



## **MWA Legislative Update – January 2023**

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As the calendar has turned to January, new members of the Michigan Legislature have been sworn in and are awaiting the start of the new 2023-2024 legislative session. As we wait for session to start officially on January 11, a recap reminding us exactly of what happened in November is timely. In a historic election few could have predicted, Democrats not only retained the offices of the Governor, Attorney General and Secretary of State, but also flipped control of the Michigan Senate and House of Representatives.

In statewide races, Governor Gretchen Whitmer won reelection by an unofficial margin of 54.5% to Republican Tudor Dixon's 43.9%. Attorney General Dana Nessel defeated Republican nominee Matt DePerno 53.2% to 44.5%, while Secretary of State Jocelyn Benson defeated Republican nominee Kristina Karamo 55.9% to 41.9%.

The Governor's 10+ point margin of victory and new legislative districts drawn for the first time by the Michigan Independent Citizen's Redistricting Commission (ICRC) established by voter approval of Proposal 2 of 2018 aided legislative Democrats as they won control of both chambers of the Michigan Legislature for the first time since 1984. While control of the Michigan House has flipped between the parties over the years, the Michigan Senate has been controlled continuously for 39 years by Republicans since the recall of two Democratic State Senators over an income tax increase back in 1983. The ascension to the majority by Senate Democrats caps a stunning reversal for a party that was in a 27-11 super-minority status barely four years ago. Democrats gained five seats in 2018, narrowing the Republican majority to 22-16, and in 2022 Democrats gained an additional four seats to take the gavel in January with a slim 20-18 majority. Democrats will be led by incoming Senate Majority Leader Winnie Brinks (R-Grand Rapids) while Republicans will be led by Sen. Aric Nesbitt (R-Porter Twp.).

After 10 years in the minority, Democrats will assume control of the Michigan House in January after more than a decade of minority status. The current Republican majority of 56-53 will turnover to a slim 56-54 Democratic majority in January. The incoming Speaker of the House is Rep. Joe Tate (D-Detroit) and incoming House Republican Leader is Rep. Matt Hall (R-Comstock Twp.).

Legislative turnover this cycle is also greater than in years past, with 57 new members in the House (3 of whom are current State Senators) and 16 new members in the Senate (12 of whom are current or former State Representatives), not to mention brand new committee chairs in each chamber.

Three ballot proposals amending the Michigan Constitution passed on Election Day:

Proposal 1 enacts financial disclosure and transparency requirements for legislators and modifies legislator term limits. The term limits change, in particular, would reduce the number of years legislators could serve from 14 to 12, but allow those 12 years to be served in either the House and Senate, compared to current limits of three two-year terms in the House and two four-year terms in the Senate. Proposal 1 passed by a yearly two-thirds margin, 66.5% to 33.5%, and was approved in all but four Michigan counties.

Proposal 2 enshrines various voting reforms into the Michigan Constitution such as early voting and ballot drop box requirements and was approved 60% to 40%.

Proposal 3, entitled “Reproductive Freedom For All”, a response to the June Supreme Court *Dobbs* decision overturning the 1973 *Roe v. Wade* decision, was approved 56.7% to 43.3%.

Finally, the Michigan Supreme Court will continue to have a 4-3 makeup in favor of Democratic-nominated justices with Justices Richard Bernstein and Brian Zahra winning re-election in November and the appointment of State Representative Kyra Bolden (D-Southfield) to succeed Justice Bridget McCormack, a Democratic nominee who is choosing to retire from the bench. Justice Elizabeth Clement has been chosen by her colleagues as the next Chief Justice of the Michigan Supreme Court.

### So What Does It All Mean?

While Democrats and Republicans have traded control of the Governor’s office back and forth since the aforementioned 1983 recall elections, continuous Republican control of the Michigan Senate has represented a bulwark defending against various Democratic proposals for 39 years, and it is fair to say Democrats are enthused to make the most of their incoming opportunity. With Democrats taking somewhat surprise control of every facet of state government for at least the next two years, legislative activity this year will likely mean a number of issues will receive consideration that have been effectively buried or blocked for years, and some other issues will fade into the background. The big question on everyone’s mind in Lansing is how fast the incoming Democratic majorities will act on issues that may prove controversial in nature.

Voter approval of Proposal 1 will also be a “game changer” in Lansing. Recent Speakers of the Michigan House have only served for two years, largely due to Michigan’s term limits law limiting House members to a lifetime total of three two-year terms. In fact, since our term limits law took effect for the first time with legislators leaving office in 1998, only two Speakers of the House have served four-year terms, while six Speakers of the House have served two-year terms, including the last four Speakers. Partisan control, as always, will obviously be the deciding factor in who serves as Speaker every two years in the Michigan House, but passage of Proposal 1 opens the door for members elected this past November to serve for a longer duration than any of their colleagues elected since 1992. Whether or not this change will tip the balance of power between the House and Senate remains to be seen, but the opportunity certainly now exists for more continuity and experience in the House compared to years past, when members often were forced to consider opportunities to run for the Senate in order to continue public service in Lansing.

With respect to issues of importance to MWA, we’ve had a bit of a shuffle in Department Directors. Former DNR Director Dan Eichinger has moved over to EGLE to serve as Acting Director, and Shannon Lott, formerly Deputy Director of the DNR, has been appointed to serve as Acting DNR Director. We also believe the incoming Legislature is likely to bring an increased focus on environmental issues such as water quality, and as the state budget remains flush with revenue, we will continue to pursue funding to assist our members and preserve inland lakes throughout Michigan. As of this writing, we are still awaiting committee chairs, but anticipate those announcements will be made public in mid-January.

### **MWA PRESENTS AMICUS BRIEF TO THE SUPREME COURT**

A founding objective of MWA was to use the legal system as one tool among many for furthering our mission. For over twenty years, MWA has sought to contribute to the creation and preservation of state laws and policies designed to protect, preserve, and promote the sustainable use of inland waters in Michigan. In 2022, MWA filed an *amicus curiae* brief with the Michigan Supreme Court to support the appellants’ application for leave to appeal in the momentous environmental law case of *Lakeshore Group v Department of Environmental Quality*.

The core issue in the *Lakeshore Group* case was whether private individuals and organizations, such MWA, can bring an action under the Michigan Environmental Protection Act (“MEPA”) against state agencies who make permitting decisions that may have an adverse environmental impact. This issue was particularly important to MWA in light of its recent efforts to curb the DNR’s opening of new lake access sites without appropriate systems to prevent the spread of aquatic invasive species.

In its brief, MWA took the aggressive position that the Supreme Court should overturn its controversial decision in *Preserve the Dunes, Inc. v Department of Environmental Quality* and restore MEPA to its former glory as the legislation that changed the environmental law landscape throughout the world by holding all actors, including state agencies, accountable for their actions affecting the environment.

Although four of the seven justices on the Court ultimately denied the appellants’ application for leave to appeal, the result was case-specific and paves the way for the eventual outcome for which MWA advocated. The three dissenting justices and Justice Bernstein, who wrote a separate opinion concurring with the majority’s decision, all expressed reservations about the way Michigan courts have interpreted MEPA. Justice Bernstein opined that the *Lakeshore Group* case was not the appropriate time to revisit this issue, but he made it abundantly clear that he would be inclined to clarify the Court’s precedent in an appropriate future case.

## ***Clean Lakes Support – Now’s the Time!***

*Ralph Bednarz, MWA Director and NALMS Region 5 Director*

The Michigan Waterfront Alliance (MWA) Board is excited to share with you some information about an advocacy campaign for restoring funding to, and enhancing Section 314 of the Clean Water Act (CWA), formerly known as the Clean Lakes Program.

When the Clean Water Act (CWA) was enacted in 1972, Congress explicitly acknowledged the importance of healthy lakes in Section 314. This voluntary Clean Lakes Program provided funds to help assess the water quality of lakes in a state or tribal jurisdiction, conduct diagnostic feasibility studies to identify the causes of pollution in the lake, implement projects to mitigate the problems, and carry out post-restoration monitoring studies. The Clean Lakes Program awarded \$145 million in grants through 1995. But Congress has appropriated no funds for the Clean Lakes Program since 1995, even though 45% of the nation’s lakes continue to be in poor condition as a result of nutrient enrichment and other stressors, according to the most recent [National Lakes Assessment](#).

Michigan was awarded a lake classification grant in 1980 which supported the state’s inland lakes water quality monitoring and assessment program. In addition to the lake classification grant support, Michigan was awarded 16 individual project grants: seven Diagnostic-Feasibility Studies (Phase I) awards, eight Restoration and Protection Implementation Projects (Phase II) awards, and one Post-Restoration Monitoring Studies (Phase III) award, during the time period of the Section 314 Clean Lakes Program financial assistance.

Another important part of the CWA is Section 319 Nonpoint Source Program that was established in the 1987 Amendments to the Act. Since 1990, the Environmental Protection Agency (EPA) has been providing financial support to states and tribes through Section 319 grants to implement their nonpoint source management programs. The EPA has encouraged states and tribes to use Section 319 funds to support the Clean Lakes Program work previously funded under Section 314. The use of Section 319 funds to support lakes-related projects varies widely by state and tribes but it has been reported in the range of 5-19%, far less than needed to keep the nation’s lakes healthy. Michigan does not track individual lake watershed projects supported with Section 319 grant funds.

Significant new funding needs to be allocated to support a coordinated effort to address the many threats to lake water quality and prevent further deterioration of existing healthy lakes.

The North American Lakes Management Society (NALMS) has been developing the elements of an advocacy campaign related to restoring funding to Section 314 of the CWA to once again allow for diagnostic-feasibility studies to be conducted on lakes across the country and to enhance the Clean Lakes Program by including funding for preservation and protection efforts for high quality waters.

### **NALMS recommends:**

- **Congress reauthorizes funding for the Section 314 Clean Lakes Program and significantly increases annual appropriations over previous funding levels.**
- **Revising the implementation of the Clean Lakes Program by adding a Healthy Lakes component to protect high quality lakes and prioritize lakes with significant cultural heritage value and lakes in communities where there are environmental justice concerns.**
- **Evaluation of existing programs like Section 319 Nonpoint Source Program, Healthy Watersheds, Urban Waters and 106 Monitoring Program to identify additional opportunities to advance lake restoration and protection.**

The NALMS 314 Working Group is taking the lead in developing materials to communicate with partner organizations and has engaged a college student intern for developing public outreach materials centered on the importance of the Clean Lakes Program and the value of lakes to the National, state and local economies, and the American way of life. The intent is for these materials to be used by lake advocates across the country to campaign for restoring funding to, and enhancing Section 314 of the CWA.

### **WHAT TO LOOK FOR IN SPRING 2023**

- Fact sheets, brochures and other informational resources geared to stakeholder groups related to this effort, and recommendations for mobilizing stakeholders.
- Packaged slideshows with narration for various audiences.
- A survey for state agencies and their collaborators on what is needed at the state level if funding is re-appropriated.
- A template letter for constituents to use in contacting their congressional representatives to express their support for re-funding and enhancing Section 314 of the Clean Water Act.

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To learn more background behind the NALMS 314 Working Group efforts, visit the [NALMS Enhanced 314 Clean Lakes Program](#) position statement.

## **Michigan Inland Lakes Partnership Activities Report for January 2023**

The Michigan Inland Lakes Partnership (MILP) is made up of a broad range of organizations and agencies that have a common interest - protecting inland lakes. The primary mission of the Partnership is to promote collaboration to advance stewardship of Michigan's inland lakes. The purpose of the Partnership is to engage state and local agencies, Native American Nations, outreach institutions (universities and other educational institutions), non-governmental organizations (NGOs), businesses, industries and citizens in a collaborative effort to ensure the quality, sustainability and ecological diversity of lakes, while considering society's needs. The Partnership will promote communication and cooperation between partners, communities and citizens interested in the management of Michigan's inland lakes, educating leaders, and strengthening stewardship efforts. To learn more about the mission and goals of the Partnership visit their website at <https://www.canr.msu.edu/michiganlakes/about/>

The Michigan Inland Lakes Partnership held a very successful virtual (on-line only) **Michigan Inland Lakes Convention** on Wednesday, Thursday, and Friday, September 14<sup>th</sup>, 15<sup>th</sup>, and 16<sup>th</sup>, 2022. **Michigan Waterfront Alliance** was a platinum level sponsor of this year's lakes convention. Attended by 350 people, the theme of this year's lakes convention was **Protecting Lakes Today for Tomorrow**, and included more than 45 presentations and workshops that were focused on specific issues such as fish management, landscaping near shorelines, lake protection and governance, algal blooms, native freshwater mussels, communications, policy, invasive species, lake restoration, and much more. Wednesday and Thursday also included keynote speakers who are regionally recognized for their contribution to the field of lake science and conservation. It is important to note that the **Michigan Waterfront Alliance** conducted a very well attended **Economic Contributions of Michigan's Inland Lakes** workshop as part of this year's lakes convention of Friday, September 16, 2022.