



CAPITOL REPORT

May 24, 2004

Gloves are finally coming off and “High Noon” is at last on the horizon in the State’s 2004-2005 budget crisis. After weeks of shadow-boxing, the Governor and legislators are getting down to the serious give-and-take of solving the \$250 million plus shortfall in the current FY 2003-2004 budget and the \$1 billion gap for FY 2004-2005.

Last week’s House defeat of a 75 cent per pack hike in the cigarette tax (and accompanying adoption of \$266 million in budget cuts) was Round One. But few observers believe that fight is over, and some optimists even believe a liquor tax hike still remains a faint possibility. A \$54 million shortfall in this fiscal year’s School Aid Fund only adds to the pressure to find new revenue. Meanwhile, the GOP State Senate says it wants a negotiated, comprehensive agreement on the over-all two FY budgets before it puts up votes on separate pieces of the puzzle.

One of the things which (at least temporarily) sunk the cigarette tax hike was that the Democratic Governor and the Republican House each had their own versions of the proposal. The Governor wanted a tax on all tobacco products and wanted all monies to go to Medicaid. The House Republicans wanted a tax increase strictly on cigarettes and would have put some of the money into the Budget Stabilization Fund (thereby making possible continued cuts in the Single Business Tax) and other money to increase Medicaid reimbursements for hospitals and physicians. The only House vote was on the Governor’s version, and it lost 53 to 44 with 12 not voting.

The House then voted 55-51 to cut the budget for 2004-2005 by \$266 million, even though the measure (HB 5521) was a supplemental bill for an over-all budget that has not yet been adopted. Included in the chopping: 1% cuts for all departments (except Transportation); 1% cuts for public universities and community colleges (\$90 million); elimination of Medicaid eligibility for caretaker relatives (\$42 million); limiting Merit Scholarship Awards to those with a “C” or better grade point average (\$20 million); early retirement eligibility for 9,000 state employees (\$16.9 million); elimination of day care for welfare recipients (\$14.8 million); elimination of funding for prisoner education (\$14.8 million); and arts grants cuts (\$10 million).

Adding to the pressure were new budget proposals by Governor Granholm aimed at fixing the current year's \$250-300 million problem. Key to her plan was adoption of the cigarette tax hike (defeated by the House), the liquor tax increase (now on life-support in the House) and a controversial delay in restoring promised funds to those colleges and universities holding the line on tuition. Meantime, late last week the House voted 78-26 to have Michigan re-enter a multi-state compact that will probably bring in \$30 to \$65 million in sales/use taxes on interstate sales.

As May ends and June begins, budget bargaining will take on a new intensity and it remains highly problematic whether budgets for the two fiscal years will be adopted by the customary July 4 break.

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Against all odds (no pun intended), **the Agricultural Enhancement Package** (more commonly known as the "racino bills") has passed both chambers and is awaiting a reconciliation of differences in a House-Senate conference committee. The bills would aid an array of agricultural endeavors, modernize the "Sport of Kings," and add millions to state coffers. Major obstacles still remain, but the legislation is now given at least a 50-50 chance of getting to the Governor's desk. Meanwhile, Detroit casino owners who fought the package in order to stave off unwanted competition, were jolted when the House overwhelmingly voted to boost the **casino tax** from 18 % to 36 %.

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The State insurance commissioner has announced she intends to utilize an administrative rule to completely ban **consumer credit scoring** in the making of insurance rates. Her action has agitated legislators who themselves were working on legislation to regulate – but not ban – the practice. Lawmakers are upset over a perceived "end run" and a reported admission from the commissioner that barring the review of credit reports will raise insurance rates for individuals with good credit histories.

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K-12 leaders are holding their collective breaths over the **\$54 million shortfall** in the current year's **School Aid Fund**. The deficit would result in a \$30 per pupil pro-rated cut to foundation allowances at a time when school fiscal years are nearly over. Kelley Cawthorne is moderately optimistic that the cuts won't occur, at least in this school FY. Pressure remains intense, however, to cut \$12.5 million from **Sec. 81 monies** for ISDs in next year's budget. Also moving in the Legislature are bills to allow tax deductions for contributions to school foundations and a greatly watered down measure (HB 5660) that would give local governments the power to review (but not block) **school construction projects**. Legislation to scrap the **MEAP** in favor of the ACT continues to inch through the process.

A handful of House members continue their efforts to link all **Intermediate School Districts** to charges arising out of well-publicized problems in the Oakland ISD. So far the most extreme corrective legislation has been beaten back or substantially amended, but additional bills were introduced into the House just during the last week. The next three weeks will be crucial in determining just how the legislation finally shakes out.

On the higher ed front, **community colleges** have concern over a House GOP plan to eliminate state-funded Merit Scholarships for students with "C" or less averages. Another worry

is Gov. Granholm's proposal to delay paying until October 1st \$52 million promised to colleges and universities that held the line on tuition increases. She says payment could come sooner if the old Northville mental hospital property is sold to developers for \$50 million, an uncertain prospect. Some think the Administration would just as soon find a way out of earlier, expensive commitments.

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The director of the State **Department of Transportation** is locked in a sometimes personal battle with a key legislator, and the result is a major struggle over how much that agency is funded and for what purposes. Director Gloria Jeff and Sen. Shirley Johnson, chair of the Senate Appropriations committee, have exchanged verbal shots, first over the Department's plan to delay new construction (especially in Sen. Johnson's Oakland County) in favor of maintenance, and then over Director Jeff's effort to get \$34 million to hire engineers in-house as opposed to using private sector engineering services. The House has re-directed the money to the private side and the Senate has killed a MDOT plan to fund local bridges while requiring Legislative sign-off on MDOT bonded projects and its five year plan.

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Bills that would require **divorcing parents** to complete a divorce education program prior to legally separating have passed the House. Supporters of the bills say the class would be effective in reducing the state's divorce rate. The seven-bill package also would lengthen the time for engaged couples to receive a marriage license if they decline to take a premarital education program. Opponents criticized the legislation as interfering with personal decisions and putting needless roadblocks in place of couples that may need to divorce.

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Trial courts have no authority to order mentally retarded juveniles accused of crimes to the care, treatment and supervision of the **community mental health system**, the Court of Appeals has ruled. The court, reversing the Van Buren Circuit Court in three cases, also said the courts could not direct a county community mental health authority to arrange and pay for evaluations of those juveniles to determine whether they are competent to stand trial. The trial court had directed the Van Buren Community Mental Health Agency to pay for certain forensic evaluations.

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Legislation remains stalled that would re-write the marine industry's manufacturer dealer contracting laws. Rumors are that sponsors are working on a new version for possible action in June.

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A cut of 7 percent in the state's **information technology** spending is one of the major changes enacted to the proposed 2004-2005 general government budget reported by the Senate Appropriations Subcommittee. Spread across all the departments the budget services – which includes Attorney General, Civil Rights, Civil Service the Executive Office, the Legislature, Information Technology, Management and Budget, State and Treasury – would total cuts of nearly \$31 million.

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The **State Public Service Commission** is expected to rule in late June whether SBC can double what it charges competitors for the unbundled network element platform (UNE-P). Competitors are charging that the requested increase will mean rate increases for consumers and hinder competition by squeezing already thin profit margins of alternative providers. Meantime, some legislators are expressing interest in re-visiting **Michigan's Telecommunications Act** which is scheduled to sunset in 2005.

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PSC Chairman Peter Lark says Michigan and the rest of the Midwest still face the **threat of a blackout** similar to the one that hit the northeast corner of the nation last summer. While the PSC has been working to ensure Michigan power providers have the capacity to serve their customers this summer, Mr. Lark told a forum sponsored by the Michigan Municipal Electric Association that Congress has not taken steps to be sure the transmission system is able to move that power to those customers. Last year he called for mandatory federal reliability standards for the transmission system. Many legislators remain interested in re-visiting aspects of Michigan **electric choice** act as out-of-state companies continue to "cherry pick" their customers.

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A bill may be moving to bar the State from requiring a person to sign a **sole negligence indemnification** provision as a condition to entering into a State contract. For years, the design professions have negotiated with the Attorney General and Department of Management and Budget over an indemnification clause in the state contract that requires an architect or professional engineer to act as a surety for a project. Such a provision is not insurable under the standard professional liability insurance policy. HB 5656, sponsored by Rep. Chris Ward, may get a second hearing in the next few weeks and could move to the floor. Also of interest to **design professionals**, Rep. John Pastor has agreed to introduce legislation that would require trial attorneys to file a certificate of merit stating that a licensed professional is willing to testify against a design professional in a civil action. The certificate of merit would have to be filed at the time of the complaint against the design professional.

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Representatives from **Save Our Shoreline** have told the Senate Natural Resources and Environmental Affairs Committee that few beaches have been cleaned since passage of PA 14 of 2003 went into effect and the state's commercial beach industry continues to suffer as a result. SOS says the State DEQ and federal Corp of Engineers have used bureaucratic "procedures and delays to accomplish what they couldn't do legislatively." Meantime, SOS is hailing a State Court of Appeals decision that gives Great Lakes waterfront owners the exclusive right to use land to the actual water's edge (and not just the "ordinary high water mark").

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Identity theft legislation has passed the Senate and is now receiving scrutiny from a study group set up by Rep. William VanRegenmorter, who chairs the House committee considering the bill. However, businesses and health care providers claim that if the bills are enacted into law, it will make such practices as debt collection nearly impossible and impact credit reporting.

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HB 4898, sponsored by Rep. Larry Julian, passed the House late last year and is now pending in the Senate Health Policy Committee. This omnibus bill upgrades the standards for **medical technologists**. However, it also attempts to expand the scope of regulatory authority for the Bureau of Radiation Safety within the Dept of Community Health. Kelley Cawthorne and Michigan Radiological Society leaders have been instrumental in removing provisions calling for regulation of non-ionizing radiation. Meantime, the Chair of the House Judiciary Committee, Rep. Jim Howell, has introduced legislation which allows a trial attorney to amend an affidavit of merit in **medical malpractice cases**, if that attorney can demonstrate that the need for the amendment is for good cause. The amendment would have the effect of relating back to the time of the filing of the original, effective affidavit. The bill is viewed as potentially expanding physician exposure to malpractice claims.

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Advocates for **adult foster care** providers are pushing for final adoption of long term care rules which have been three years in the making. Nursing groups, however, are trying to inject onerous new requirements that will probably be rejected. AFC providers were also successful in holding up a bill (HB 5795) which would have required disclosure of inspection reports to each resident of an adult foster care facility, a requirement many believe to be costly and unnecessary.

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A pair of bills (SB 831 and 832) affecting the **pharmaceutical industry** would require state pharmacy and therapeutic committees to utilize basic due process in their deliberations and also protect certain drugs from pre-authorization requirements. The bills are pending on the Senate floor.

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Health plans are asking the Senate to advance SB 1150 to allow them to offer a wider choice of covered services. The bill would allow providers to offer, at a minimum, “preventive health care services.” Further Senate consideration of the controversial bill appears likely.

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Despite rumors to the contrary, it appears the so-called “**Triangle Project**” in downtown Lansing remains dead due to continuing controversy, an ongoing lawsuit, and the pending move of the Military and Veteran’s Affairs Department to a North Lansing location. The DMB, meanwhile, is nearing completion of its downtown space plan. Area developers are anxiously awaiting an RFP for 150,000 square feet of space to be occupied by Department of Community Health employees displaced by the MVA move to North Lansing.

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The Family Independence Agency testified before the Senate Appropriations Subcommittee last week that Michigan’s food stamps error rates are now in the single digits and that further federal fines will be avoided. Recent improvements to California’s system may raise the bar for all states, and many are speculating that a system-wide **information technology** solution is necessary to comprehensively address eligibility issues within Michigan’s FIA.

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Lead paint penalty bills remain stalled in House committee. However, two bills making it easier for property owners and managers to evict drug dealers have been signed by the governor.

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The DEQ is undertaking a dramatically scaled back **automotive mercury** component removal program on a pilot basis. The department continues to negotiate with the automotive industry for a broader program but issues of funding, participation, and liability remain stumbling blocks.

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