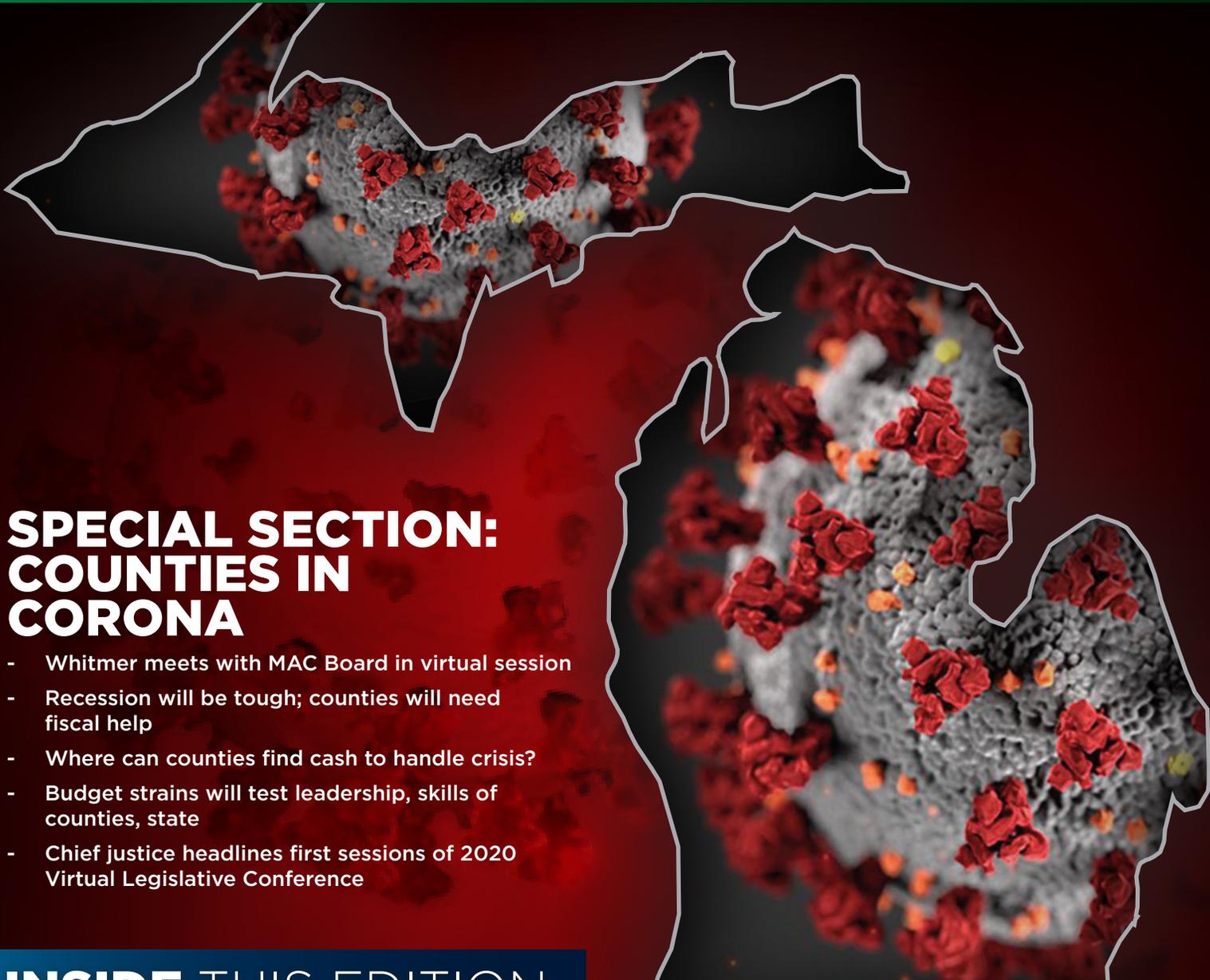


# MICHIGAN COUNTIES

Official Voice of the Michigan Association of Counties | April 2020



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- Recession will be tough; counties will need fiscal help
- Where can counties find cash to handle crisis?
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# MAC

MICHIGAN ASSOCIATION OF COUNTIES

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## LETTER FROM THE EXECUTIVE DIRECTOR

In times like these ...

Wait, for almost all of us, we have never seen times like these. We are in uncharted territory. The coronavirus has halted normal life across our state and nation.

What it hasn't halted, though, is the work of our members who are providing public health, public safety and public support services to Michigan residents. And because your work hasn't stopped, neither have MAC's efforts to assist you.

Since the crisis deepened, MAC has:

- Maintained a daily updated Resources Page on our website with everything from the latest Executive Order from the Governor's Office, to legal analysis of said orders, to tips on how to keep work areas cleansed against corona.
- Provided a daily email update, Monday-Friday, with the latest news from Lansing, Washington, D.C., and beyond.
- Curated a special Q&A page with the Governor's Office to expedite inquiries from you about the corona response.
- Gathered and presented technical suggestions on remote meeting tools.
- Met repeatedly with counterparts in other states and NACo officials to coordinate a county strategy on rescue funding.
- Built a virtual conference for members to replace the canceled 2020 Legislative Conference in Lansing.



Our role is to be there every day for you, just as you are there every day for your constituents. I'm immensely proud of the work done by the team to date.

After our transition to telework on March 13, we have had staffers, including myself, visit the offices from time to time to address critical issues such as physical mail and cutting checks for bills. Our goal, however, has been to have only one person in the office at any given time. The fundamentals of the association are strong, as I reported to the MAC Board of Directors during a virtual meeting on April 21.

It was a disappointment, of course, to cancel the physical conference, but we were able to quickly issue refunds. And planning is under way for regional summits and our annual conference this summer.

Our MAC committees continue their policy and platform work, albeit remotely. This crisis is forcing all of us to re-evaluate how we do things professionally and at home. I've asked staffers to think on changes to MAC operations that will make us both more resilient and more responsive during normal periods and crises alike. If you have ideas drawn from your own county's experience in recent weeks, please feel free to share them with me at [scurrie@micounties.org](mailto:scurrie@micounties.org).

I look forward to resuming my visits to courthouses and county buildings around the state. In the meantime, I wish you good health.

**Stephan W. Currie**  
MAC Executive Director

## AFFILIATE MEMBERS

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 Community Economic Development Association of Michigan  
 Community Mental Health Association of Michigan  
 County Road Association of Michigan  
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# LETTER FROM THE PRESIDENT

Well, this hasn't gone as planned, has it?

The coronavirus pandemic has taken thousands of lives, sickened thousands more and stripped us of many basic human functions. Remember gathering in one room as family for Easter?

It is difficult not to be overwhelmed by the horror, the uncertainty.

But those of us who have chosen public life have an added responsibility in this crisis. We must continue to serve, continue to lead.



From my tiny physical vantage point from my Macomb County front porch to my digital one that allows me to stay connected with colleagues around the state and nation, I see so much good being done. We are 83 strong and showing it.

The plan in late April was a time to reassess the recent MAC Legislative Conference and all that we had heard and learned from state leaders and experts in their fields. That didn't happen, yet we are hearing and learning from state leaders and experts via our "Virtual Conference" of speeches and workshops.



Click the image to see a special video message from President Klinefelt

The plan in late April was to be meeting with our county colleagues to track what we expected to be a good budget year, with revenues and spending moving in prescribed courses. The reality is county boards are learning the ins and outs of videoconferencing and dangers of "zoombombing."

The plan in late April would have had me gearing up for my visits with Executive Director Stephan Currie to board meetings across our state and with my counterparts in the affiliate groups for countywide elected officials. The reality is face-to-face meetings are, for the most part, illegal right now, and may become less and less common as our culture adapts to viral threats.

For those who have lost loved ones, there are no words. For those of us left, there must be deeds to honor those who can no longer speak.

We've made mistakes. We are seeing some successes. We must learn from both. We must be 83 strong.

**Veronia Klinefelt**  
 President, MAC Board of Directors



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Kenneth Borton  
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Charlevoix County

Thank you to all MACPAC members. To support MACPAC, please visit our website, [micounties.org](http://micounties.org).

# MAC EVENTS CALENDAR

### May 1

#### Finance & General Government Committee

10 a.m. to 12 p.m.  
Virtual Session

### May 8

#### Environmental, Natural Resources and Regulatory Affairs Committee

10 a.m. to 12 p.m.  
Virtual Session

### May 15

#### Agriculture & Tourism Committee

10 a.m.  
Virtual Session

### May 22

#### Transportation and Infrastructure Committee

10 a.m. to 12 p.m.  
Virtual Session

### May 25

#### Health & Human Services Committee

10 a.m. to 12 p.m.  
Virtual Session

### May 25

#### Judiciary and Public Safety Committee

2 p.m. to 4 p.m.  
Virtual Session

**For latest event listings, click here.**



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# COUNTIES IN CORONA

## WHITMER MEETS WITH MAC BOARD IN VIRTUAL SESSION

By Deena Bosworth/MAC Governmental Affairs Director

Gov. Gretchen Whitmer met with the MAC Board of Directors on April 21 via virtual conferencing to update county leaders on the state's work against the COVID-19 pandemic and planning for reopening segments of Michigan's economy.

Whitmer opened by noting the unprecedented times the state, nation and planet are facing and the complexity and stakes involved, saying that each decision she makes weighs heavily on her. While in continuous consultation with medical professionals and epidemiologists, she remains focused on making sure personal protection equipment is available and ensuring the aggressive actions she has taken are working.

On re-opening the economy, the governor emphasized the need to be extremely cautious and that Michigan faces a long process ahead. She said consultations with other Governors across the country is going well and she will continue to work in concert with them while also not being bound by their actions. She added that a resurgence of infections would be devastating to our residents and our economy.

Following her remarks, she took questions submitted by Board members on:

- **Plan/timing for easing restrictions** – The governor is pleased with the results of the Stay Home order in Michigan but is not ready yet “to spike the football.” She will work on phasing out the Stay at Home order, but the biggest obstacle right now is the lack of swabs and reagents for testing kits. She said Michigan could double or triple the daily testing with such supplies.
- **Sharing money from the federal CARES Act with locals** – Whitmer said many local expenses should be covered by FEMA funds, and that she's asked for a waiver to the current 75/25 cost share so that the federal government would pay 100 percent of the expenses. The governor also said she is seeking flexibility in CARES Act funds, which are now limited to cost reimbursements. She also noted that the State is facing a \$3 billion shortfall for this fiscal year and an even bigger blow for next year.
- **Why did the state proceed with May 5 election?** – The governor said it is critically important to maintain our democracy and elections are essential to that, noting that even during the Civil War elections were held. She is encouraging everyone



to vote by mail. She also noted that Secretary of State Jocelyn Benson has recruited 1,500 election workers to help with the election should we fall short on volunteers.

In closing, she said that as May 1 approaches, she will look at loosening current restrictions. She did state that returning to normal will require a long phase-in period and that will be based on continuous, 14-day periods of steady declines cases.



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# COUNTIES IN CORONA

## RECESSION WILL BE TOUGH; COUNTIES WILL NEED FISCAL HELP

By Eric Scorsone/MSU Extension Center for Local Government Finance and Policy

The U.S. and Michigan economy are likely heading into a severe (and hopefully short) recession in the second quarter of 2020. The consensus from the Blue Chip economic forecasters is that second quarter 2020 will see a drop in Gross Domestic Product (GDP) of 24.5 percent. This would be the biggest drop since the Great Depression and much bigger than the one in 2008-09.

Forecasters expect a recovery from that point in the second half of 2020. However, even with this recovery, the economy is likely to be below where it was in 2019 by a substantial amount. The recovery could be sharp “V” type with major rebound, a “U” shaped with a longer downturn and then an uptick or a sort of “half V” where there is some recovery but then many businesses will need to operate with fewer people in attendance at any particular location. Imagine for example half empty concert venues or restaurants. This means higher unemployment, lower retail sales and lower home prices and other factors that drive governmental tax and fee revenues.

U.S. retail sales were down 8.7 percent when comparing March 2020 to March 2019 according to the Census Bureau. This trend is likely to continue for several months. Michigan sales tax is dominated by retail sales as opposed to services and this puts a potential burden on state revenue sharing. It remains to be seen the types of cuts that the state will invoke in addressing its own budget shortfalls. Estimates are that the state may face a \$1 to \$4 billion dollar shortfall this fiscal and next (state fiscal year is Oct. 1-Sept. 30).

In the manufacturing sector nationally, industrial production fell over 5 percent which was the biggest monthly drop since 1946. Manufacturing remains critical stalwart in state revenues. This fact combined with the over 800,000 new unemployment fillings means that at least in the short term the Michigan economy is facing serious headwinds.

In early April of 2020, the Senate and House fiscal agencies reported (based on March 2020 data) minimal or actual revenue increases at the state level as compared to last year. According to the House Fiscal Agency, income tax withholding was up 6.7 percent as compared to last year, sales tax was up 5.4 percent as compared to last year and overall major state tax revenues up 4.7 as compared to last year and even up compared to the January revenue forecasting consensus estimate of 3.8 percent. That said, these numbers are likely to turn significantly downward and most of the gains will be wiped out over the next few months.

**Table 1. Michigan County General Fund Balance Statistics**

	FY 2012	FY 2018
<b>AVERAGE</b>	22.9%	33.7%
<b>MEDIAN</b>	19.4%	31.3%
<b>VARIANCE</b>	16.8%	18.7%
<b>MAXIMUM</b>	70.6%	89.9%
<b>MINIMUM</b>	-21.6%	2.4%

There are a whole variety of questions that may come into the future as the crisis evolves. There has been discussion of the deferral of summer property tax payments to assist households struggling with their own finances. This worthwhile policy would have a direct impact on all local government revenues and cash flows at least in the short time. It could also increase delinquent taxes in general and lead to other problems such as increased foreclosures over the next few years if the economy were to remain weak. Some county fees may also be subject to a declining revenue trend as groups are unable to congregate or events are unable to be held. Some of these fee decreases may be offset by remote payment options but certainly not all of them.

Despite having to operate in a very poorly constructed local finance system, county governments have shown great resolve and leadership in rebuilding their financial reserves since the Great Recession of 2008-09. The table above shows where counties were on average in FY 2012 and where they were as of FY 2018. On average, counties have increased their general fund reserves from 22 percent to over 34 percent in 2018. Further, there are no counties currently showing a general fund overall deficit. These reserves will help counties as they face oncoming fiscal difficulties.

County budget shortfalls will not be addressed completely by reserves or other local changes. They may be addressed partially by a fourth federal stimulus bill. The first three bills provided some relief to state and local governments related to COVID-19 expenses, but not directly to shortfalls induced by the economic decline such as lost revenues. The next steps from Congress will need to address the challenges facing local governments in Michigan and across the country.

*Eric Scorsone is an associate professor at Michigan State University and the director of the MSUE Center for Local Government Finance and Policy.*

# COUNTIES IN CORONA

## WHERE CAN COUNTIES FIND CASH TO HANDLE CRISIS?

By Shu Wang and Mary Schulz/MSU Extension Center for Local Government Finance and Policy

The outbreak of COVID-19 imposes great pressure on counties' resources. From increased needs for health and social services to added law enforcement for stay at home order, counties along with other local government entities are working on the front line to keep their residents safe. Additional resources and revenues are needed more than ever to ensure critical services are delivered efficiently, effectively, and equitably. In this article **we point counties to potential revenue sources**, while noting capacity-building strategies to optimize these resources.

### Federal aid

Sweeping impacts of the pandemic require federal intervention. The federal government has provided support both through new appropriations like the Coronavirus Aid, Relief, and Economic Security (CARES) Act and through additional funding of existing federal programs. **Table 1** includes a list of federal grants and assistance made available to local communities to address various challenges due to COVID-19. Although not exhaustive, the list focuses on programs for which counties can be direct recipients and presents potential resources for various aspects of local operations.

Counties should also be mindful of the fact that some grants may be distributed to the state first and then administered by state designated officers. For instance, \$8 million in DOJ CESF has been allocated to Michigan counties and municipalities. This relief program provides support for coronavirus-related overtime, equipment including law enforcement and medical personal protective equipment, supplies such as gloves, masks, and sanitizer, hiring, training, and travel expenses particularly related to the distribution of resources to the most impacted areas.

### Property taxes

In addition to addressing immediate needs for combating the pandemic, it is also crucial to plan. At the federal level, there are discussions about multi-year stimulus package(s) for enhancing access to critical infrastructure such as drinking water, broadband, and transportation. Unfortunately, due to increased unemployment and business closures, counties must prepare for the possibility that their own-source revenues, such as property taxes, would grow at a lower rate or even decline in the next couple of years. It would be helpful for counties to start identifying projects and



services that anticipate increased spending in the near future, as well as explore revenue sources to support these functions. A couple options include:

**Mills above the general limit.** The state constitution sets a 15-mill cap on property taxes charged to any parcel in a given year, but also allows exceptions to the limit. Voters can raise this limit to 18 mills through referendum. Voters can also raise the limit to a total of 50 mills as long as the use of extra voted millage is specified, such as for parks, roads, water and sewer. On top of that, additional millage can be raised to repay general obligation debt whose issuance was approved by voters before. With the property tax base weakening, extra mills can stabilize revenue and secure funding for projects and services.

There has been increased use of special assessments in the past few years for public improvements. Unlike general property taxes, there is no limit on the special assessment rate. Should a county anticipate increased needs for certain capital projects and local services, special assessments could be considered. The use of special assessments may have legal, administrative, and political implications. Counties should be aware of their impacts on local communities before implementing special assessments.

Both options require stakeholder buy-in either through voter approval or property owner initiative. For special assessments imposed unilaterally by counties, voters can also oppose through petition referendum. Communicating with residents about the need for additional revenues to sustain service delivery is important for garnering support and building trust.

**Continued on page 8**

# COUNTIES IN CORONA

## WHERE CAN COUNTIES FIND CASH TO HANDLE CRISIS?

from page 7

### Capacity-building

In order to maximize COVID-19 resources for your county, it is recommended counties establish a COVID-19 task force responsible for coordinating the county's needs and resources. Members should understand the county's structure and processes, implement strategies to identify and capture eligible and recoverable costs through funding sources, and identify and align priority projects and funding needs with available resources.

Counties are also encouraged to track spending dedicated to COVID-19 response to demonstrate these expenditures were necessary and incurred due to the public health emergency. This tracking isolates to funding sources specific eligible and recoverable expenditures.

For counties that desire the assistance of consultants familiar with navigating federal and state funding sources, consultant fees expenses may be recoverable. For example, depending on disaster specific guidelines, 75 percent to 100 percent of management costs are reimbursable by FEMA. If your county is considering hiring consultants to support the work of its COVID-19 task force, you may want to inquire about the recovery of fees related to this work.

Additionally, counties should track lost revenues (decline in property taxes, service fees, etc.) that are not directly accountable to COVID-19. This tracking will help Michigan counties communicate to Michigan's congressional delegation their challenges and advocate for additional resources.

*Shu Wang, Ph.D., is an assistant professor and Mary Schulz is an associate director at the **MSUE Center for Local Government Finance and Policy.***

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# COUNTIES IN CORONA

## BUDGET STRAINS WILL TEST LEADERSHIP SKILLS OF COUNTIES, STATE

By Eric Lupher/President, Citizens Research Council

Two questions come up in times of crisis:

What can I do to help? If you are reading this, you are a county official who stepped up long before this crisis to put service before self. The citizens of your counties and the communities around you will be looking to your leadership to navigate these uncertain and difficult times.



Lupher

How will the crisis affect me? Rather than focusing on how the coronavirus affects individuals, let me address how it affects the governments that you lead.

First, this pandemic has caused a recession. Businesses are producing less, people are buying less, and many people are earning less.

It is unlikely that the economic downturn will have major effects on residential property tax values, at least not immediately. There is a short-term threat of unpaid property taxes this fall if unemployment remains high and people are unable to pay. It is way too soon to speculate whether that could lead to a new round of foreclosures.

Much of Michigan experienced reduced property values in the wake of the 2008 recession, but that was an anomaly driven by the housing bubble, mortgages bundled as investment vehicles, and the loss of manufacturing jobs. This led to outmigration and an oversupply of housing. We do not know how long the coronavirus-recession will last, but it came while the economy was strong. It is unlikely to affect residential values to the extent that we experienced 10 years ago.

On the other hand, there is a risk of declining commercial and industrial property values. Social distancing may endanger small businesses on Main Street of your town. Even larger retail businesses are suffering economic loss and may seek relief because of the reduced foot traffic.

The state projects it has a \$2.5 billion deficit in the current (FY20) budget, which runs through Sept. 30. And revenues for FY21 are expected to be \$3 billion below original plans, but that will depend to a great extent on how the virus affects our path to economic recovery.



It is very likely that state revenue sharing will be among the early budget targets.

At the time of this writing, Michigan is still sheltering in place. But even when the shelter-in-place order is lifted, there will still be people sick with coronavirus. We will still need to practice social distancing. There will still be health risks for people with asthma and other underlying conditions. There will still be disruption to the economy.

The state budget was tight even before this crisis. Resources and spending have only recently returned to pre-2008 recession levels. Inflation-adjusted state tax revenues only surpassed 2000 levels last year.

Even though Michigan's personal income has been growing at an anemic rate, compared to the rest of the nation, state tax revenues have been growing even more slowly, meaning the state was challenged to maintain service levels in normal times.

What will this mean for your counties and local governments?

The Michigan Constitution requires a balanced budget. The state will have to plug its FY20 deficit.

Constitutional revenue sharing to cities, villages, and townships will fall to reflect declining sales tax revenues, while statutory revenue sharing for counties and local

**Continued on page 10**

# COUNTIES IN CORONA

## BUDGET STRAINS WILL TEST LEADERSHIP SKILLS OF COUNTIES, STATE from page 9

governments will be severely cut or even eliminated.

People are driving less. That translates to less gas purchased and fuel taxes paid. With fewer cars purchased, vehicle registration fee revenues will fall. Act 51 funding distributed to county road agencies and municipal governments, which many argue was insufficient to begin with, will be reduced.

If funding for state police is reduced, that could affect the ability to supplement or replace county sheriff patrols and other support services.

Each county needs its health department to operate at full capacity in this crisis. Yet, there is no dedicated funding source for public health. State budget makers must find funding to provide matches for federal funding. It is possible that county resources may be needed to supplement state resources sent to fund these services.

Michigan counties are not authorized to levy income taxes,



MAC strongly supports the work of the **Citizens Research Council of Michigan**, a nonpartisan, independent public policy research organization. MAC Executive Director Stephan Currie currently sits on the CRC Board.

but most levy real estate transfer taxes and some, hotel taxes. If slowing economic activity translates to fewer home sales, county revenues will suffer. If the fear of coronavirus causes people to travel less, especially as we approach summer vacation season, hotel tax revenues will decline.

The coming months will test leadership in every unit of government.

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NRM-12870M5 (01/15)

# COUNTIES IN CORONA

## CHIEF JUSTICE HEADLINES FIRST SESSIONS OF 2020 VIRTUAL LEGISLATIVE CONFERENCE

By Derek Melot/MAC Communications Director

Highlighted by a presentation from Chief Justice Bridget Mary McCormack, MAC's 2020 Virtual Legislative Conference started its two-week run on Thursday, April 16.

McCormack detailed her work on a variety of reforms in the judicial branch, particularly the actions **taken to reduce the threat to jails** posed by corona and **administrative orders to allow** for virtual court proceedings to help protect the public health.



McCormack

Subsequent events included:

- A workshop on best practices for boards, led by John Amrhein of MSU Extension on "extraordinary governance."
- A workshop on how counties can spur economic development and grow their tax bases, led by Harmony Gmazel of MSU Extension.
- A workshop on rising water levels in Michigan, both on the Great Lakes shoreline and in inland areas. Speaker Deanna Apps of the U.S. Army Corps of Engineers **warned Michigan's soils** are saturated and water has "few places to go right now."
- A workshop on the Open Meetings Act and Freedom of Information Act. Attorney Matt Nordfjord advised county leaders that even under the emergency Executive Orders they still had a responsibility to process what FOIA requests they could and ensure public access and comment in virtual board sessions.
- A special live edition of MAC's Podcast 83, during which White House aide Doug Hoelscher said state and local governments needed to do a better job of providing data to support claims for future federal aid: "(The president) hears that concern and said he would look at it. The challenge so far that I have seen is we have not seen good data on real revenue losses and projections. There needs to be more than one month of revenue projections.

Attendance has been strong throughout the event, as has been the response: "Great job on the MAC Virtual Legislative Conference. I am finding the three sessions I have attended so far very valuable. Well done," wrote Robert Belleman, controller in Saginaw County.

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2020 Michigan Counties  
Legislative Conference

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MAC  
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"We've had a few bumps, but we are pleased with what we have been able to present and with what we are hearing from members," said Stephan Currie, MAC Executive Director.

The conference's final sessions on April 28-30 will feature workshops on the state budget and reopening Michigan and a closing keynote by Matt Chase, executive director of the National Association of Counties.

For complete details, including videos of conference events, **visit the conference page.**

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## MACNEWS

# UPDATES FROM MAC: EXEC COMMITTEE TERMS EXTENDED; POLICY PROCESS CONTINUES

In response to the extraordinary circumstances of recent weeks, the MAC Board of Directors on Tuesday voted to extend the terms of current Board officers for an additional year.

President Veronica Klinefelt, First Vice President Phil Kuyers and Second Vice President Stan Ponstein will continue in their roles until the MAC Annual Conference in September 2021.

This decision does not affect the regular elections for Board seats that occur at the Annual Conference. Seats on the ballot will be from Regions 1, 2, 3 and 5 and an at-large seat. Incumbents are expected to file for re-election in those seats. Members in Region 4 also will select someone to fill the seat vacated by Donald Parker when he resigned his seat on the Livingston County Board.

Executive Director Stephan Currie and members of the MAC staff briefed the Board at the April 21 session on the status of the association and its services

**Membership** – Ogemaw County recently resumed membership after a hiatus, meaning all 83 counties are MAC members. The MAC membership year runs from July 1 to June 30.

**2020 Legislative Conference** – The cancellation of the physical event, originally planned for April 15-17, caused MAC to lose a small amount after attendees and requesting exhibitors and sponsors received refunds.

**2020 Regional Summits** – The first of the four summits this year is scheduled for June 15 in Escanaba, followed by Grand Rapids (June 22), Frankenmuth (July 13) and Gaylord (July 27). MAC continues to evaluate how the pandemic and Executive Orders and public health orders will affect gatherings. Virtual options are being studied.

**2020 Annual Conference – The event is scheduled for Aug. 16-19 in Kalamazoo.** MAC remains in close contact with the venue and continues to monitor the health and legal situations.

**Policy Platforms** – Platform work continues with virtual committee meetings. In May, committees will finalize their proposals for review by the MAC Board, sitting as the Resolutions Committee at its June meeting. The approved versions will then go to the membership for final discussion and votes at the Annual Conference.

Earlier in the spring, two of the policy committees, Finance and General Government, were merged into a single committee, **leaving a total of six such committees.**

# MAC

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## AFFILIATE CORNER

# IF MORE VOTERS SHIFT TO MAIL OPTION, CLERKS WILL NEED FUNDING, RULE CHANGES

By Barb Byrum/Ingham County Clerk

In March, Secretary of State Jocelyn Benson said her office would mail an application for an absent voter ballot to all qualified registered voters who have an election on May 5. Michigan law requires that voters submit a written request for an absent voter ballot. Many city and township clerks now maintain a Permanent Absent Voter (AV) List, where they mail an application for an absent voter ballot to those who have signed up for the list before each election. For those voters that are not already on the Permanent AV List, they can certainly still vote by mail in any election they choose, they would just need to find the request form for that specific election.



Typically, May special elections see lower turnout, so perhaps if voters receive an application for an absent voter ballot, more will participate. Benson has argued that by encouraging absent voter participation, her office is helping promote public health and keeping democracy protected. During the March 10 presidential primary election, we learned what a significant increase in no-reason absentee voting, as well as same-day voter registration, looks like for those running elections.

When holding an election by mail, which the May special election essentially will be, arguably on a smaller scale than the August 2020 election will be, local clerks are going to need additional resources.

The need to start processing ballots the day before the election is heightened, when almost all ballots will be absent voter ballots. The current proposed legislation does not allow for the early tabulation of ballots. The current proposal allows for the processing of ballots, which includes: Opening the outer envelope, while keeping the voted ballot still in the secrecy envelope and removing the ballot stub.

Also, some local clerks who have never had an absent voter counting board (AVCB), which is essentially a separate precinct set up for the sole purpose of processing absent voter ballots, are all of a sudden going to find themselves in need of this process. AVCBs are not necessarily difficult to carry out, but will require an extra supply of election inspectors and now, with the concerns about COVID-19, clerks will certainly see a decrease in staff. AVCBs also need their own tabulators that need to be tested and set up for this purpose. Coupled with the need to do significant mailings and data entry for those mailings before the election in a timely manner (tracking in the Qualified Voter File when absent voter ballot applications are received, absent voter ballots are mailed, absent voter ballots are received, etc.), clerks are going to have some new, perhaps even un-identified, opportunities to overcome.

Although voting by mail, or as us Michiganders know it, absent voting, seems like it protects everyone's right to vote, there will still be a need for local clerks to have precincts open and their offices open for those individuals who need to go to the poll to vote or those that need to register to vote with their local clerk on Election Day.

Most of the above concerns will land on the shoulders of the local (city and township) clerks, but the County Clerks stand ready to assist in any way we can. Perhaps County Clerks can assist local clerks in coordinating AVCBs, lending extra equipment for AVCBs, or assisting with same-day voter registration in local clerks' offices. Safe and secure elections are our primary goal and we look forward to continuing to serve the voters of Michigan in that capacity.

*Barb Byrum is a board member for the **Michigan Association of County Clerks.***

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## EXPERT CORNER

# PENDING CASE MAY PROVIDE CLARITY TO WHEN PERSONAL EMAIL ACCOUNTS ARE SUBJECT TO FOIA

By Christian K. Mullett/firm of Cohl, Stoker & Toskey, P.C.

Does the Freedom of Information Act, MCL 15.231, et seq. (“FOIA”), apply to public officials’ use of non-governmental email accounts?

In FOIA, it is the stated policy that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials. FOIA’s specific provisions require full disclosure of public records in the possession of a public body. However, these bright-line principles may be blurred when the public official uses a non-governmental email account to conduct government business.

FOIA subjects all “public records” to possible disclosure unless specifically exempted by statute. A “public record” is a writing that is prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Under this broad definition, emails, text messages, social media posts, and even voice mails would be subject to disclosure under FOIA if made in the furtherance of government business. In *Competitive Enterprise Institute v. Office of Science and Technology Police* 827 F.3d 145 (D.C. Cir. 2016), the U.S. Court of Appeals for the District of Columbia interpreted this very issue under the federal FOIA statute, wherein it opined:

*[A]n agency always acts through its employees and officials. If one of them possesses what would otherwise be agency records, the records do not lose their agency character just because the official who possesses them takes them out the door or because he is the head of the agency.*

The Court further commented:

*If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his department emails on an account in another domain, that purpose is hardly served ... It would make as much sense to say that the department head could deprive requesters of hard-copy documents by leaving them in a file at his daughter’s house and them claiming they are under her control.*

Governmental communications on a private device or personal account should be retained by the government official if they constitute public records. When individual public employees act in their official capacity, they are transacting business of the public body.

However, in practice, the access to certain emails under FOIA is particularly daunting to municipalities when these

communications are saved on personal devices and not under the governmental body’s possession or control.

The fact that a personal email account has been used to send or receive public records does not necessarily transform all communications sent or received on that account into public records that would be subject to FOIA. Similarly, social media communications should be retained by the public entity in the same manner as emails if they concern the function of government. This may be problematic in that certain social media platforms automatically delete content.

While the FOIA law clearly favors disclosure, the Michigan Court of Appeals recently determined in *Bisio v. The City of the Village of Clarkston* (COA Docket 335422, July 3, 2018, lv granted) that if documents are held by agents of a public body such as a city attorney, the agent is not considered a public body that can be compelled under FOIA to release documents. The Court opined that the statute was clear, in that the definition of “public body” provided in MCL 15.232(d)(iii) does not include officers or employees acting on behalf of cities, townships and villages. In contrast, MCL 15.232(d)(i), which defines a “public body” relevant to the executive branch of government, does include officers and employees acting on behalf of the public body.

The *Bisio* case is now before the Michigan Supreme Court and could be reversed, as the decision by the Court of Appeals appears to conflict with the intent of FOIA. Ultimately, time will tell if the Supreme Court opts to follow the Court of Appeals’ narrow interpretation and continue to blur the line between private and public communications, or will overturn *Bisio* to clarify that FOIA applies to records kept in the hands of municipal officers and employees, regardless of where and how they are kept. Recently, the Supreme Court entertained oral argument on March 5, 2020, and will release its decision before the end of its current term on July 31, 2020.

One potential solution to provide clarity is to develop a county policy regarding the use (or prohibition) of private email to conduct government business.

*Christian K. Mullett is an associate with the Lansing law firm of Cohl, Stoker & Toskey, P.C.*



## BEST PRACTICES

# WHY ACTIVE-ACTIVE DATA CENTERS FIT THE BILL FOR LOCAL GOVERNMENTS

By Wylie Wong

In Michigan's **Muskegon County**, some departments need 24/7 access to computers, applications and the IP-based phone system, including the **Muskegon County Sheriff's Office**, the **Muskegon County Juvenile Transition Center** and the **Muskegon County Wastewater Management System**.



To improve uptime, the county recently upgraded its IT infrastructure and turned its primary and secondary data centers into an active-active environment. Now, if one data center goes down, the second site automatically continues IT operations. "We are a 24-hour operation. Downtime is not an option," says Ivan Phillips, information systems director for the county.

Local governments are increasingly embracing active-active data center configurations to improve resiliency and bolster continuity, says Greg Schulz, founder and senior analyst at **StorageIO**, an IT consulting firm in Stillwater, Minn. Government agencies rely on critical applications such as 911 systems, and residents increasingly want anytime access to services, such as the ability to pay property taxes during off hours.

"More and more are doing active-active. It used to be for the large, high-profile organizations," Schulz says. "There was a perception and belief that smaller organizations didn't need it. But the reality today is that smaller organizations — whether they are small state agencies, counties or cities — are realizing that information access is time-sensitive, and that the risk and cost of not doing active-active outweighs the expense of doing it."

### Minimize downtime with active-active data centers

Bad winter storms have the potential to knock out power in Muskegon County. And while the county uses uninterruptible power supplies and generators, its information systems department doesn't want to take chances. It's moving from an active-passive to an active-active data center model this spring.

With approval from the county board of commissioners, the IT staff replaced aging servers and storage equipment that were reaching capacity with new **Cisco Unified Communications System servers**, flash storage from **Pure Storage**, the latest **VMware vSphere server virtualization software** and **VMware Horizon** desktop virtualization software.

Each data center is now powered by 10 Cisco **UCS B200 M5 blade servers** and a **Pure Storage X50R2 150-terabyte flash array**, which provides enough capacity for growth for the next five years, Phillips says.

It's converged infrastructure that's pre-validated and configured to seamlessly work together, making it easier to deploy and manage, says Mark Hansen, the county's information systems manager.

Continued on page 16

## SHARE YOUR 'BEST PRACTICES' WITH MAC

From challenges come creativity, and you have Michigan's counties been challenged in the 21st century.

MAC continues to highlight how counties have found ways to continue or expand services in the most hostile of fiscal environments. Our "Best Practices" initiative isn't a competition, but a celebration — of Great Lakes ingenuity, passion and plain ol' grit.

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Please send a brief description and contact information for the point person of your "Best Practice" to Derek Melot, [melot@micounties.org](mailto:melot@micounties.org).

For questions, call Melot at 517-372-5374.



HOW COUNTIES ARE TURNING CHALLENGES INTO OPPORTUNITIES

# WHY ACTIVE-ACTIVE DATA CENTERS FIT THE BILL FOR LOCAL GOVERNMENTS from page 15

The county hosts about 150 virtual servers and about 600 virtual desktops for its employees. Nearly every county department relies on the IT infrastructure, including the county airport and a court system that is going electronic and paperless, Phillips says.

The county spent more on hardware to deploy the active-active configuration, but it's worth it, Phillips says. In the past, a prolonged power outage would have forced the IT staff to manually bring applications up in the secondary data center.

Now, with Pure Storage software, data replicates from one data center to another while the county operates the virtual servers and desktops as a single stretched cluster, meaning they are load balanced, with half the virtual machines running in the main data center and the other half in the second data center, Hansen says.

If one data center goes down, VMware software will automatically migrate those VMs to the second data center. "If servers go down, our users will never know it. There will be no disruption in service, which is our goal," Hansen says.

The active-active configuration also allows the IT staff to update software and firmware without causing downtime. "We can upgrade and do maintenance and keep operations running," says Dave Majeski, the county's system administrator.

*Wylie Wong is a freelance journalist who specializes in business, technology and sports. He is a regular contributor to the CDW family of technology magazines.*

*This article originally appeared at **StateTech Magazine**. It is reprinted with permission.*

**“The county spent more on hardware to deploy the active-active configuration, but it’s worth it, Phillips says.”**



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## MEET YOUR MAC BOARD

# ROBERT SHOWERS AND JULIE ROGERS



**Name:** Robert Showers  
**County/MAC Region:** Clinton County/  
 Region IV  
**Position:** Director  
**County Service:** 18 years  
**Profession:** Retired Vice President of  
 Sales and Marketing for the ASU Group

**Previous Public Service:** Councilman, mayor pro tem and mayor of city of DeWitt

**On what issue or subject area do you spend the most time in your county? Why?**

Most of my activity is focused on revenue growth and financial oversight. I chair the Healthcare Trust Fund and the Employee Deferred Savings Program. I am the board representative to the Lansing Economic Area Partnership (LEAP). I am a founding member of the Capital Council of Governments (CAPCOG) a consortium of Eaton County, Ingham County, Clinton County, Michigan State University and the Lansing Regional Chamber of Commerce.

We perform governmental advocacy for economic projects in the greater Lansing area.

I chair the Next Michigan Development Corporation, a municipal partnership between the city of Lansing, DeWitt Charter Township and the Capital Region International Airport. Our mission is to recruit Industrial and Commercial Businesses who will build facilities on Airport property.

Why? Clinton County has maintained a positive financial position because we vigorously pursue increased tax revenue through business and residential growth. We find it abhorrent to ask the public for additional millage.



**Name:** Julie Rogers  
**County/MAC Region:** Kalamazoo  
 County/At-Large  
**Position:** Director  
**County Service:** 8 years  
**Profession:** Physical therapist

**Previous Public Service:** Kalamazoo County Brownfield Redevelopment Authority 2007-2013; Michigan Physical Therapy Association Federal Affairs Liaison to Congress, 3 years

**On what issue or subject area do you spend the most time in your county? Why?**

I spend most of my time collaborating with commissioners and our administrator on infrastructure. We have had several aging buildings that have needed replacing for a number of years. I championed replacing our Animal Services Shelter with a new, updated building with features that improve the health of our animals, appeals to the public to maximize adoption rates, and boosts the morale, health and safety of our employees. Additionally, I've been passionate about enhancing the energy efficiency of our buildings, reducing our carbon footprint, and integrating sustainable practices into our new construction projects.

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## MEET THE STAFF

# VICKKI DOZIER AND MICHAEL RUDDOCK



Dozier

**Staffer:** Vickki Dozier, Executive Assistant

**Joined MAC:** September 2019

Prior to joining MAC, Vickki had a long career with the Lansing State Journal. She is a graduate of Battle Creek Central High and attended Michigan State University. She's a big fan of Spartan basketball, border collies and the ID Channel.

**Briefly describe your daily duties at MAC:** No day is ever the same, which keeps it interesting. From directing phone calls and preparing for committee meetings, to greeting the members and coordinating, updating and maintaining the executive director's calendar and meetings. Some days, I am preparing for summits and reaching out to county administrators about county visits. Or I could be coding and processing bills, registering MAC staff for conferences workshops and trainings or ordering supplies.

**What do you find most interesting/rewarding about working at MAC?** I get to talk with and meet folks from each of Michigan's 83 counties. I learn facts about the counties I've never been to. It's rewarding to know MAC is advocating for legislative solutions and providing programs and services for these counties. And it's good to know that if counties ever have any questions or run into a roadblock, we are there to help them find solutions and deal with the complexities of county governance. The people we help are so appreciative of what we do.



Ruddock

**Staffer:** Michael Ruddock, Governmental Affairs Assistant

**Joined MAC:** January 2018

Michael Ruddock joined MAC at the start of 2018 as governmental affairs assistant after graduating from Michigan State University.

**Briefly describe your daily duties at MAC:** I lead MAC's lobbying efforts surrounding environmental and

agricultural issues: I run the internal MAC committees on those same issues as well. I also clerk for the other 5 MAC internal policy committees throughout the year. Additionally, I handle a great deal of the internal administration, such as PAC filing, research and data collection, legislative tracking and more.

**What do you find most interesting/rewarding about working at MAC?** I'm usually the first person that commissioners call when they have a question about research, procedural rules, ordinances, etc., so I get to hear a lot from commissioners in every part of the state. It's refreshing to be able to share information and develop relationships with people that sacrifice so much of their time and energy to make Michigan a better place to live and play.

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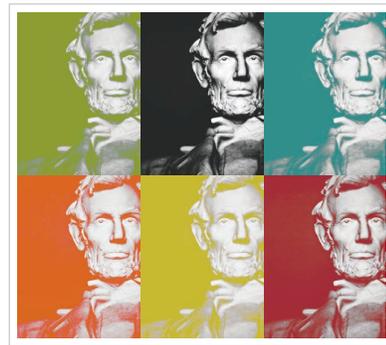
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entered into an agreement with the State of Michigan. This agreement includes seven key actions that we are undertaking to move toward a long-term solution for the future of Line 5.

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## LEGISLATOR Q&A

# SENATOR JIM ANANICH



**Name:** Sen. Jim Ananich

**District/counties:** 27/Genesee County

**Committees:** Government Operations

**Term #:** 2nd full term

**Previous public service:** Michigan House of Representatives, 2011-2013; Flint City Council, 2005-2009

### What is the most pressing issue facing Michigan now?

COVID-19 is at the front of every Michiganders' mind right now and that is certainly the most serious issue facing us right now. The spread of this virus has touched every aspect of our daily lives. Huge sectors of Michigan's economy have come to a direct halt, and in the coming weeks and months, the state government will aggressively be pursuing ways to ensure residents have access to the resources they need to recover from this. We will remain diligent partners with those at the federal and local levels as well as the governor's office until we're out of the woods. Michiganders are tough and we're going to get through this together.

### Based on your experience, how important are counties to the effective delivery of public services?

As we've seen in real time over the past weeks and months, counties have been extremely important leaders in the response to the coronavirus. County health officials have been on the front lines working to mitigate the spread and communicate updates to residents.

County work behind the scenes is just as valuable as their work in the face of a crisis. I have worked with so many effective local officials on critical issues ranging from Flint water to expanding health care and environmental protections.

### As the Senate minority leader since 2014, what are some of the key leadership skills you have developed during your time in the position?

I learned at the very beginning that you have to assume that other legislators are acting in good faith, no matter how strongly you disagree. Too often in Lansing I've seen folks threaten to take their ball and go home if others don't accept their mandates. That doesn't lead to

good results for anyone. I always say, "let's start where we can agree and work from there."

### The Joint Task Force on Jail and Pretrial Incarceration specifically mentioned the Genesee County jail as an example for extraordinarily long pretrial jail stays. In your view, how can the state help counties in combatting this problem and ensuring a mental health infrastructure that supports the needs of this vulnerable population?

The Joint Task Force received input from sheriffs and stakeholders across the state, and it is now clearer than ever that we cannot continue using jails as a substitute for mental health services. We need more support for substance abuse and mental health programming, and to help drive down our jail populations, we need to have a serious conversation about bail reform. We can also consider alternatives to jail for non-serious misdemeanor offenses; the task force found that 60% of jail admissions in Michigan are for misdemeanor offenses, whereas nationally misdemeanors only account for about one-fourth of jail admissions. There is a lot of work to be done to address these complex problems, but the task force has given us a road map with some great first steps. Every year I fight for more resources for the Genesee County Jail, and I'd like to commend the staff there for doing the best they can with the limited resources they have.

### Clearly investing in our state and local roads and bridges has been a priority for the Governor and Legislators, as well as our county elected officials. A long-term funding solution has yet to be agreed upon by all necessary leaders. Do you think 2020 is the year an agreement will be reached?

Time is of the essence. Every day that this legislature fails to find a long-term road funding, roads get increasingly more expensive to fix and dangerous to drive on. Finding a solution that works for Michigan drivers is doable. There's no shortage of ideas but the only path forward to a solution is by working on it together.

The voters hired us to solve Michigan's toughest problems, not just the easy ones. Drivable roads, affordable health care, quality education for each child, good job opportunities and clean water—these are our priorities that we think everyone should be able to agree on.

## LEGISLATOR Q&A

# REPRESENTATIVE SARAH LIGHTNER



**Name:** Sarah Lightner

**District/counties:** 65th/Parts of Jackson, Eaton and Lenawee counties

**Committees:** Appropriations Committee; Appropriations Subcommittees on General Government (vice chair), Judiciary (vice chair), Corrections and LARA/DIFS

**Term #:** 1st

**Previous public service:** Jackson County commissioner, 6 years

### What is the most pressing issue facing Michigan now?

With the outbreak of COVID-19, public health and safety is the number one issue that we're currently facing.

### Based on your experience, how important are counties to the effective delivery of public services?

They have a unique understanding of their communities, and they just need the tools provided to them at the local level along with adequate funding to continue providing essential services. For example, counties provide numerous health service and emergency management services to their particular area, run health departments, and do tons of community-specific programming that is unique to each municipality within their boundaries. They are the front lines in providing free, fair, and safe elections, food and water security, and of course collaborating with local hospitals and the health officer to provide service for our health care needs.

Counties also have other priorities that maintain healthy communities through parks departments, maintaining and building infrastructure and roads, provide for public safety through the Sheriff Departments and preserving justice through its court system.

### You are one of the sponsors of the legislation that would lengthen county commissioner terms to four years. Why do you think that is a priority?

As a former county commissioner, I think it's very important to gain some institutional knowledge that helps you do your job well. It also makes sense to align county commissioners with other county elected officials that already serve four-year terms, such as the Sheriff, Prosecutor, Clerk, Register of Deeds and Treasurer. I had

a great relationship with my fellow public servants, but with turnover every 2 years, there isn't that ebb and flow of government when one piece of the puzzle is taken out every two years. It makes sense to have time to build a rapport and camaraderie, and it just makes good sense to have all the county elected officials be on four-year terms.

### You also introduced House Bill 5488, which would extend the sunset allowing counties to impose reasonable court costs to October 1, 2023, which MAC supports. Additionally, the Trial Court Funding Commission released its recommended reforms at the end of 2019. What is your short-term, or long-term, priority from those recommendations?

The speaker has named me as a co-chair for our work group on trial court funding. It is one of my priorities to work with all the stakeholders in finally determining a real long-term solution to fund our courts. This is why I sponsored the bill to extend the sunset, but I also have a bill to implement part of one of the commission's recommendations to bring judicial salaries under the state umbrella. This shows good faith to our judiciary that this is a priority and that we will take under advisement the work that has been done in prior years to actually put this on the agenda this term and in future terms. I am in a unique position, as I have personally been involved with these issues through serving as county commissioner, chair of Judiciary for MAC and serving under Governor Snyder as an appointee to a state commission. I have been utilizing the relationships I have built to try to get input on this and have an aggressive timeline to actually write several new trial court funding mechanisms into law.

### House Bills 5582-88 were recently introduced. The bills would phase out the sales tax on gasoline at the pump and replace it with an excise tax with revenues going to local roads which would ultimately leave a \$780 million hole in the General Fund. Do you worry that statutory revenue sharing to counties could decrease as a result of this proposal?

I think this is smart policy. As you know, Michigan was one of the few states to have a sales tax on gasoline, and that sales tax was not directed toward our roads. This puts money directly into the budgets of county and local road commissions for roads, which is what we have all been talking about for the last several years. I don't see a problem with it affecting county revenue sharing. The state has a duty to ensure proper funding for our locals; however, the formula for that is outdated as well, and I would still like to see reform there. As long as I am in the Legislature, I will continue to work hard to keep counties adequately funded to perform their duties.