinity, orthophosphate or silica, calcium	Taps	Every 6 months annually or every 3 years at a reduced number of sites
	pH, alkalinity dosage rate and concentration (if alkalinity adjusted control), inhibitor dosage rate and inhibitor residual	Entry point or points to distribution system	At least every two weeks

highest and second-highest concentrations.[9] For less than five samples, the highest result is used.[10]

If a water supply tests above the 90th percentile for lead or copper, the water supply is no longer considered to have optimized corrosion control treatment and may be required to implement a different corrosion control treatment, water quality parameters, source water treatment, lead service line replacement, and/or public education.[11]

9 Mich Admin Code R 325.10604f(1)(c)(iv).

10 Mich Admin Code R 325.10604f(1)(c)(v).

11 A municipality may have samples well in excess of the 15 ppb of lead or 1,300 ppb of copper if the samples are above the 90th percentile. There is no maximum ppb. For example, if a

Corrosion Control Treatment

A large water supply that exceeds the lead or copper action level is required to conduct initial monitoring during consecutive six-month periods. Such a supply must also complete corrosion control studies and install optimal corrosion control treatments as designated by the MDEQ. Thereafter, the water supply must complete follow-up sampling, operate the system in compliance with the optimal water quality parameters as determined by the MDEQ, and continue to conduct tap sampling.

Small and medium-size water supplies are required to conduct initial tap sampling until the supply either exceeds the lead or copper action level or becomes eligible for reduced monitoring. A supply that exceeds the lead or copper action level must provide the MDEQ with a proposed optimal corrosion control treatment within 6 months. Within 12 months, the MDEQ may require the supply to perform corrosion control studies. After a monitoring period in which the supply exceeds the lead or copper action level, the MDEQ is required to specify an optimal corrosion control treatment for implementation within 18 months for medium-size supplies, or 24 months for small-size supplies. If the MDEQ requires a supply to perform corrosion control studies, those studies must be completed within 18 months. If the supply has performed corrosion control studies, the MDEQ will designate an optimal corrosion control treatment within 6 months, and the supply must install the designated treatment within 24 months. Follow-up sampling is required within 36 months following the designation of the optimal corrosion control treatment. The MDEQ is charged with reviewing the supply's installation of the treatment, and must designate optimal water quality parameters within 6 months of the supply's completion of follow-up sampling. The supply must continue to operate in compliance with MDEQ-designated optimal water quality parameters and to conduct tap sampling.

Water Quality Parameters

When any corrosion control treatment change is introduced into the water supply, the water quality parameters may be affected. Therefore, when the MDEQ requires a water supply to implement a new or modified corrosion control technique to achieve compliance with the LCR, the MDEQ may also require the supplier to conduct additional water quality parameter testing.

Source Water Treatment

When a supply exceeds the lead and copper action levels, it is required to complete lead and copper source water monitoring and make a treatment recommendation to the MDEQ within 180 days of the end of the monitoring period. The MDEQ will proceed to make a determination regarding source water treatment within 6 months. If the MDEQ requires installation of source water treatment, the supply must install the treatment within 24 months and conduct follow-up tap water monitoring and source water monitoring within 36 months. Once installation of the treatment is complete, the MDEQ must review the installation and the operation of source water treatment and specify maximum permissible source water levels within 6 months. Thereafter, the supply must continue source water monitoring and operate in compliance with the lead and copper source water levels specified by the MDEQ.

Lead Service Line Replacement

Lead service line replacement is typically required for systems that continue to exceed allowable lead limits after optimizing corrosion control treatments and/or source water monitoring and source water treatment. Michigan's administrative rules require water supplies to replace 7-percent of all lead service lines within their distribution systems each year.[12] A water supplier is required to replace the portion of the lead service line that it owns. If a supplier does not own the entire lead service line, the supplier is still required to offer to replace the property owner's portion of the line at the owner's expense.[13] The property owner may opt not to pay the cost of replacing his portion of the service line. If only a portion of the lead service line is replaced, the municipal water system must (1) notify customers at least 45 days prior to replacement about the potential for increased lead levels, (2) collect samples within 72 hours of replacement, and

municipality is required to obtain 10 samples and nine of the 10 samples are below the 15 ppb lead and 1,300 ppb copper requirements, the municipality is in compliance with the LCR even though the 10th sample was 1,000 ppb lead.

12 Mich Admin Code R 325.10604f(5)(b)(i).

13 Mich Admin Code R 325.10604f(5)(d).

(3) provide results within three days of receipt.[14] Lead service line replacement may be discontinued when lead levels remain within the allowable limit in tap samples for consecutive six-month monitoring periods.

Public Education

Public education on these issues serves to (1) inform consumers of the health complications associated with lead and copper exposure, (2) help consumers identify potential sources of lead and copper exposure, and (2) impart strategies to help consumers minimize their exposure to lead and copper. This information can be delivered to consumers in a variety of ways, including through consumer water bills, local health agencies and other organizations serving at-risk populations, press releases and website notices, and social media.

Variances, Exemptions and Treatment Technologies

The director of the MDEQ (the Director) is permitted to grant a variance or exemption to certain state drinking water standards.[15] A variance cannot be granted, however, where it would allow circumvention of maximum contamination levels of E. coli and total coliform, nor where treatment technique requirements of filtration and disinfection are at issue.[16]

To be considered for a variance, a water supply must make a request in writing not less than 90 days before the date on which the variance or exemption would become effective. Before granting a variance or exemption from maximum contaminate levels, the Director must make a specific finding based on information provided by the supplier that each of the following conditions exist: (1) due to compelling factors, including economic factors, a public water supply is not able to comply with an MCL or treatment technique; (2) a public water supply for which an exemption is requested was in operation on the effective date of the state drinking water standard; and (3) the supplier of water has demonstrated that the granting of an exemption will not result in an unreasonable risk to the health of persons using the public water supply.[17]

14 Mich Admin Code R 325.10604f(5)(d)(i).
15 This authority is granted under MCL 325.1020.
16 Mich Admin Code R 325.10303(1)(a)-(b).
17 Mich Admin Code R 325.10306.

If the Director finds that all of these conditions exist, he may grant the issuance of a variance or exemption.[18]

Prior to issuing an order granting a variance, the Director is required to provide public notice of intent to grant the order and afford any person an opportunity to request a public hearing.[19] The Director may issue an administrative order granting the variance or exemption, or he may deny the request, following the public hearing. The exemption or variance has a fixed term not exceeding 5 years, but a supplier who wishes to extend an exemption may submit a request for reissuance.[20]

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18 *Id.*
19 Mich Admin Code R 325.10309(1).
20 Mich Admin Code R 325.10311.

Opinions of the Attorney General Bill Schuette

By Assistant Attorney General George M. Elworth

Editor's note: *Assistant Attorney General George M. Elworth of the State Operations Division and a member of the Publications Committee furnished the text of the headnotes of these opinions. The full text of these opinions may be accessed at www.mi.gov/ag.*

Opinion No. 7294 (February 2, 2017)

YOUTH TOBACCO ACT – AGE OF MAJORITY ACT – PREEMPTION: *Validity of local ordinance raising the age of persons able to purchase tobacco products to the age of 21.*

The Age of Majority Act, 1971 PA 79, MCL 722.51 et seq., preempts a city ordinance that provides "a person shall not sell, give or furnish a tobacco product in any form to a person under 21 years of age." The ordinance directly conflicts with state law by barring the sale or furnishing of tobacco products to 18- to 20-year-olds because the Age of Majority Act prohibits treating these young adults differently from persons 21 years and older with respect to their legal capacity to purchase tobacco products.

Opinion No. 7295 (March 8, 2017)

INCOMPATIBLE PUBLIC OFFICES ACT – CONTRACTS OF PUBLIC SERVANTS WITH PUBLIC ENTITIES ACT – GENERAL LAW VILLAGES ACT – VILLAGES: *Compatibility of offices of village president and village manager.*

The offices of village president and village manager of the same village are compatible in a village with a population of less than 40,000 under subsection 3(4)(b) of the Incompatible Public Offices Act, MCL 15.183(4)(b).

A village president is not prohibited from entering into an employment contract to serve as the same village's manager in a village with a population of less than 25,000 under subsection 3a(c) of the Contracts of Public Servants with Public Entities Act, MCL 15.323a(c).

To the extent a village ordinance provides that its village president appoints the village manager, subsection 2(1) of the General Village Law, MCL 62.2(1), prevails over the ordinance, and the village council is the appointing authority for the village manager.

Case Summaries

By Spencer Bondy and Mike Hanchett, Johnson, Rosati, Schultz & Joppich, PC

In *Cole v City of Memphis*, 15-5725 (October 17, 2016), the Sixth Circuit held as unconstitutional the regular practice of police wherein pedestrians were arrested after failing to clear a busy stretch of walkway during late-night weekend hours. The Court held that these police sweeps effected an impediment to the fundamental right of intrastate travel, and were thus subject to review under intermediate scrutiny. Because the sweeps "resulted in the broad denial of access to a popular, two-block area of a public roadway and sidewalk" and the City's public-safety rationale for the practice was undercut by its overly broad and regular application, the Court determined that the sweeps were not "narrowly tailored to meet significant city Objectives" and therefore violated the constitution.

http://www.michbar.org/file/opinions/us_appeals/2016/101716/63770.pdf

In *Trinity Health-Warde Lab, LLC v Charter Twp of Pittsfield*, 328092 (November 3, 2016), the Court of Appeals addressed whether the plaintiff, a for-profit entity owned and under the near-complete corporate control of a charitable institution, was exempt from paying taxes on real property under the General Property Tax Act. The Court found that the Plaintiff was not entitled to either of the exemptions it claimed; because one of the exemptions was available only when real property was owned or operated by nonprofit trusts used for public health purposes (under MCL 211.7r), and the other was reserved for charitable institutions which "must be . . . nonprofit" (under MCL 211.7o). Reasoning that the for-profit plaintiff was ineligible by definition for tax exemptions applicable only to non-profit organizations, the Court clarified that plaintiff was not entitled to the real property tax breaks simply because it is controlled by a non-profit parent.

http://www.michbar.org/file/opinions/appeals/2016/110316/63907.pdf

In *City of Pontiac Police and Fire v City of Pontiac*, 316418 (October 25, 2016), the Michigan Court of Appeals held that determinations of whether emergency managers' executive orders should be given retroactive effect were subject to the same criteria used when analyzing questions of statutory retroactivity. At issue was City of Pontiac Emergency Manager's Executive order (EO 225), which attempted to eliminate the city's accrued but unpaid contractual obligation to make its annual contribution to the city Police and Fire Health Insurance Trust for the 2011-2012 fiscal year. EO 225 did not include clear, unequivocal language providing for retroactive application. The Court determined that retroactive application would impair or abolish plaintiff's vested right in a breach of contract claim, by eliminating the City's contractual obligation itself. Thus, applying the retroactive-application test set forth by the Michigan Supreme Court in *In re Certified Questions from US Court of Appeals for the Sixth Circuit*, 416 Mich 558 (1982), the Court of Appeals found that an executive order issued by the Emergency Manager of the City of Pontiac did not meet the requirements of that test, and would thus not have retroactive effect.

http://www.michbar.org/file/opinions/appeals/2016/102516/63861.pdf

As part of the City of Detroit's Chapter 9 bankruptcy case, residential customers of the Detroit Water and Sewage Department brought an action in the United States Bankruptcy Court for the Eastern District of Michigan seeking declaratory and injunctive relief, *inter alia*, following mass water shutoffs due to non-payment. The Bankruptcy Court dismissed the residents' action, citing lack of jurisdiction to grant the requested relief under 11 USC § 904. 11 USC § 904 prohibits a bankruptcy court from interfering, "by any stay, order, or decree . . . with any of the political or governmental powers of the debtor . . . the property or revenues of the debtor[,] or the debtor's use or enjoyment of any income-producing property."

On appeal in *In re City of Detroit*, 15-2236 (November 14, 2016), the Sixth Circuit affirmed that decision, holding that "a bankruptcy court order requiring [the Detroit Water and Sewage Department] to provide water service at a specific price, or refrain from terminating service," as the residents had requested the Bankruptcy Court to order, "interferes with the City's political and governmental powers, its property and revenues, and its use and enjoyment of income-producing property," in direct violation of 11 USC § 904. (quotations omitted). The Court also noted even if plaintiff's substantive due process and equal protection claims had survived §904, they were properly dismissed for "failure to state a claim upon which relief can be granted." "There is no fundamental right to water or service," "[w]ithholding water on condition of payment for delinquent charges does [not deprive an individual of a constitutional guarantee, or otherwise shock the conscience]." Additionally, the Court held that plaintiff's procedural due process claims were made moot by the DWSD's amended shut-off procedures.

http://www.michbar.org/file/opinions/us_appeals/2016/111416/63966.pdf

In *Denney v. Kent Cnty. Rd. Comm'n*, 328135 (November 15, 2016), the Michigan Court of Appeals held that since the deceased could have maintained an action for lost earnings under the highway exception to governmental immunity for his bodily injury, and since the plaintiff was able to bring this derivative claim under the wrongful-death statute, as the personal representative, the trial court improperly granted defendant's motion

for partial summary disposition in regards to her claim for damages for the decedent's lost earnings. Defendant argued that plaintiff's claim for lost earnings did not fall under the highway exception because MCL 691.1402(1) only allows for damages to "a person who sustains bodily injury" and the personal representative's claim was on behalf of the beneficiaries rather than of the decedent. The COA, however, found that the claim for lost earnings was the decedent's, which survived his death and was brought under the wrongful-death statute by the personal representative on his behalf.

http://www.michbar.org/file/opinions/appeals/2016/111516/63973.pdf

In *Milot v Department of Transportation*, 329728 (December 8, 2016), the Michigan Court of Appeals held that a plaintiff bringing a tort action against an agency under the highway exception to governmental immunity is required under MCL 691.1404 only to provide the defendant notice of persons who witnessed the occurrence of the injury and the defect. Reasoning that the purpose of the statutory notice is "to provide the governmental agency with an opportunity to investigate the claim while the evidentiary trail is still fresh and, additionally, to remedy the defect before other persons are injured," the Court rejected the defendant's contention that summary disposition was appropriate because the plaintiff did not include in her notice the names of two individuals who arrived on the accident scene after the injury had occurred. The Court held that when a plaintiff is required to provide such notice, she "must list . . . the names of those witnesses who have pertinent information about the accident itself, not all witnesses who have knowledge of the subsequently revealed extent of the plaintiff's injuries."

http://www.michbar.org/file/opinions/appeals/2016/120816/64141.pdf

Legislative Updates

By Kester K. So and Eric McGlothlin, Dickinson Wright PLLC

Over the course of the last several months, the Michigan Senate and House of Representatives have considered numerous bills of municipal interest. The following are summaries of some of those bills.

Laws Enacted 2015-2016

- **Medical Marihuana. HB 4209 (2016 PA 281)** creates a new act known as the "Medical Marihuana Facilities Licensing Act" to license and regulate medical marihuana growers, producers, processors, transporters, centers and safety compliance facilities. It also provides duties and powers to state and local governmental officers and entities. Creates new act. See also **HB 4210** and **4827**. http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0281.pdf
- **Medical Marihuana. HB 4210 (2016 PA 283)** amends the Michigan Medical Marihuana Act with respect to the production, transporting, and retail sale of medical marihuana. Amends sections 3, 4, 6, and 7, adds sections 4a and 4b, 2008 IL 1 (MCL 333.26423, 333.26424, 333.26426, and 333.26427). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0283.pdf
- **Economic Development. HB 4226 (2015 PA 125)** amends The Local Development Financing Act to revise creation of authority in which a certified technology park may enter into agreements. Amends section 12b of 1986 PA 281 (MCL 125.2162b). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2015-PA-0125.pdf
- **Local Government. HB 4331 (2015 PA 115)** amends the Emergency Municipal Loan Act by amending the emergency financial assistance loan board powers and loan requirements. Amends sections 2, 3, 4, 5, 6, and 7 of 1980 PA 243 (MCL 141.932 *et seq.*). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2015-PA-0115.pdf

- **Recreational Authorities. HB 4578 & SB 481 (2016 PA 173 & 174)** allows two or more municipalities or districts to establish a recreational authority, for acquiring, constructing, operating, maintaining, or improving: a swimming pool, a recreation center, an auditorium, a conference center, a park, a museum, or historic farm, and allows levy of voter-approved tax of not more than 1 mill for 20 years therefor. (MCL 123.1133, 123.1141 *et seq*.). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0174.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0173.pdf

- **Property Tax. HB 4580 (2016 PA 329)** amends the General Property Tax Act to prohibit the governing body of an eligible local assessing district, after December 31, 2016, from adopting a resolution exempting new personal property from the collection of taxes without a written agreement. Amends sec. 9f, 1893 PA 206 (MCL 211.9f). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0329.pdf

- **Counties. HB 4610 (2015 PA 181)** amends the County Road Law to allow a Township Board in certain circumstances to require a county road commission to use a competitive bidding process to contract for the work on a project. Add sec. 19c to chapter IV, 1909 PA 283 (MCL 224.19c). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2015-PA-0181.pdf

- **Transportation. HB 4611 (2015 PA 182)** amends the Michigan Transportation Fund law to require competitive bidding on all local road agency projects for construction or preservation, except maintenance, costing more than $100,000. Amends sec. 11c, 1951 PA 51 (MCL 247.661c). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2015-PA-0182.pdf

- **Governmental Immunity. HB 4686 (2016 PA 419)** amend provisions of the governmental immunity law to allow a municipality to assert any defense available under the common law with respect to a premises liability claim, including that the condition was open and obvious. Amends sec. 2a, 1964 PA 170 (MCL 691.1402a). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0419.pdf

- **Property. HB 4747 (2016 PA 52)** amends the Revised Judicature Act to clarify that a municipality is not subject to adverse possession, laches, or periods of limitations defenses when the municipality is asserting rights to land against an individual. Amends sec. 5821, 1961 PA 236 (MCL 600.5821). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0052.pdf

- **Energy Conservation Financing. HB 4990 to 4994 (2016 PA 119-123)** amend various acts to allow local government officials to improve energy conservation, utilizing financing that includes lease-purchase agreements, and to expand the uses for which that financing could be applied. Each respectively amends Sec. 5f, 1909 PA 279; Sec. 36, 1895 PA 3; Sec. 24b, 1909 PA 278; Sec. 75b of Ch. 16 of the Revised Statutes of 1846; Sec. 11c, 1851 PA 156 (MCL 117.5f; 68.36; 78.24b; 41.75b; 46.11c). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0119.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0120.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0121.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0122.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0123.pdf

- **Local Government. HB 5113 (2016 PA 421)** amends Act 178, Public Acts of Michigan, 1939, as amended, which governs municipal water liens, to extend from three years to five years the enforceable period of a lien against property to which a municipal water distribution or sewage system provides service. Amends Sec. 2, 1939 PA 178 (MCL 123.162). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0421.pdf

- **Water. HB 5120 (2016 PA 478)** amends the Safe Drinking Water Act to require the owner or operator of a public water supply to issue a public advisory

within three business days after being notified that the lead action level had been exceeded. Amends sec. 19, 1976 PA 399 (MCL 325.1019). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0478.pdf

- **Local Government. HB 5176 (2016 PA 124)** amends the Local Community Stabilization Authority Act with respect to reimbursement calculation rates and use of local community stabilization share revenue, among others. Amends secs. 14, 17, and 21, repeals sec. 20, 2014 PA 86 (MCL 123.1354 *et seq.*). http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0124.pdf

- **Economic Development. SB 0619-0624 (2016 PA 505-510)** amends various acts to prohibit a tax increment financing program from capturing the revenues from taxes levied from separate millages levied for library purposes approved by the voters after December 31, 2015. (MCL 125.1651, 125.1653, 125.1773, 125.1785, 125.1801, 125.1803, 125.2152, 125.2154, 125.2843, 125.2857, 125.2873, 125.2888).

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0505.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0506.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0507.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0508.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0509.pdf

  http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0510.pdf

Bills Introduced by the House of Representatives

Local Government. HB 4002 (2017) creates the "Local Government Public Notice Act" that would, among other things, set forth the methods for local governments to provide public notices and would include a "website" within the definition of "newspaper" if there is no newspaper publication that meets the "newspaper" definition. http://www.legislature.mi.gov/documents/2017-2018/billintroduced/House/pdf/2017-HIB-4002.pdf

Join us for the upcoming 19th Annual Joint MAMA/PCLS Summer Educational Conference!

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Our featured speaker for the conference is Lisa Soronen is the Executive Director of the State and Local Legal Center in Washington, DC. Prior to joining the SLLC, Lisa worked for the National School Boards Association, the Wisconsin Association of School Boards, and clerked for the Wisconsin Court of Appeals. She earned her J.D. at the University of Wisconsin Law School and is a graduate of Central Michigan University.

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But wait! There's more! Attend the Section's *annual meeting* during this conference on Friday, June 23 at approximately 4:30 p.m. (at the conclusion of the day's educational presentations). Among other things, the agenda includes:

- Election of officers and board members
- Proposed amendment to Section 1.1 of the Section's bylaws to read:

  Section 1.1. NAME. The Section shall be known as the "Government Law Section of the State Bar of Michigan.