

# CAPITOL NEWS UPDATE

WEEK OF JUNE 8, 2020

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## **WHITMER OPENS CAMPS, SCHOOL SPORTS AND EXTENDS EVICTION PROTECTIONS**

As the number of new coronavirus cases and deaths continues to decline, Governor Whitmer issued Executive Order 2020-120 today allowing overnight residential, travel and troop camps to open beginning Monday, June 15. The campus must follow yet-to-be-published guidance issued by the Department of Licensing and Regulatory Affairs.

The order also allows some K-12 school sports activities and in-person extracurricular school activities to begin, as long as they are consistent with rules requirement social distancing.

Also on Thursday, Whitmer released Executive Order 2020-118, which extends the protections for tenants and mobile homeowners from being evicted until June 30.

## **COVID-19 CASES CONTINUE TO DECREASE**

The Latest numbers in Michigan show a continued decline in new coronavirus cases and deaths as the state begins opening its economy to help slow down the spread of COVID-19.

According to Gongwer, the number of cases reported by the Department of Health and Human Services from June 1-7 was 87 percent fewer cases and 71.8 percent fewer deaths than during April 1-7, and 68.9 percent fewer cases and 69.8 percent fewer deaths than May 1-7.

## **APPEALS COURT RULES AGAINST NESSEL**

The Michigan Court of Appeals ruled Thursday that legislation signed by former Gov. Rick Snyder that allows construction of a tunnel to house the Enbridge Line 5 oil pipeline under the Straits of Mackinac is constitutional.

Following the ruling, Enbridge said it anticipates completing the project in 2024, while the Michigan Department of Attorney General said it plans to appeal the decision.

A spokesperson for the Department of Attorney General, Courtney Covington, said in a statement that "While we are disappointed by the Court of Appeals' decision, we stand by our position that Act 359 is unconstitutional. We intend to ask the Michigan Supreme Court to review this important matter."

In the case, *Enbridge v. Michigan*, the Court of Appeals upheld a Court of Claims ruling that the law creating the authority to oversee the construction of a tunnel beneath the Straits of Mackinac to house the Line 5 oil pipeline is constitutional.

Gov. Gretchen Whitmer ordered her administration to end action on the tunnel and enforcement of the authority law last year after Attorney General Dana Nessel issued an opinion stating that the law violated technical constitutional requirements related to the Michigan Constitution's title-object clause, regarding how closely the text of a bill must relate to its title.

After the Nessel issued her opinion, Enbridge filed suit in the Court of Claims to force the state to enforce the tunnel authority law and declare the legislation as constitutional. Enbridge won in the Court of Claims last October, and the Court of Appeals upheld this decision.

## **FAIR AND EQUAL MICHIGAN INITIATIVE ALLOWED MORE TIME FOR SIGNATURES**

Court of Claims Judge Cynthia D. Stephens agreed this week unusual circumstances hampered the Fair and Equal Michigan initiative's ability to meet normal petition signature requirements and granted backers of the LGBT rights initiative an extra 69 days to gather the signatures required to get their question on the ballot.

The additional days were equal to the number of days of Gov. Whitmer's coronavirus related stay-home orders which lasted from March 23 to June 1.

Fair and Equal Michigan's ballot initiative aims to amend the Elliot-Larsen Civil Rights Act in the state, and to extend anti-discrimination protections to LGBT people.

The group had filed suit in the Michigan Court of Claims May 25 in order to challenge the requirement that citizen-led ballot initiatives must collect 340,042 signatures in 180 days to qualify.

Stephens wrote in her opinion:

“In ordinary times this challenge would fail because there is a legitimate if not compelling state interest in play. However, for 69 days the people of the state were ordered to ‘stay at home’ except for activity that was necessary to sustain or protect human life or health. Violation of this imperative was a misdemeanor.”

With the ruling, Stephens ordered the state not to count days that overlapped the stay-home period in the 180-day signature collection window.

Fair and Equal Michigan is working to add sexual preference and gender identity to the Elliott-Larsen Civil Rights Act which provides protection from discrimination related to “religion, race, color, national origin, age, sex, height, weight, familial status, or marital status.”

Fair and Equal Michigan has already sued Secretary of State Jocelyn Benson, Director of Elections Jonathan Brater and the state Board of Canvassers.

The ballot question couldn't go before voters until 2022, but once the signatures are collected, the legislature has the option of voting the ballot language into law at any time.

Two other requests from Fair and Equal Michigan were declined by the Court of Claims including the request to push back the May 27 submission of signatures deadline to qualify for the ballot in November, and to reduce the number of valid signatures from registered voters needed for ballot access.

## **STATE SUES DAM OWNER, BOYCE HYDRO BLAMES STATE**

The Michigan Departments of Environment, Great Lakes and Energy and Natural Resources filed suit on Tuesday in the Ingham County Circuit Court against Boyce Hydro LLC, the owner of the two dams that failed in Midland County in May.

The state is seeking compensation for taxpayer expenses of responding to the floods, and for violations of the Natural Resources and Environmental Protection Act.

The attorney for Boyce, Lawrence Kogan, said that instead, the state is to blame. Kogan claims that the state's lawsuit is meant to "deflect blame, legal culpability and liability of the state." He also contended that the state in part caused delays in repairing the Edenville dam, and that the state's dam safety program is poorly staffed it could not adequately regulate the dam.

State officials have emphasized that the Federal Energy Regulatory Commission asked Boyce to upgrade the spillway at the Edenville dam for 14 years. Its failure to do so eventually led to FERC revoking Boyce's permit to generate electricity from the dam. This then led to the state being responsible for regulating the dam.

Kogan said that "when the facts come out, it will show that MDEQ and MDNR are ultimately responsible for preventing Boyce from undertaking its dam safety obligations to FERC because of all the complaints filed with FERC from 2015-18."

Other state issues, according to Kogan were a lack of capital funds to upgrade the spillways, the state obstructing work with demands for unjustified permits, and efforts by the state to focused on enhancing natural resources protection and recreation, not dam safety.

A spokesperson for EGLE, Hugh McDiarmid Jr., said the claims were misleading. "They had 14 years of ignoring FERC's demands that they bring their dams up to safety standards, and none of that had anything to do with EGLE's dam safety unit, that only has to do with them not following the law," McDiarmid said.

## **SENATE RESPONDS TO GEORGE FLOYD KILLING WITH BILLS TO ADDRESS EXCESSIVE FORCE**

Following the death of George Floyd, and the resulting protests across the country, Senate Republicans on Thursday introduced bills to address excessive force and pressure to the throat or windpipe by law enforcement officers.

SB 967, introduced by Sen. Ruth Johnson (R-Holly), would require all law enforcement agencies in Michigan to adopt policies requiring officers to intervene when they witness another officer using excessive force on a suspect. Agencies would be required to punish officers who were found not to have intervened when seeing another officer using excessive force.

SB 968, introduced by Sen. Peter Lucido (R-Shelby Twp.), creates a prohibition on applying pressure to the throat or windpipe by law enforcement officers.

Both bills were referred to the Senate Judiciary and Public Safety Committee, chaired by Sen. Lucido.

The Committee also took up SB 945, which requires mental health and law enforcement response training for law enforcement officers.

In addition, Gov. Whitmer is asking the Michigan Commission on Law Enforcement Standards to provide guidance to law enforcement agencies on continuing action to keep officers apprised of new laws and issues in the community, including diversity and implicit bias training, and she is encouraging police departments to participate in efforts to establish comprehensive reporting on their use of force.

## **MM&A Briefs**

### **2020 Mackinac Policy Conference Canceled**

The Detroit Regional Chamber has announced that the Mackinac Policy Conference. The Conference, which was first rescheduled from May to August, is now canceled for the year. Next year's conference is scheduled for June 1-4, 2021.

### **Snyder backs Kowall for Oakland County Exec**

Former Governor Rick Snyder is supporting Mike Kowall for Oakland County executive, the campaign announced on Thursday.

Kowall served in the House from 1999-2002, then as White Lake Twp. Supervisor before returning to the legislature as a Senator from 2011-18. He then went on to be a top aide to former Executive L. Brooks Patterson until Patterson's death. He will face the winner of the Democratic primary between Oakland County Executive Dave Coulter and Oakland County Treasurer Andy Meisner.

## **Calendar of Important Events**

### **June 13 Rep. Kara Hope (D) Fundraiser**

Location: 5 p.m., on Zoom (A virtual Fundraiser, Zoom link to be provided with RSVP)

### **June 16 Rep. Mark Huizenga (R) Fundraiser**

Location: 7:30 a.m., Karoub Associates, Lansing

### **Rep. Pam Hornberger (R) Fundraiser**

Location: 11:30 a.m., TBD, Lansing, 11:30 a.m. (Rescheduled from June 9)

### **June 17 Rep. Bronna Kahle (R) PAC Fundraiser**

Location: 7:30 a.m., Michigan Beer and Wine Wholesalers, Lansing (Rescheduled from June 3)

### **June 22 Rep. Mark Huizenga (R) Fundraiser**

Location: 11:30 a.m., Grand Rapids Area Chamber of Commerce, 250 Monroe Avenue, N.W., Suite 150, Grand Rapids

### **June 23 Rep. Jim Lower (R) Fundraiser**

Location: 7:30 a.m., Michigan Municipal League, 208 North Capitol Ave., Lansing

- June 23**      **Rep. Brandt Iden (R) Fundraiser**  
Location: 5:30 p.m., Michigan Beer and Wine Wholesalers, Lansing
- June 24**      **Rep. Mary Whiteford (R) PAC Fundraiser**  
Location: 7:30 a.m., Karoub Associates, Lansing  
(Rescheduled from June 4)
- 71st House District candidate Christine Barnes (R) Fundraiser**  
Location: 8 a.m., Lambert, 114 West Allegan St., Lansing
- Rep. Michael Webber (R) Fundraiser**  
Location: 8 a.m., Michigan Beer and Wine Wholesalers, Lansing  
(Rescheduled from June 9)
- Rep. Beau LaFave (R) PAC Fundraiser**  
Location: 5 p.m., Michigan Beer and Wine Wholesalers, Lansing
- June 25**      **Sen. Kim LaSata (R) Fundraiser**  
Location: 8 a.m., Michigan Beer and Wine Wholesalers, Lansing
- June 26**      **Rep. Phil Green (R) PAC Fundraiser**  
Location: 9 a.m., The Timbers Golf Club, 7300 Bray Road, Vassar  
(Registration at 9 a.m., shotgun start at 10 a.m.)
- Sen. Peter MacGregor (R) PAC Fundraiser**  
Location: 9 a.m., Scott Lake Golf and Practice Center, 911 Hayes Road NE,  
Comstock Park