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# capitol currents

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## A Legislative Update for Township Officials

### Governor delivers special local government message, includes revenue sharing replacement



Gov. Rick Snyder delivered a Special Message in Grand Rapids on March 21, titled "Community Development and Local Government Reforms." The message, in part, was expected as a follow-up to the statutory revenue sharing reforms proposed in the governor's budget on Feb. 17. However, the governor's message went well beyond the scope of his replacement plan for statutory revenue sharing and was captured in an 11-page

document.

The governor's budget calls for eliminating the current \$307 million in statutory revenue sharing that goes to townships, cities and villages, and replacing it with a \$200 million incentive-based fund next fiscal year called the "Economic Vitality Incentive Program" or EVIP. Currently, only 40 out of Michigan's 1,240 townships receive any statutory revenue sharing. However, all townships receive constitutional revenue sharing, where current projections anticipate a 2.4 percent increase (based on sales tax collections) for next fiscal year. Prior to the governor's announcement, MTA learned from the governor's staff that he only intends to allow townships, cities and villages that are currently receiving statutory revenue sharing to qualify for EVIP. So, only 40 townships could potentially qualify. And when added to another new provision that the funding only be open to communities that would be expected to receive more than \$6,000 under the new structure, even fewer townships will qualify.

The new EVIP program intends to reward local governments using best practices. According to the governor, there are three elements that communities must embrace: 1) accountability and transparency, 2) plans to consolidate services, 3) establish employee compensation criteria. Municipalities will receive one-third of their funding for each category of best practices they meet. Local units must meet every criteria described in a specific category

by the defined timeline to fully benefit from the program. Municipalities that do not meet the criteria will see reduced funding in their scheduled payments.

-Accountability/Transparency – The governor is asking each community to follow his lead by creating a Citizen's Guide to Financial Health "dashboard" (at the local level) by Oct. 1, 2011, to make their local finances, including recognition of their unfunded liabilities, available to the public. The governor has created a template available at: [www.michigan.gov/gov](http://www.michigan.gov/gov).

-Consolidate services - Municipalities must develop plans by Jan. 1, 2012, to consolidate services that will result in taxpayer savings. The plans should make a good-faith effort to estimate potential savings and costs associated with sharing critical services at the local level.

-Employee compensation – Local governments must begin to address compensation for new, modified or extended contracts. The following criteria must be used: all new hires on a defined contribution plan or a hybrid retirement plan that caps annual employer contributions at 10 percent of base salary; where applicable use a 1.5 percent multiplier to determine employee pensions (2 percent for employees not eligible for Social Security benefits); implement controls to avoid pension spiking (i.e. a three-year salary average that doesn't include more than 240 hours of paid leave and overtime to determine benefit levels); and if health care is offered, all new hires must be on an 80/20 employer to employee health care premium split. Alternatively, a dollar amount could be assigned to local health care plans and compared to the state health care plan if it is an HMO or includes other cost-saving measures such as co-pays or deductibles.

There were other key issues for townships that the governor ventured into in his special message. He expressed support for legislation that permits the establishment of metropolitan government as a **metropolitan authority** in Michigan. Specifically, such authorities would supersede existing county government and perform city and county functions at the metropolitan authority level. He also stated that the decision to consolidate should be left at the local level.

The governor called for changes to the **Urban Cooperation Act**, the

*Governor's message continued on page 2*

### Legislative Summer Conference in August - Mark your calendars and join us!

MTA will be holding a Legislative Summer Conference from August 4-5, 2011. The agenda will include a number of local government ideas and issues circulating around the state Capitol. The conference will be held up north in the relaxing atmosphere of Crystal Mountain Resort & Spa in Thompsonville.. Registration materials will be mailed the last week in April. Watch your mail!

**Intergovernmental Transfer of Functions and Responsibilities Act, the Metropolitan Councils Act and the Emergency Services to Municipalities Act.** He said "These laws should be amended to provide that upon merger of services, management and employees should immediately begin the collective bargaining process for the new entity and complete this within an appropriate time. Such a change would permit municipalities to avoid multi-layer bargaining while creating certainty on costs, wages and benefits for both employers and employees." On March 24, the Michigan House approved HBs 4309-12, which amend these acts to help remove barriers when two or more local governments attempt to provide shared services. In part, the bills are designed to prevent wages and benefits from moving up to the highest level when local governments merge fire, police or other services. The debate is about whether language (so-called "no harm" language) should be eliminated from current law. Existing laws essentially say that if an employee is transferred due to two or more communities merging services, their current level of pay, benefits, seniority, etc. cannot be placed in any worse position. The bills also allow for local governments to amend existing labor contracts when merging services with others. MTA supports the package.

Another reform item addressed by the governor included the **binding arbitration** process found in PA 312 of 1969. He stated that PA 312 needs to be enhanced and clarified to include a communities' ability to pay, include internal salary and benefit comparisons, require both sides to submit a last best offer before entering into binding arbitration and require decisions by mediators to come within 90 days from the start of the process.

The governor also expressed support for the Headlee Amendment (PA 101 of 1979) and curtailing future state **unfunded mandates** on local governments. He would like to enhance the process by requiring the state to conduct a fiscal note process that would be developed by the House and Senate fiscal agencies for legislation that affects local governments. He stated that if legislation is enacted that imposes new, costly requirements on local governments without complying with a fiscal note process, such legislation will have no force or effect until compliance is achieved.

A copy of the governor's special message can be found at:  
[www.michigantownships.org](http://www.michigantownships.org). ■

## Public employee health care draws testimony

The Senate Reform and Restructuring Committee held several hearings in March on Senate Bill 7, offered by Sen. Mark Jansen (R-Gaines Chtr. Twp.), which requires public employees to pay part of the cost of their health care. While SB 7 is the continuation of a debate that began over a year ago, the governor added to the discussion when he announced that in order to receive statutory revenue sharing payments a local government must require all new employees to pay at least 20 percent of their health care premium.

The Jansen legislation, while often thought of as a plan to require employees to pay 20 percent of their premium, actually creates a model that caps the amount local governments may pay for health insurance. The legislation requires each unit of government to total the existing cost of providing health insurance to all employees and then divide that result by the number of employees being covered. Eighty percent of the calculation is the most a local government can pay for health insurance for any individual employee. The difference in real cost must be borne by the employee. The cap remains in perpetuity but is modified each year by the rate of inflation.

The calculation would result in the first year with a program that may mean that an employee who is single not being required to cover any of the cost for their insurance, while an employee with a family may be required to pay 40 percent or more of the premium cost. In future years, the employee contribution would increase substantially in any year where health care inflation is greater than overall inflation, which has been the case in virtually every year for decades. The legislation essentially requires the employee to deal with the price risk associated with health insurance. The philosophy expressed is that this will make employee groups active participants in health care savings concepts.

As drafted, SB 7 does allow a local municipal government to opt out of the requirements of this proposal with a two-thirds vote of the governing board. However, this procedure must be repeated each time a new health care contract is approved. School districts would not be allowed to opt out of the provision. ■

## Emergency managers: The details you won't find in newspapers

The Michigan Legislature has enacted new legislation to expand the powers of emergency financial managers (EFMs). This legislation has drawn more attention than any legislation since possibly the vote to eliminate school property taxes that triggered the creation of Proposal A. The Michigan Townships Association (MTA) worked on many issues related to the legislation that resulted in significant modifications to the legislation between the time it was introduced and when it was enacted.

While the media and many who protested against the legislation focused



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on the expanded powers of the EFM, there were many issues within the 44-page bill that had significant potential impacts on township operations. This resulted in MTA presenting four pages of detailed comments and recommendations regarding provisions of the legislation.

The main piece of legislation was House Bill 4214, which is now Public Act 4 of 2011. This legislation eliminated the old financial manager laws that have been in existence for 20 years and replaced those provisions with the language in the new act. The triggers that can initiate a review by the Department of Treasury are virtually identical with the old law. If you don't pay your employees on time, fail to pay the bills, or don't disburse property tax collections to the appropriate recipient, you will likely see an investigator seeking an answer as to why this has occurred. Citizens can petition for a review, the township board can make the request, the Legislature can initiate an investigation, or the state treasurer can send in an investigator based on indicators maintained by the department.

Under the old law, when a community was evaluated by the department, it could only result in two outcomes, either no action or the appointment of an EFM. Under the new law, more options are outlined prior to the consideration of an EFM. The Treasury representative can still conclude that the issues do not rise to the level of intervention by the state, just as exists under the old law. However, the evaluator may conclude that a local government is in a situation of severe financial distress or it may find that a financial emergency is occurring.

If a community is found to be in financial distress, the department may recommend that a consent agreement be established that details what type of steps will be taken in reaction to the distress. This document is created by the local unit of government and presented to the state treasurer. The state may reject the proposed plan, which would require the local government to redraft the proposal. If an agreement is not finalized or if an agreement is not followed, an EFM can be appointed.

If a condition of a financial emergency is determined to exist, a consent agreement is again required; however, in this situation, the plan is created by the department. If it is not adopted or it is not implemented by the township board, an EFM can be appointed. In financial emergencies, the state may grant EFM-type powers to the chief executive officer, chief finance officer or the governing board. This was done to expedite the consent agreement. The only EFM power that can't be conveyed to the local official is the ability to abrogate a labor contract. It is these proactive intermediate steps that are intended to avoid situations that will require EFM.

If an EFM is appointed, that person will have powers that exceed those of former emergency managers. All operations will come under the scope of their control. In the case of municipalities, this may include appointments to boards and commissions. It is important to point out that the law is written in a permissive style. If these functions are intertwined within the issues of controlling the budget, they will likely be invoked. The language was focused on the legal question that arose with the Detroit schools' EFM.

Local officials are bound by law to cooperate with the state officials investigating the issues within the local government as well as the EFM.

Failure to cooperate can result in that elected official being removed from office by the governor for the reason of gross neglect of duty.

The single largest expansion of the powers of an EFM is the ability to modify labor contracts. This is the issue that most protesters who descended on Lansing focused upon. While there are serious state and federal issues related to breaking a contract, the Legislature looked to eliminate those obstacles by enacting Public Act 9. This companion law to PA 4 requires all new labor contracts that are ratified in the future to include a provision that the contract can be altered by an appointed EFM.

There were many issues that were contained in the legislation, as introduced, but were removed as the bill went through the legislative process. Many of the issues were highlighted in MTA testimony. The original legislation banned any elected board member from running for office for 10 years if they served on a board when an EFM was appointed. This was eliminated from the legislation. Elected officials' powers can be curtailed when an EFM is in place, but that will likely be related to how cooperative or uncooperative those officials are with the EFM.

The original legislation would have allowed an EFM to be a firm. MTA was adamant that an individual must take overall responsibility for all actions and the Legislature agreed. The original legislation allowed an EFM to consolidate the unit of government that was in trouble with a neighboring community. This concept was quickly dismissed. An EFM may negotiate for consolidation of the unit of government, but all laws on how that is accomplished remain in place, which means the voters decide that issue. An EFM may look to consolidate services with neighboring communities.

An EFM with the consent of the governor may dissolve the local unit of government. This provision seems to have more intimidation value than reality. Dissolving a city or village would mean that it would dissolve into a township. Of course, it would lose all taxing authority at the same time. There are no readily identifiable circumstances that would suggest that cutting off most income would solve any fiscal problem. As for townships, there are no provisions in law about what would exist if the township were dissolved. Again, all taxing authority would disappear as well as most basic functions. So, again, this ultimate option seems to have little basis in practical operations. ■

## House committee considers legislation creating water quality alliances

In mid-March, the House Natural Resources, Tourism and Outdoor Recreation Committee began considering legislation aimed at allowing local units of government to establish water quality alliances to address water quality issues within a particular water body or water bodies. The legislation is patterned after legislation enacted in 2004 to create watershed alliances to address issues within particular watersheds.

Under the legislation, House Bill 4133, introduced by Rep. Kurt Heise (R-Plymouth Chtr. Twp.), would allow two or more local units of govern-

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ment to establish a water quality alliance for the purpose of monitoring water quality and implementing activities to address water quality. The purpose could include such things as monitoring, sampling and analysis of data; preparing and distributing educational materials; and designing and implementing projects; and conducting activities to protect or enhance water quality.

Under the legislation, a resolution to establish a water quality alliance would need to include, at a minimum, the structure of the organization and decision-making process; the water bodies or water intakes within the jurisdiction of the water quality alliance; the local units of government eligible for membership in the water quality alliance; the basis for assessing costs to members; and a mechanism to be used for adoption of an annual budget to support projects and activities. The water quality alliance shall provide an equal basis for all local units within the jurisdiction of the water quality alliance to voluntarily join as members. In addition, the legislation provides the opportunity for a public school district, public college or university, or other local or regional public agencies to be eligible for membership in the water quality alliance.

HB 4133 would also allow for a water quality alliance to hire personnel to coordinate and implement actions, and to enter into agreements or contracts. A water quality alliance would further be able to solicit grants, expend funds, and to access and collect fees from members with approval of the governing bodies of the members. A water quality alliance would have the power to sue and to be sued.

From a financial accounting standpoint, a water quality alliance would be required to present an annual report to its members by April of the following year outlining its income and expenses. The bill requires each water quality alliance to have an audit at least every other year with the submittal of the audit to its members. Of key importance to MTA is that a water quality alliance would have no independent authority to access fees or taxes from individuals or property owners. However, a water quality alliance member may allocate the use of public funds from fees,

taxes or assessments generated under other state laws for use by a water quality alliance.

The legislation makes it clear that joining a water quality alliance would be strictly voluntary for local units of government. The benefit of the legislation is that it would provide another vehicle for local units of government to work together on water quality concerns. ■

## On farm ethanol production legislation

The Senate Agriculture Committee has reported legislation that would allow for the production of ethanol on farms. Senate Bill 46, offered by Sen. Arlan Meekhof (R-Olive Twp.), amends the Zoning Enabling Act to specifically allow certain ethanol production facilities to be placed on a farm. Operations that produce less than 100,000 gallons per year and have at least 75 percent of the corn or other product that is being converted to ethanol grown on the farm and at least 75 percent of the ethanol or other by-product used on the farm would be an allowed use by right on that farm.

Operations that generate less than 500,000 gallons per year would be allowed with a special use permit on farms. The legislation spells out the special use requirements that must be evaluated so that no amendments to local zoning ordinances would be required. However, the legislation also allows local governments to establish their own provisions for special use permit requirements if they feel that the general provisions are inadequate for their community. The law also allows a local government to allow such facilities as a right on farms in their jurisdiction. In all cases, federal laws must also be observed.

The legislation was generated based on new technologies that allow for more efficient distillation of ethanol that also produces a residual feed by-product that is extremely high in protein content for livestock production. ■