In This Issue:

2 Sunday morning liquor sales fiasco
School district election coordinating committee

3 Bond bill may help local budgets
Noxious weed bill completed
Timing of assessment notices
New lawn fertilizer act (phosphorus)

4 Wind energy tax exemption fails

capitol currents

Official Publication of the Michigan Townships Association

january 2011

A Legislative Update for Township Officials

Property tax bill becomes a big problem; MTA requests a veto

When Senate Bill 77 was first introduced, it required local treasurers to prorate the 18-mill school tax for homes that sold at any time during the year. The legislation took several twists and turns as it moved through the Legislature, some even being palatable. However, SB 77, in its final form, is far from being palatable, or even workable for that matter. For this reason, MTA has sent a letter to the governor asking that the legislation be vetoed.

SB 77, as passed by the Legislature, exempts homes that are owned by financial institutions through foreclosure from paying the 18-mill school tax. The legislation then continues to describe that instead, a payment must be made equal to the amount of the 18-mill tax during the time that the financial institution owns the home.

This new "amount" would require all local governments to establish yet another tax roll. It would require individualized accounting and reporting to the state. This means additional local resources would be required to deal with these special provisions. The legislation then further states that one-half of the property tax administration fee associated with the 18 mills must be forwarded to the state. Effectively, this legislation robs local governments of administrative fees that are currently being used to fulfill our mandated duties of assessing property and collecting taxes, and instead enriches the state at a time when the state is mandating these additional administrative functions.

The legislation requires a new form to be filed with the tax collecting unit to be eligible for the program. However, all issues associated with the principal residence status of a piece of property are maintained by the assessing unit, not the tax collecting unit. The tax collecting unit can be a township, city, county, ISD or school district. This, as well, will create another problem.

The legislation then requires a pro-rata refund of this "amount" paid based on how much of the calendar year has expired. The language related to the pro-rata refund has serious concerns as well. It states that the refund made shall be calculated based on the "last payment" made multiplied by the fraction of the sales date divided by 365. This calculation has many situations where it will create issues. The last payment made could be for current year operations or it could be for prior year operations. This would result in a correct calculation when sales occur after July 1 in a community that collects 100 percent of the 18 mills on the summer bill. If the home is sold on June 1 in a community that levies the 18 mills on the summer tax, the local government would be refunding part of the prior year payment, not collecting a pro-rata amount for the current year operations.

The issue becomes even more complex in communities that levy half or all of the 18 mills on the winter bill. If a person purchased a home at the end of November in a community that collects the 18 mills on the winter bill, it could be interpreted that the state would be required to refund 90 percent of the money collected for school operations for the prior year. If this issue was administrated to mean that this is referencing the amounts paid for the current year school operations, this creates another problem. The sale of any home in an area of the state where any or all of the 18 mills are collected on the summer bill will require additional payments from the financial institution after the home is sold if the sale occurs prior to Dec. 1 of any given year. In these communities, the taxes are effectively paid after the service is performed and thus pro-rata is not a refund, but a payment. Of course, the ability to collect money from a financial institution after it disposes of the asset is problematic to say the least. However, the law creates the remedy: we simply apply the 18 mills retroactively to the property and the new homeowner receives a very unpleasant surprise.

The final issue is the policy itself. The objective of the legislation is to reduce the cost of taxes to allow bank-foreclosed homes to be sold quicker due to a lower overall price point. What is being ignored is the impact this will have on those homeowners who are trying to sell their own homes. If the state creates a law that will effectively lower the sales price of a foreclosed home with 100 percent of the difference coming at the expense of the state, but does not impact homes still in individual ownership, regardless of being occupied or not, this legislation will create an artificial distortion in the real estate market that rewards financial institutions and will hurt our citizens who are looking to sell their homes. ■

Sunday liquor sales: "The Sunday morning fiasco"

It all started with a simple concept: generate some additional revenue for the state by allowing liquor licensees to sell from 7 a.m. to noon on Sunday morning. That simple concept has turned into a confused mess.

The Legislature originally passed legislation that made numerous changes to the way liquor is sold in the state; so many changes that the governor vetoed the original legislation, citing several issues as concerns within the legislation. The Legislature came back and amended a run-of-the-mill piece of legislation that made a single change to the liquor laws and readopted many of the changes already discussed, including Sunday morning sales. Given the time of the year, this occurred in the way many bills are passed at the end of session, with a floor amendment that often receives little if no public scrutiny. The legislation passed with many legislators voting against the measure. Verbally, legislators were informed that the legislation allowed local governments to exempt themselves from the new sales.

In reality, the legislation probably did not match the verbal description that was offered to legislators. The most important sentence contained in the legislation was contained in section 1113(5) of the liquor control act. The final sentence states: "The legislative body of a city, village or township, by resolution or ordinance, may prohibit the sale of alcoholic liquor on Sunday or a legal holiday, primary election day, general election day or municipal election day." In fact, this language is unchanged by the new law.

The legislation was signed into law on Nov. 17 as Public Act 213, which took effect on Dec. 1. On Dec. 2, the Liquor Control Commission (LCC), which has the duty of administering the state system, met to discuss the new law. They concluded that they would delay issuing the new licenses until they could identify which communities would opt out of Sunday sales. Their attorneys read the opt-out provision and concluded that a straightforward reading indicated that the law allowed local governments to opt out of Sunday sales, but the language gave no importance to Sunday morning sales. The LCC mailed letters to every clerk in the state that gave a straightforward reference to the ability to opt out of Sunday sales from 7a.m. on Sunday to 2 a.m. on Mondays.

The LCC further requested that locals inform them by Dec. 15 of their intention to prohibit Sunday sales. The letter explained that the LCC would begin issuing the new licenses on Dec. 16. It is very important to note that local governments do not lose the ability to prohibit Sunday sales in the future if they did not act by Dec. 15. It may simply mean that the LCC may be required to withdraw a license once it is issued if the township acts at a later time.

Legislators also started reacting to the LCC position regarding the interpretation of the new law. Many were of the understanding that communities could choose to exempt Sunday morning sales only. A week after the LCC letter was sent to all local governments, the LCC concluded that it would accept resolutions that prohibited only Sunday morning sales; this being a fairly liberal interpretation of the noted sentence. Finally, legislators are also looking to amend the law once again, once the new Legislature convenes in January to make Sunday morning prohibitions explicitly allowed in the law.

For townships, if Sunday morning sales are not an issue in your community, township boards are not required to take any action. There is no question that the law allows townships to prohibit all sales of beer, wine and spirits all day on Sundays. For those that want to ban beer, wine and spirits sales on Sunday mornings, the LCC will respect your resolution, but the legal standing of that resolution has less certainty than an all-day ban. Legal counsel should be sought for further clarification. ■

School district election coordinating committee bill sent to governor

On Dec. 17, the Senate sent to the governor legislation extending the timeframe that school district election coordinating committees meet from every two years to every four years. This followed action by the Senate to concur in House changes to Senate Bill 1126, which was introduced by Sen. Michelle McManus (R-Leland Twp.).

Under the original Senate-passed version, school district election coordinating committee decisions held in January 2013 would be binding for the next four years. The House version of the bill made a change to allow an earlier meeting of the coordinating committee if determined necessary by the chairperson (county clerk) and those decisions would be binding until an altered report is filed.

Earlier in the legislative process, MTA worked with the bill sponsor and other interested parties to delay the implementation date from Jan. 1, 2012, until Jan. 1, 2013. The delay will ensure that township clerks newly elected in November 2012 will have the opportunity to fully participate in the school district election coordinating committee process and to "opt in" to running school district elections in their jurisdictions if they so desire. School district election coordinating committees will still meet this January (2011) to make decisions for a two-year period until the January 2013 meetings are conducted. ■

capitol **currents**

Official Publication of the Michigan Townships Association

Editor: David Bertram **Associate Editors:** Bill Anderson & Tom Frazier

Michigan Townships Association
512 Westshire Drive, P.O. Box 80078
Lansing, MI 48917
(517) 321-6467 Fax (517) 321-8908
legislation@michigantownships.org
www.michigantownships.org

Bond legislation may help local budgets

The Michigan Legislature has approved House Bill 5550, which would allow local governments to refinance certain bonds. The legislation amends the Revised Municipal Finance Act. Under current law, a local government may not refinance a bond if it increases the overall long-term cost of the obligation. This provision was put into place in 2002. However, within the current economic climate, there are many communities that may be in desperate need to reduce current year bond obligations, even if it will mean paying for the bond over a longer period of time and thus costing more in the long term.

HB 5550, sponsored by Rep. Jeff Mayes (D- Bangor Chtr. Twp.), opens a two-year window, during which time local governments may look to refinance bonds, which create a greater cost in the long term. However, before the refinancing process may proceed, the local government must procure the approval of the Department of Treasury.

This legislation could be extremely important in situations where the normal growth pattern of a community has been significantly disrupted by the poor economy. As an example, a local community may have installed sewer and water lines into a developing area of the township. The bond repayment plan may have been based on a steady stream of new tap-ins in order to pay yearly payments. With the lack of development comes a lack of funds to make yearly payments. Refinancing may be considered to delay principal payments for a number of years in anticipation that development in the area will return. This is not an optimal solution, but it may be an important option. ■

Legislature completes action on township noxious weed bill

On the last day of session, the House passed Senate Bill 1464 that adds townships to the list of governing bodies that will have the ability to include other plants in addition to those outlined in state statute as noxious weeds. Counties, cities and villages already have this authority. The bill was introduced by Sen. Mike Nofs (R-Battle Creek) and brings greater clarity to the noxious weed statute. The legislation also adds another plant, giant hogweed (*Heracleum Mantegazzianum*), to the noxious weed definition as requested by the Michigan Department of Agriculture. This is in addition to the 10 noxious weeds already identified in state statute.

In practical terms, the bill will permit townships to have the authority to determine if other plants should be added as a common nuisance in the noxious weed definition. An example might include grass in excess, for example, of 12 inches in height as a noxious weed. With the increase in foreclosures, this has become a serious issue in many communities where properties have been abandoned, often times resulting in a health, safety and welfare issue for a neighborhood if vermin are allowed to inhabit these areas. Once signed into law, the bill will allow townships, after proper notice, to be able to do the same thing as counties, cities and villages and mow property and bill the appropriate entity (usually the bank) for reimbursement of the cost of providing the service.

Earlier this year, House Bill 5573, now Public Act 118 of 2010, was introduced by Rep. Jase Bolger (R-Marshall), passed by the Legislature and signed into law by the governor. It removed the previous population threshold of more than 5,000 for a township to provide by ordinance for the controlling and eradicating of noxious weeds in subdivided land. This legislation was initiated by concerns from Schoolcraft Township (Kalamazoo Co.) and Williams Charter Township (Bay Co.) that were experiencing problems in removing noxious weeds on many foreclosed and other properties within their respective townships.

MTA staff worked with the sponsors of both bills to help get the legislation through the legislative process and believes that SB 1464 will be an excellent complement to PA 118 as it will serve to bring uniformity to all communities in addressing noxious weed concerns.

At the time of writing, SB 1464 has been ordered enrolled by the Senate and will be sent to the governor in the near future for her signature. ■

Legislation will change timing of assessment notices

Senate Bill 395, which will require assessment notices to be sent out 14 days prior to the first meeting of the board of review, is currently awaiting the signature of the governor to become law. Current law requires the notices to be mailed at least 10 days prior to the first meeting.

The legislation, offered by Sen. Roger Kahn, (R-Saginaw Chtr. Twp.), originally called for the notices to be mailed at least 30 days prior to the meeting. The legislation was amended once MTA went through the process of compiling the information for the notices and pointed out that part of the information needed for the assessment notices wasn't even due from certain property owners prior to the original suggested timeline.

MTA also pointed out that many more communities are posting assessment information on websites, which negates the concern that citizens don't have enough time to visit the township hall to prepare for a board of review appeal. In today's world, and certainly into the future, those visits will not be necessary for most property owners. ■

New PA prohibits application of lawn fertilizer containing phosphorus

On Dec. 16, 2010, Gov. Jennifer Granholm signed legislation into law that will eventually curb the application of lawn fertilizer containing phosphorus in most situations. House Bill 5368, introduced by Rep. Terry Brown (D-Winsor Twp.), would prohibit the use of phosphorus in lawn fertilizer beginning Jan. 1, 2012, except to correct a phosphorus deficiency, to establish new turf grass or on a golf course under certain circumstances. The bill becomes Public Act 299 of 2010.

Of particular note to local units of government is that PA 299 prohibits local units of government from adopting and enforcing future local ordinanc-

Phosphorus continued on page 4

capitol **currents**
Official Publication of the Michigan Townships Association

Michigan Townships Association
512 Westshire Drive
Lansing, MI 48917

PRSRT STD
U.S. POSTAGE
PAID
PERMIT NO. 765
LANSING, MI

Phosphorous continued from page 3

es as of the bill's enactment date. The enactment date is the date that the governor signed the bill into law (Dec. 16, 2010). However, MTA fought and succeeded in its efforts to grandfather in those local units of government that already have existing ordinances. Numerous townships have had local lawn fertilizer ordinances since the early 1990s and many other townships and counties have adopted local ordinances in more recent years to protect the environment.

The new act also prohibits the application of lawn fertilizer to turf less than 15 feet from any surface water unless there exists a continuous natural vegetative buffer of at least 10 feet wide that separates the turf from the water body or unless specific types of equipment are used when applying the fertilizer and the fertilizer is not applied within three feet of the surface water.

PA 299 further outlines responsibilities for spill clean-up if a person releases fertilizer on an impervious surface and prohibits the application of fertilizer to turf if the soil is frozen or saturated with water.

Finally, the act provides for civil fines of not more than $1,000 that can be issued to a person who violates or attempts to violate certain provisions of the new act. The act limits a civil fine to $50 if the violation or attempted violation occurs on a single-family residential parcel and is committed by the property owner or lessee, or a member of his or her family, or a person who resides on the property.

While MTA staff believes the new act has the potential to provide environmental protection for Michigan's water bodies, its shortcoming is that it does not contain any serious efforts to educate the public about the dangers of using lawn fertilizers containing phosphorus near surface water nor does it provide funding for state enforcement. In most cases, existing local ordinances are much more effective in both their educational and enforcement efforts and are one reason why MTA fought hard to grandfather in existing local ordinances as the legislation moved through the legislative process. ■

Failed attempt to exempt wind energy from taxes

A lame-duck legislative session can bring many surprises. The waning hours of the 2009-10 session of the Michigan Legislature brought a couple of surprises. First, the Legislature returned for one final day of session after exiting on Friday, Dec. 3, its final day. Senate Majority Leader Mike Bishop (R-Rochester) for weeks had said the Senate would not return for any further voting. However, his mind changed after it was discovered that the Senate would have to return to session to deal with at least a dozen bills or more that needed immediate effect and to be enrolled or they would die on the Senate floor.

Both Houses returned to Lansing for about four hours on Dec. 15 to finish what appeared to be a very tightly agreed to list of bills by the leaders. In the final few hours, however, there was an attempt by Rep. Jeff Mayes (D-Bangor Chtr. Twp.) to add a provision in legislation that would have exempted all property taxes on wind energy devices. Currently, wind turbines and related property are taxed as personal property with revenue going to local governments. With no debate or discussion, Rep. Mayes drastically substituted (H-7) a technical bill (SB 810) intending to change references to the Department of Environmental Quality to the Department of Natural Resources in the General Property Tax Act. MTA immediately warned members of the Senate of the stealth language changes that were made to SB 810 in the final hour of session. Thankfully, no action was taken by the Senate on the legislation. The move by Mayes, who is departing the Legislature, to exempt all existing taxes on wind energy would have created a very negative scenario for local governments related to wind energy development in Michigan. It would have created a disincentive for local governments to welcome wind development in their communities. ■