



CAPITOL REPORT

December 16, 2004

The Michigan Legislature wrapped up its 2004 session last Thursday night (December 9), bringing to a close a sometimes tumultuous lame duck session and the careers of 37 term-limited state representatives.

The new legislature, with a partisan breakdown of 22 Rs and 16 Ds in the Senate and 58 Rs and 52 Ds in the House, will convene at the Capitol on Wednesday, January 12, 2005. Gov. Granholm will deliver her State of the State message later in the month and her very important Budget proposals in early February.

Senate leadership will remain the same in the new term, with an increasingly outspoken 18 year legislative veteran, Sen. Ken Sikkema, as majority leader. One-term State Rep. Craig DeRoche will take over as the new Speaker, and another first term, Rep. Chris Ward, will serve as majority floor leader.

Senate leadership is increasingly obsessed with the idea of restructuring state government and “re-inventing” the budget process as a precondition to enhancing revenues (i.e., raising taxes), while the new House leadership is even more rigidly conservative than their predecessors on tax and spend issues. How the State will address a projected \$370 million current fiscal year deficit against that backdrop will be one of the most intriguing issues of 2005.

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Retail interests led by Wal-Mart caught a last minute attempt by the House of Representatives to impose a **75 cent per tire tax** on the sale of all new tires at retail. Opponents successfully argued in the Senate that the new tax at least ought to have been carefully studied in the committee and not be the subject of an 11th hour lame duck maneuver. An overwhelming bi-partisan majority in the Senate agreed and the bill went down to defeat with only three “yes” votes.

The legislature has completed work on the so-called **Identity Theft** package. As originally introduced the package denied access to social security numbers for a whole series of legitimate business concerns. Kelley Cawthorne formed a business coalition to amend the

legislation so that data collectors could continue to conduct business. The package also includes a first-in-the-nation exemption from a state ban on the use of social security numbers in resident and employee screening by third-party property managers. The industry successfully argued that ending this long-standing industry practice would lead to compromised resident safety and increased rents. This achievement capped a year in which property managers also won important amendments to lead hazard and smoke detector liability issues.

Kelley Cawthorne was also successful in obtaining passage of House Bill 5656 which has been a top priority of **architect and engineer professions** for years. It bans the sole negligence indemnification clause in state contracts. Instead, it fairly apportions responsibility based upon degree of fault. Passage of the bill came in spite of vigorous opposition from the Department of Management and Budget (DMB). The professional organizations are waging a concerted effort to obtain the Governor's approval for the bill which faces a December 20 sign-or-veto deadline.

A capital outlay bill with multiple **community college and university projects** passed the House but died in the Senate during the last week of lame duck. Uncertainty over projected deficits caused Senate leadership to back away from the measure. Most observers expect a capital outlay bill to be taken up in the spring of 2005. In related higher education news, the long-awaited report of Lt. Governor John Cherry's Commission was released yesterday. The report calls for higher education to be universal to all citizens and says that the state's economic health is tied to a higher college graduation rate.

The Senate passed a bill (HB 5668) designed to combat illegal **internet sales of cigarettes** and other tobacco products. Concern over "smokes", a new product which is advertised as being a cigarette but which retails for less than the new per pack cigarette tax (\$2.00 per pack) presented a last minute roadblock. The tobacco industry is concerned about proper taxation of the new product being offered by "fringe companies" and the potential impact on the Master Settlement Agreement posed by changing product definitions.

SB 1432 is on the way to the Governor's desk and would allow municipalities to join together in creating **watershed alliances**. The measure would be especially helpful to proper management of the Rouge River watershed.

The **Public Service Commission** has provided some financial relief to Detroit Edison in a much-anticipated rate case decision. However, the Commission did not address serious structural and fair competition problems arising out of passage of **electric "choice"** in 2000. Senate Technology and Energy Committee Chair Bruce Patterson announced he would again take up the issue of PA 141 reform in early 2005 and suggested that he may support a return to full electric regulation. He also expressed concern over the pace at which the Commission is deciding rate cases.

Also, the **PSC** could continue its **rulemaking authority** over telecommunications issuers until at least July under legislation (HB 6337) sent to the Governor. The measure would reinstate rulemaking authority for the PSC until such time as the Supreme Court rules on a Court of Appeals decision that the utility regulatory agency did not have rule making powers.

A scheduled Joint Capital Outlay subcommittee meeting was scratched in the last week of session after intense speculation that the Granholm Administration would put forward a lease-purchase agreement for the controversial **Triangle Project**. The Triangle, a no-bid project left over from the Engler Administration, was originally slated to be a joint State Police/Military Affairs headquarters in a flood-plain location in downtown Lansing. The project looked near death after a taxpayer's lawsuit and public criticism of it by Governor Granholm's incoming department heads. However, the project appeared to gain new life after the developers announced publicly that they had a deal with the state. This prospect was news to Senate Appropriations Committee Chair and JCOS co-chair Shirley Johnson, who was quoted by the Lansing State Journal as saying that "this project smells . . . It doesn't make sense to do this at all." The project could still re-surface before year's end, however, if a new Joint Capital Outlay committee meeting is scheduled.

Gov. Granholm appears poised to veto legislation (SB 591) **creating a Detroit-Wayne County mental health authority** because the measure fails to fix basic governance issues and because she believes Wayne County Executive Robert Ficano should have more time to fix agency problems on his own. Bill sponsor Sen. Bev Hammerstrom says she will reintroduce the legislation in the 2005 session.

Years of work on legislation to change how **mobile home owners** pay taxes failed to survive the last day of session. Local government and public school associations succeeded in scuttling the bills because the legislation fell far short of what is needed to adequately tax mobile home owners. Under a law unchanged since 1959, mobile home owners pay \$3 per month in taxes. While they must pay sales tax when they buy the home and lot rental fees that include the cost of property taxes paid by park owners, they do not pay the same property tax paid by owners of traditional homes, known as an ad valorem tax. Critics have said mobile home owners pay far less than their fair share to fund school buildings and roads.

Persons who receive their health insurance through a **health maintenance organization** could be responsible for up to \$5,000 in out-of-pocket costs for individuals and \$10,000 for families under recently approved legislation. The bill (SB 1150) would change current law that now allows HMOs to charge a "nominal" amount, which the Office of Financial and Insurance Services has interpreted to mean \$3,000 for individuals and \$6,000 for families.

The **Department of Transportation** is expecting its **funding** to about keep up with inflation over the next five years, but doesn't plan to spend at that pace. MDOT this week circulated its five-year plan for 2005-2009 for public comment. The plan projects \$6.33 billion in total state and federal funding, but only plans \$6.28 billion in total spending. The department concentrates most of its efforts on rebuilding roads and bridges already in place, with money for new construction falling to nothing by 2009. Under the plan, maintenance spending will actually increase from \$357 million in 2005 to \$373 million in 2009. Preservation spending will fall from \$883 million to \$751 million over the period. New roads and new lanes, meanwhile, will peak at \$256 million in 2005 falling to \$49 million in 2006 and nothing by 2009.

After years of effort, legislation (SB 823) has passed to convert all but one **part-time probate judge** to full-time status. Another bill (HB 6315) to extend state-sponsored health care

coverage for trial judges passed the House but didn't clear the Senate. The issue will likely be a major one in 2005 and is high priority for the State's trial bench.

Children and the courts were the focus of great attention in the lame duck session. Deadbeat parents who don't pay child support were the subject of one package (SBs 1447-50 and others). Other bills (SBs 683-86) create an outpatient treatment option for the severely mentally ill. Another bill (HB 4096) gives the Children's Ombudsman Office more powers to deal with child abuse cases.

Save Our Shoreline, a citizens lobbying group, is seeking financial support from Great Lakes property owners to pursue its battle in the State Supreme Court to uphold owners rights to property between the "ordinary high water mark" and the actual water's edge. The group won an important case before the Court of Appeals and is seeking the high court's clarification of that decision.

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Dead for the year are HB 4987 and HBs 5435-38, bills designed to help local pharmacists by discouraging **mail order prescription** services. Also dead is a bill (HB 4808) which would sink boat manufacturer – dealer relationships in a sea of red tape. Legislation introduced to expand the scope of practice of **interior designers** and geologists will die at the end of this session. House Bill 4176 and Senate Bill 1174 which expand the **scope of practice for physical therapists** will also expire at the end of session due to vigorous opposition from the medical profession. These bills would have allowed physical therapists to "interpret" tests which was widely viewed as allowing a physical therapist to diagnose a patient and thus engage in the practice of medicine.

Legislation entitled "**integrity in retail pricing**" will be a major priority of Speaker-elect DeRoche early in the 2005 session. The bill would amend parts of Michigan's item pricing Law.... Expansion of the state's **bottle return** law will be a major issue next session. Strong forces want to expand mandatory returns beyond the current coverage of beer and pop containers "SUTA dumping," the practice of minimizing **unemployment taxes** by creating multiple entities, will also be a target for elimination in the 2005 session....**Electric and telephone** deregulation will be major issues in 2005....So will fair taxation for **professional employer organizations**.

Two major education policy packages will soon become law after intense legislative battles. By overwhelming margins, the Senate and House passed bills (SBs 1153-57) which would **eliminate the high school MEAP** in favor, probably, of the ACT or SAT. The legislation takes effect in the 2006-07 school year and does not impact the MEAP for lower grades. The other group of bills is the so-called **ISD "reform" package** which was greatly watered down from its original version. Stung by numerous setbacks in her efforts, the legislative sponsor has made numerous statements widely viewed as inaccurate and exaggerated about ISD activities in the legislative struggle over passage.

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Budget musings... Most of the nation's 50 states are in far better fiscal condition than Michigan. In fact, some states are now considering tax cuts in 2005 after raising taxes to meet earlier budget shortfalls, according to a national study by the National Conference of State Legislatures. Michigan is one of just three states that face a budget shortfall, and also one of just three states where tax revenues are falling below projections.

An analysis by Michigan's Senate Fiscal Agency for the period 2000-01 FY to 2004-05 FY says that spending on the Department of **Community Health** budget, much of it Medicaid, increased 30.6 percent or \$943.4 million. At the same time, the Department of **Corrections** spending increased 6.2 percent and K-12 school aid by a mere 4.1 percent. Spending on Community Colleges dropped by 12.1 percent, for higher education by 11.6 percent, and by 27.6 percent for revenue sharing.

Says Senate Majority Leader Ken Sikkema, "Michigan provides more types of healthcare services to more groups than other states and more than is required by the federal government. Medicaid spending has to be capped in the 2006 budget. We are not raising taxes, and it's irresponsible to keep cutting other areas because of our inability or refusal to make tough decisions on Medicaid."

But Sikkema is not necessarily calling for **Medicaid** cuts. The state may need to look at how services are provided and at the level of financing the federal government provides, a spokesperson for Sikkema says.

While Gov. Granholm says she is open to putting a cap on Medicaid for certain populations, she would prefer to emphasize efficiencies in the system and use the power of bulk purchasing. "Cutting people off of health care is not what we're about as a state, and it certainly is not what I'm about as governor," the Governor said.

Meantime, the Legislature has plugged current shortfalls in the School Aid Fund, heading off at least temporarily a new round of pro rata cuts of per pupil **school aid** expenditures. Pressure may increase on Sec 20 j (hold harmless) and Sec. 81 (ISDs) funding, however.

Speaking of schools, consider this: The nonpartisan Citizens Research Council of Michigan says contributions to **public school** employee pensions and health care will raise from 14.87 percent of payroll in 2005 to more than 20 percent in 2008 and to more than 30 percent by 2018. By 2008, health care and retirement costs will eat up about 20 percent of the State's \$6,700 per pupil foundation grant.

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Political notes.... Ex-Governor Jim Blanchard says he is interested in being the new national Democratic chairman.... Michigan Republicans will choose a successor to state chair Betsy DeVos. Former State Rep. Andrew Raczkowski, considered by some to be the front-runner, surprised observers by dropping out of the race and throwing his support to a new entry, lawyer David Trott. Long-time party activist Saul Anuzis is also making a strong bid So far, no credible GOP challengers to Gov. Granholm as the '06 (!) political season begins No word yet on who will be new House Appropriations chair. Whoever it is will probably take a back seat to the hard-charging Senate Approps chair, Sen. Shirley Johnson (R)....

Best Holiday wishes from,

Frank Kelley *Dei O. Cant* *Jim Cawthorne*
Pat McCullough *Paul ...*
[Signature] *C. K. Call*

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