



An Action Plan for Flint

State Representative Jeff Irwin
Michigan House of Representatives
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Dear Colleagues,

For over a year, the mothers of Flint's children took their brown, smelly jugs of water to their government, begging for relief. Their government assured them that everything was fine. Their government was wrong.

How could anyone look those mothers in the eye and look at those jugs of water and think everything was fine? Did the governor, who had placed himself as the sole elected official responsible for the City of Flint, look those mothers in the eye? We don't know, because our legislative committee didn't ask. We didn't ask the governor what he was doing about Flint in the summer of 2014. We didn't ask Dan Wyant, the former DEQ director, what he knew about those brown, smelly jugs of water, and we didn't ask any of the emergency managers directly responsible for the day-to-day decision-making that led to the Flint water crisis. We made no attempt to answer the many unanswered questions about what went wrong in Flint.

Nonetheless, the Joint Committee on the Flint Water Public Health Emergency did learn some important things. We learned that our emergency manager law severs the link between citizens and their local government. We learned that this link is essential for the checks and balances that keep corruption and incompetence at bay. We learned that sampling protocols and acceptable limits of poison in our water need to be tightened. And we learned that there is bipartisan agreement on many improvements we can make in light of this catastrophe. We agree that our water infrastructure needs more attention and a serious plan for long-term sustainability. We agree that the frequency and stringency of water quality testing needs improvement. But our agreement can and should extend farther.

In this addendum to Chairman Stamas's committee report, I propose a number of additional solutions to help improve the response in Flint, strengthen our drinking water protections, and reform Michigan's approach to local governments facing financial challenges. In many cases I offer a more specific path to reforms than are called for in the Chairman's report, such as proposals to amend the emergency manager law. In other cases, as with infrastructure mapping and investment, I offer specific, new funding sources. In some instances, such as my proposal to dramatically increase our lead-abatement efforts statewide, I offer ideas that were left out of the Chairman's initial report. Finally, I also included proposals that have been floating around for some time but that would help Flint and communities facing similar problems. These ideas include positioning the state treasurer to provide income tax collection services for cities, a more efficient approach that reduces costs system-wide.

These proposed solutions include bills that have been already introduced, which meet many of the suggestions in the Chairman's report. They are only awaiting the Legislature's action to be implemented. But so far the legislative response to the water crisis has been as ineffectual and lacking in urgency as the executive branch's. Bills have been left to sit in committee for almost a year while the people of Flint are still living in Third World conditions. Although some of the harm to the people of Flint is irrevocable, the state has a responsibility to do its best to make whole the people it poisoned. In the last few days of the legislative session, this needs to be a top priority. I call on my colleagues to rise to this moral imperative and act quickly to pass legislation to mitigate the Flint water crisis.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Irwin", with a long horizontal flourish extending to the right.

Jeff Irwin
State Representative, 53rd House District

An Action Plan for Flint

On April 25, 2014, residents of the City of Flint began to draw water from their taps that was not only often brown, smelly, and bad tasting, but also contained dangerously high levels of lead. The decision to switch to the Flint River as a water source was not their decision; it was made by a state-appointed emergency manager. But they suffer the consequences of that decision.

Ever since the switch in Flint's water source, the state government of Michigan has belittled the residents' concerns and ignored their cries for help. Even after outside actors brought to light the ongoing health crisis, the state still dragged its feet in acknowledging the crisis. Although the state finally acknowledged the Flint water crisis in late 2015, the aid to Flint has been woefully inadequate given the severity of the crisis. The state failed to deliver filters and clean water to residents in need, instead relying on residents to pick up limited amounts, and to buy the rest they would need to drink or wash. Replacement of damaged pipes and equipment has barely begun. Even now, over a year after the state acknowledged the crisis and over two years since the state caused the crisis, Flint residents are asking a federal court to step in and make the state of Michigan respond with humanity. Flint is fed up.

I am also extremely frustrated by the lack of legislative action. The funding provided for pipe replacement—\$25M beginning in October 2016 – is too little to get the job done and arrived too late to take advantage of the 2016 construction season. Delay is not acceptable when our citizens are still living without drinkable water more than a year after the crisis was first made public. As the governor's Task Force pointed out, the state government caused this crisis, and the state has an obligation to act quickly to improve the situation for citizens and to ensure that the failures in Flint are not repeated.

On Oct. 19, 2016, almost 30 months after the City of Flint was poisoned, Chairman Stamas released the Report of the Joint Select Committee on the Flint Water Emergency. While the report does include many good policy proposals, I believe that the report is incomplete and that the work of the Joint Select Committee is unfinished. This document is meant as an addendum to that report.

Legislative Solutions

Improving the Response in Flint

The response to the Flint water crisis has been a disgrace. When Flint families came forward with brown, smelly jugs of water, they were ignored while state workers in Flint were provided bottled water. When health professionals sounded the alarm on high lead levels in children, state officials belittled the concerned while working to cover up the evidence of their own criminal malfeasance. And when the people of Flint finally caught the notice of the world – because the evidence of their mistreatment could no longer be denied – the state of Michigan failed to do enough to address the needs of people living in Flint.

The emergency response has been anemic. A year after the Flint water crisis hit the headlines and two years after Flint first felt the sting of the corrosive, undertreated water, many residents are still relying on bottled water. Service line replacement has been slow to start, with a tiny percentage of the work completed even a full year after the administration acknowledged the damage.

I recommend immediate action to:

Deliver water and/or filters

A federal judge has recently ordered bottled water to be delivered to the door of every home in Flint, except homes where it has been verified that a water filter is installed and functioning. The state of Michigan needs to comply with this order, as it should have voluntarily.

Develop a Water Emergency Response Plan

The failure of the state to provide aid to the residents of Flint makes clear that the state needs to develop an emergency response plan for water crises. An emergency response plan would create clear guidelines for how MDEQ, MDHHS, MSP, and other state agencies would mobilize and work together to provide water distribution, health resources, education, and other services after a water crisis has been identified. In developing a plan, House Bill 5460 should be seriously considered. The bill would update the Michigan Emergency Management Plan to include the following responses for a municipal water emergency: short-term provisioning of drinking water and filters; medium-term provisioning of home water supplies by drums and tanker trucks; public education to identify the risk of harm and give information to minimize risk. *House Bill 5460 (Phelps). Status: Awaiting hearing in the House Committee on Local Government.*

Forgive Flint water bills and protect from shutoffs

The state should not hold Flint residents financially liable for poisonous water and should provide funds to forgive water bills incurred by Flint residents after the switch from DWSD to the Flint River. While the state has provided a 65 percent water bill credit, this is simply insufficient. The state should not be in the business of nickel-and-diming people for water that the state rendered unsafe and unusable.

- ◆ Further policy should be enacted to ensure that DHHS does not use a family's water being shut off for grounds of child removal during this crisis. Providing access to safe water instead of taking children from their homes will improve family outcomes and save taxpayers money. Lastly, the Legislature needs to make sure that occupied homes in crisis areas are not condemned or deemed uninhabitable based on the water being shut off. Senate Bill 655 (Ananich) and House Bill 5122 (Chang), which both create the Water Shutoff Protection Act, could provide a good starting point for achieving this. *Senate Bill 655 (Ananich). Status: Awaiting hearing in the Senate Committee on Energy and Technology. House Bill 5122 (Chang). Status: Awaiting hearing in the House Committee on Local Government.*

Strengthening our Drinking Water Protections

The Flint water crisis revealed that the Department of Environmental Quality's culture prioritizes expediency and the letter of the law over public health. Solving this problem will require executive leadership and a strong civil service ethic. But the work of our committee also revealed numerous areas where the rules for drinking water testing need to be stricter and clearer. We also discovered that processes at the DEQ lack transparency and would benefit from greater citizen involvement and oversight.

The methodology that the DEQ uses to satisfy the Environmental Protection Agency's Lead and Copper Rule (LCR) reporting requirement is flawed. In the Flint water crisis, DEQ's methods ensured reported lead levels never exceeded the LCR action threshold, even as many Flint homes had tap water with enough lead to qualify as hazardous waste. DEQ should be required to stop instructing homeowners to sample their water in ways that underreport lead levels. DEQ should also start using profile testing, a sampling technique where a series of samples are taken to measure lead levels successively from the faucet, home water lines, supply lines, and water mains.

Legislation to improve water safety has been awaiting action for nearly a year. Despite the fact that Chairman Stamas' report mentioned many of these bills, they still have not had hearings or votes.

- ◆ **Pre-Flushing ban** – Stipulate that the DEQ and all water authorities must be compliant with EPA guidelines and mandate that no entity, including DEQ, will be permitted to use pre-flushing in water sample collection. *House Bill 5094 (Neeley). Status: Awaiting hearing in the House Committee on Local Government.*
- ◆ **Lead and copper testing** – Require municipal water suppliers to conduct annual lead testing and profile testing to get samples from different parts of the water line if initial lead and copper testing exceeds the action level. Require residents be notified of lead service lines. *House Bill 5459 (Phelps). Status: Awaiting hearing in the House Committee on Local Government.*
- ◆ **Public notification** – This bill stipulates that for Tier II water violations, the DEQ and responsible water authority have 72 hours to notify the public after firmly identifying a violation. Tier II violations occur whenever a contaminant exceeds drinking water standards; currently water authorities have 30 days to notify the public. *House Bill 5120 (Neeley). Status: Awaiting hearing in the House Committee on Government Operations.*
- ◆ **Lower the Lead Action Level to 10 ppb** – This bill would institute a stricter Lead Action Level of 10 ppb. If more than 10 percent of households test at or above 10 ppb, steps must be taken to reduce lead levels across the water system. *Senate Bill 1118 (Ananich). Status: Awaiting hearing in the Senate Committee on Government Operations.*
- ◆ **Inform residents whose water has high lead levels** – Require the DEQ and municipal water systems to notify individual residents when their water tests at 5 ppb or above, even if the community as a whole does not exceed the Lead Action Level. *House Bill 5459 (Phelps). Status: Awaiting hearing in the House Committee on Local Government.*
- ◆ **Lead abatement for schools and day care centers** – Establish water testing and interventions for schools and childcare centers, as well as repairing and replacement of sources of lead contamination. *House Bill 5461 (Neeley). Status: Awaiting hearing in the House Committee on Local Government.*
- ◆ **Lead testing for schools** – Require schools to test drinking water sources for lead every 3 years. *House Bill 5285 (Zemke). Status: Awaiting hearing in the House Committee on Local Government.*

- ◆ **Lead plumbing material ban** – Set stricter standards for lead content in solder, flux, pipes, pipe fittings and fixtures. *House Bill 5515 (Kosowski). Status: Awaiting hearing in the House Committee on Local Government.*
- ◆ **Water testing for colleges and universities** – Require college and university water suppliers to test water from the school annually for contaminants, including lead, for which the state has a drinking water standard. *House Bill 5553 (Kosowski). Status: Awaiting hearing in the House Committee on Local Government.*
- ◆ **Water testing for hospitals** – Require water suppliers to test hospital water annually for contaminants, including lead, for which the state has a drinking water standard. *House Bill 5554 (Kosowski). Status: Awaiting hearing in the House Committee on Local Government.*
- ◆ **MDEQ Citizen Oversight Commissions** – Restore two gubernatorial-appointed citizen oversight commissions for air pollution and water quality. *House Bills 5404-6 (Phelps/Chang/Neeley). Status: Awaiting hearing in the House Committee on Natural Resources.*
- ◆ **Water Ombudsman**– The administration’s failure to protect and advocate for the health, safety and interests of the people of Flint shows the need for an advocate for the people and their municipal water supplies. It is crucial the residents of Michigan have their own independent advocate to investigate concerns over the health, safety, and availability of municipal water supplies. The Water Ombudsman would be able to independently hear complaints from residents, investigate as necessary, publicize findings, and advocate on behalf of water customers. *House Bill 5462 (Neeley). Status: Awaiting hearing in the House Committee on Natural Resources.*
- ◆ **Access to water** – Access to clean and affordable water is an absolute human necessity. As such, the state would be well served by putting that into statute. The Legislature should consider House Bill 5101 (J. Plawecki)/Senate Bill 643 (Young), which would establish that each individual in Michigan has the right to safe, clean, affordable, and accessible water for human consumption, cooking, and sanitary purposes. *House Bill 5101 (J. Plawecki). Status: Awaiting hearing in the House Committee on Local Government. Senate Bill 643 (Young). Status: Awaiting hearing in the Senate Committee on Government Operations.*
- ◆ **Creating a Health Care and an Education Trust Fund** – As the long-term effects of lead play out, Flint will see increased education costs and health care costs for a generation or more. Establishing two trust funds, one for education and one for health care, could help to provide for the increased future costs. Each fund should be funded such that the creation of the funds does not detract from other funds which provide similar assistance statewide. The purpose of the two funds would be to increase the total amount of funds available to help defray education and health care costs, instead of reshuffling already existing funds used for these purposes. The interest earned on these funds would be used to help provide ongoing funding.
- ◆ **Bringing in healthy options** – Flint is considered a food desert, so the healthy foods needed to combat the effects of lead are not available to many citizens. A farm-to-school program should be established to make sure schools are supplied with fresh fruits and vegetables. Households in Flint that are on WIC or food stamps should receive increased funding and/or triple value for purchasing identified foods that help with lead. This could also include grants for nutrition education and starting an urban gardening initiative in affected communities.
- ◆ **Civil Service** – The Chairman’s report recommends civil service reform, in the form of House Joint Resolution MM and House Bill 5677, saying that “The Flint water crisis shed light on problems inherent with managing a large bureaucracy. Accountability, empowering employees to protect the public, and the ability of the Executive to reward and discipline employees are all issues that deserve their own attention.”

Unfortunately, the civil service “reform” called for in Chairman Stamas’s report will make public employees more afraid to raise concerns over issues of public health. Instead of eliminating protections for employees that speak out, a better solution is to provide greater whistleblower protection for state employees. Currently, reporting a planned violation of a law or an anticipated breach of the public trust is not protected under the state’s Whistleblower’s Protection Act. The experience of Flint, and the testimony that the committee heard from Mike Glasgow, City of Flint’s Laboratory and Water Quality Supervisor, underscore the need to plug this hole in our whistleblower law. That’s why I have introduced House Bill 6021, which would amend the Whistleblower’s Protection Act to ensure employees are protected when reporting a planned or anticipated harm. *House Bill 6021 (Irwin). Status: Awaiting hearing in the House Committee on Government Operations.*

Reforming Michigan's Approach to Local Governments Facing Financial Challenges

Michigan's emergency manager law, which confers a mixture of tremendous powers and little to no accountability and oversight, led to the disastrous decisions that made the Flint water crisis. One of the lessons learned in Flint is that severing the linkages of local control removes critical checks and balances. We need to restore those linkages by bringing the community stakeholders into the process to find solutions. The state should be a partner for financially distressed communities, not a dictator. The most just and productive path to financial stability would give local communities the resources to make changes that support the financial and service needs of citizens.

Michigan's municipal finance crisis is not new, but the Flint crisis has brought new attention to the severity of the challenges communities face. The Legislature should follow through on the state's promises to our local partners and develop new tools for local governments to succeed. I recommend action to:

Reform Emergency Management

Our state should phase out emergency managers, encouraging local governments instead to utilize an improved consent agreement process or a neutral evaluation process. Community participation is key to finding long-term solutions that meet the needs of citizens. Communities that have been successful in navigating financial calamity have done so by engaging the citizens and the public workforce. Instead of imposing an outside manager, Michigan's legal framework for financially distressed communities should focus on collaboration to seek real solutions through planning, negotiation, and, if necessary, arbitration with employees.

The weakness of the current emergency manager system was revealed when emergency managers acted autocratically to switch Flint's water source and went on to ignore citizen concerns over water quality and safety. A single emergency manager consolidates all local power within one person, who is necessarily limited in experience and perspective. This removes the checks and balances that an independent local government, which is elected and accountable to the electorate, provides. Unless local democracy is guaranteed for financially distressed communities, we can expect more situations in which emergency managers sacrifice the public interest.

Chairman Stamas's report recommends some changes to the emergency manager system, but would leave it largely in place. In contrast, I have proposed House Bills 6030 and 6031 to overhaul the statute governing financially distressed communities, PA 436. These bills would remove the option for installing new emergency managers in municipalities in fiscal distress and limit the powers of existing emergency managers. Financially distressed communities would be able to negotiate a consent agreement or use neutral evaluation as alternatives to bankruptcy. These options provide a much larger role for local voices and ensure a more tailored approach to fiscal distress, instead of imposing a one-size-fits-all approach.

I have also introduced House Bill 6032 to create the Office of the Local Government Financial Emergency Ombudsman. The ombudsman would ensure complaints and concerns are heard by a party separate from the local government and from the state. The office would be empowered to receive complaints, conduct investigations, hold hearings, and report the findings of investigations. *House Bills 6030-2 (Irwin). Status: Awaiting hearing in the House Committee on Local Government and the House Committee on Government Operations.*

Municipal Finance Reform

Emergency management is not a real solution to municipalities in fiscal crisis. Rather, it is a symptom of the disingenuous relationship that the state has with municipalities. Instead of providing assistance and cooperating with municipalities, the state has slashed the revenue sharing that municipalities need to fund basic services. The state Legislature has used that money to fund state tax cuts on the state level, while blaming municipalities the resulting local revenue shortfalls. Many municipalities would not be even approaching fiscal distress if revenue sharing payments had been maintained. The loss of revenue sharing payments, combined with the restrictions on revenue generation leaves municipalities only able to cut services in pursuit of solvency. This leads to a downward spiral – as services are cut, the municipalities become much less attractive places to live and work, which depresses revenue even further.

In the wake of the 2008 financial crisis, municipalities have been hindered by a state constitutional limit that keeps property tax revenue from rising as quickly as property values have recovered. In addition to the straitjacket on property tax revenue, municipalities are also severely restricted to only a few sources of revenue. This restriction ensures that a single factor, such as a fall in property taxes, can almost immediately put municipalities into financial distress.

In order to be resilient, municipalities need new and additional sources of revenue. Potential reforms include allowing municipalities to place an assessment on large entertainment venues, or allowing greater local discretion to determine how to generate revenue to better serve each individual community.

State Cooperation

The state needs to do more to assist local governments, especially in service areas where the state already overlaps. For instance, the state could offer more administrative services – especially income tax collection – for municipalities. Municipalities should be able to partner with the state in collecting income taxes, which would both reduce duplication in the tax collection process and simplify the process for taxpayers. This will reduce costs for municipalities, and could increase tax collections as well. Senate Bill 1127 (Hansen) and House Bill 4829 (Pscholka) could provide a good starting point.

Additionally, the state could provide new and additional incentives to municipalities for service consolidation and government mergers. This could help to reduce costs and increase the quality of services.

Without the resources and bond ratings available to the state government, municipalities struggle to invest in infrastructure. The state of Michigan should propose a new Clean Michigan Initiative to fund infrastructure improvements for water and sewer, in addition to cleaning up polluted sites and preventing pollution in the Great Lakes. Not only are lead services lines in need of replacement; all of the state's water and sewer infrastructure is greatly underfunded. The governor's 21st Century Infrastructure Commission estimates that we need to invest at least \$800 million more a year in water and sewer infrastructure in order to maintain services and meet future need.

To that end, I have introduced House Bill 6055, which would reauthorize the Clean Michigan Initiative. The bill would allow the state to issue up to \$1 billion in bonds to help finance lead abatement, water infrastructure, replacement water sources in response to contamination, environmental protection, and protection of the public health. *Senate Bill 1127 (Hansen). Status: Recommended to Senate Floor. House Bill 4829 (Pscholka). Status: Recommended to House Floor. House Bill 6055 (Irwin). Status: Awaiting hearing in the House Committee on Appropriations.*

Conclusion/Discussion

I am dissatisfied with the depth and breadth of the Joint Committee's investigation and with the lack of urgency to fix the damage in Flint. When the committee was formed, Chairman Stamas stated he would not focus its work on investigating what went wrong in Flint. This intentional limitation of the committee's scope meant that the committee had to rely on others, such as the governor's Flint Water Task Force and the U.S. Congress, to develop an understanding of the problems to be solved. While those bodies, various media outlets, and other organizations performed good investigative work, there are still many unanswered questions. Hopefully, state and federal law enforcement will uncover even more answers. But refusing to investigate the causes of Flint's problems makes it more difficult for the committee to develop useful proposals that would restore justice, aid the people who have been harmed, and prevent similar disasters from reoccurring elsewhere.

The water crisis will have a lasting effect on Flint. Some of the harm to Flint's infrastructure and especially its people can never be undone. Rebuilding public trust in state agencies will take years, if it can be done at all. Nonetheless, both Chairman Stamas's report and this report identify productive and bipartisan proposals to improve our clean water and municipal governance laws. Bills have already been introduced to address the problems in Flint, and bills have been introduced to help ensure other communities don't experience the disaster of living with polluted water. But those bills have languished in committees for months, and very little action has taken place. During our final two weeks, the Michigan Legislature owes it to the people of Flint and to all of the people of Michigan to pass legislation fixing our broken emergency manager law and our inadequate protections for drinking water.

