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# capitol currents

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## A Legislative Update for Township Officials

### Return of the property tax proposal

Last fall, the House of Representatives adopted a resolution to amend our state's constitution. HJR III was designed to stop taxable values from going up on a piece of property when the state equalized value (SEV) was declining. That proposal died with the end of the year, but the idea lives on in the form of SJR H. The latest version of cutting property taxes was passed by the Senate and now awaits action in the House of Representatives.



Unlike HJR III, which was adopted on a unanimous vote by the House without even taking the time to hold a public hearing, SJR H went through the traditional committee process, but on a swift pace and would still result in a mess if adopted into our state's constitution. Unlike HJR III, legislators paid attention to the funding problems that would be caused if the amendment were to pass.

In order for the Legislature to place a constitutional amendment before the voters, both chambers of the Legislature must approve the language by a two-thirds majority. The Senate's first attempt to pass SJR H failed to reach that threshold, being two votes short. Unfortunately, later that day, the governor held a press conference to talk about creating a graduated income tax in exchange for lowering the state's new business tax. At that press conference, she responded to a question regarding the proposed property tax issue. When she responded that it might be worth discussing with other tax issues, it caused some members of the Senate to soften their opposition to the proposed constitutional amendment. The next day, the resolution easily passed the Senate.

As adopted, SJR H would go on the ballot in November 2010. The constitutional amendment would require for all taxes levied after Dec. 31, 2009, that taxable values may not increase on a parcel of property if the SEV declines. It further states that the taxable value would decline if the SEV declines below the prior year's taxable value.

An astute observer would note that the date of the election comes months after property is assessed, tax bills distributed and collected for the 2010 year. Under the Senate plan, all of the 2010 assessments would have to be re-evaluated, tax bills would have to be adjusted, and potentially refunds issued to taxpayers. Of course, budgets would remain in question well into the middle of most local government fiscal years.

The second issue that is created under the proposed amendment concerns property that has been sold. The proposal does not exclude transferred property from the new limitation. As a result, someone purchasing a home will have no idea of what their future tax bills will total. Under this proposal, if the SEV of the new home declines by as little as \$1 in the year following the sale, the taxable value of the home could not "pop-up" as currently required by the constitution. On the other hand, if the SEV increased by as little as \$1 on the new assessment, the taxable value would pop-up, just as it has in the past. For the new homeowner, the future property taxes could be a lot or a little based on the randomness of whether neighborhood sales studies are showing a minor increase or decrease in any given year.

The Senate Fiscal Agency estimated that local governments would see a reduction of \$175 million in their property tax revenue in 2010 if this proposal were adopted. It would also reduce school operational revenues by approximately \$75 million next year. The most difficult aspect of the proposal is that its biggest effects come at a time when property tax revenues are at their weakest point. ■

### Cable dispute resolution legislation favors industry

Both the Michigan House of Representatives and the Senate approved cable dispute resolution legislation that favors cable providers over local governments in disputes before the Michigan Public Service Commission (MPSC). While each house had moved identical but separate bills, House Bill 4247, sponsored by Rep. Jeff Mayes (D-Bangor Charter Twp.), and Senate Bill 190, sponsored by Sen. Samuel "Buzz" Thomas

*Cable dispute continued on page 2*

(D-Detroit), it is apparent that SB 190 will be the vehicle bill destined to go all the way. On March 16, the House also approved SB 190, which now only needs a concurrence vote by the Senate to gain final approval.

MTA and other local government associations attempted to make improvements to the bill by offering various amendments in both the House and Senate. None of these changes gained approval. Most of these efforts focused on revising language in the legislation that favors cable companies that have much deeper pockets for legal expenses than local governments. The cable industry is making claims that the bill creates a dispute process that equals one currently contained in the Michigan Telecommunications Act. Unfortunately, that is not accurate and local governments have been requesting a reference be included in the bill to the appropriate sections of the Michigan Telecommunications Act to assure that the processes are the same. For example, one amendment idea MTA was pushing in the Senate would have required attorney's fees to be paid by the party bringing action if the MPSC determined that the matter was frivolous. Amazingly, representatives for the MPSC joined with the cable/telecommunications industry to oppose these revisions that would have given the agency the authority to settle attorney's costs issues. While MTA identified an amendment sponsor, it was never offered.

MTA was also supportive of including a requirement in the bills that the MPSC phone number be added on each billing statement provided to cable customers. Under federal law, the phone numbers of local governments are required on the bills as franchising entities. The idea is that since the creation of the Uniform Video Services Local Franchise Act (PA 480 of 2006) in Michigan, the state is now in the position to resolve disputes between not only cable providers and local governments but also between cable providers and cable customers. Including the phone number of the MPSC on the bill would give the cable customer the number for the agency in charge related to service problems.

MTA believes that the dispute resolution process being created in SB 190 is flawed and will not achieve its intended goal of encouraging parties to use the dispute resolution process in lieu of filing in circuit

court. MTA appreciates the efforts of Sen. Van Woerkom and the other eight senators who voted against SB 190: Sens. Anderson, Brater, Cassis, Clark-Coleman, Jacobs, Jelinek, Scott and Whitmer. MTA also appreciates the three state representatives who voted against the bill: Reps. Agema, Moss and Sheltroun. ■

## Governor's budget recommendation causes concern over future of wetlands program

In February, Gov. Jennifer Granholm presented her proposed budget for the various state departments to the Legislature. One department budget that has received particular attention this year is that of the Michigan Department of Environmental Quality (MDEQ). Significant cuts are proposed for the department's budget including a recommendation to transfer the wetlands program back to the federal government, saving the MDEQ approximately \$2.1 million in employee costs, or about 30 full-time positions.

On the surface, the proposal may sound like an appropriate way to cut state government costs in a tight economy. However, there are several ramifications to the proposal. Of utmost concern is the affect the proposal would have on wetlands and those applying for wetland permits, but also the impact on local units of government that have wetland ordinances.

Some of the specific concerns that have been raised over the transfer of the wetlands program to the U.S. Army Corps of Engineers, with oversight by the Environmental Protection Agency, are that many of the permits would likely take much longer to be approved and that approximately one million acres of Michigan wetlands currently overseen by MDEQ would not come under the preview of the Army Corps.

However, the issue that affects township government most directly is how the change would affect local wetland ordinances. Should the state discontinue wetland regulation, the department has proposed that Part 303 of the Natural Resources and Environmental Protection Act (NREPA), the state wetlands protection statute, be repealed. The concern is that if there are no resources for the department to regulate wetlands, then it doesn't want the statute on the books. The question then becomes what happens if the wetlands protection statute is repealed. The wetlands statute gives direction to local units of government that have a local ordinance.

Under the current state wetlands protection statute, a local ordinance shall not have a different definition of wetland than what is provided in state statute, except that a local wetland ordinance may regulate a wetland less than five acres in size. Local regulations of wetlands less than two acres in size must comply with certain state conditions unless the local unit determines that the wetland is essential to the preservation of the natural resources of the local unit of government and provides those findings in writing.

Should the state wetlands protection statute be repealed, some, includ-



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ing the attorney general, have argued that a local unit of government would actually have greater authority to regulate wetlands under general land use (zoning) authority because of the current state wetlands statute limitations on a local unit's ability to go beyond state standards in most situations. However, many organizations would likely have concern over giving locals greater authority in this area.

Meanwhile, no less than three bills (House Bills 4153 and 4542, and Senate Bill 187) have been introduced to eliminate MDEQ's ability to regulate wetlands by turning that authority back to the federal government and to authorize local regulation of activities in wetlands under the constraints originally designed to provide unity with state level regulation. This approach would limit local prerogatives to enhance regulation. However, one version of SB 187 would actually eliminate a local unit's ability to provide wetland regulation, which would be problematic to local units that currently have a wetlands ordinance and those that may be looking to implement one in the future.

The debate is starting to heat up on this issue as there are several groups working to find state dollars to continue the MDEQ oversight. There are a few other groups supporting the transfer of authority to the Army Corps. MTA is following this issue very closely and will work to protect the rights of local units of government and potentially to enhance those rights as decisions are being made. ■

## Senate committee working on storm water utility bill

Members of the Senate Natural Resources and Environmental Affairs Committee are continuing to work on legislation outlining the process for local units of government to establish storm water utilities to pay for costs associated with addressing storm water pollution. Senate Bill 256, introduced by Sen. Patty Birkholz (R-Saugatuck Twp.), would set parameters for local units of government creating a storm water utility consistent with the *Bolt* decision of the Michigan Supreme Court.

Under the bill, a storm water utility could establish fees for storm water management. The bill would provide guidance for local units of government to help pay for storm water programs that have been mandated by the federal and state governments (i.e. Storm Water Phase II).

The *Bolt* decision established a three-part test to distinguish a fee from a tax. A fee must serve a regulatory purpose, be proportional to the necessary cost of the service, and be voluntary. SB 256 is written to meet all three requirements, including being voluntary as numerous fee-reducing credits are provided for actions that reduce the level of service needed.

Among numerous other changes, opponents of the legislation are demanding that a cap be set for fee payers so that manufacturers and large businesses can know in advance what their fee obligation will be. However, this concept would go against the parameters of the *Bolt* decision in that all fees must be proportional to the level of service

being provided. If this amendment were to be placed on the bill, other ratepayers would either pay an unproportional amount by picking up part of the cost of the larger entity, which is counter to *Bolt*, or the local unit of government would be required to pick up the difference. MTA has expressed strong opposition to this amendment.

In addition, MTA and other interest groups promoting the legislation have worked over the past few weeks to accommodate most of the concerns of the business, manufacturing and homebuilder communities, and are hopeful that the bill can move forward with these agreed-upon incorporated changes. ■

## Alternative energy property taxes

The House of Representatives passed two bills this month that would impact how certain alternative energy generation devices are taxed under the property tax act. House Bill 4103 was offered by Rep. Jeff Mayes (D-Banger Chtr. Twp.). The legislation would exempt small-scale energy conversion devices from the payment of property taxes. Small-scale devices are defined as those that have a capacity that does not exceed 150 kilowatts. The legislation would impact devices that collect energy from solar, wind, geothermal, water or biomass to generate electricity, or heat or cool a building.

The legislation targets home-based situations only. The tax exemption would only apply for systems that are added this year or are installed prior to Jan. 1, 2014. Testimony on the legislation brought out an issue within the property tax act. In 2006, the property tax act was amended to state that a wind energy system, wind turbine towers, were to be considered personal property. A homeowner testified that the new wind turbine that had been erected for her home had been classified as industrial personal property. MTA hopes to clarify this issue as the legislation moves through the process.

The second bill that moved through the House impacted the taxation of wind turbines. Any wind turbine that is certified by the Michigan Next Energy Authority is exempt from property taxes unless the local unit of government passes a resolution to collect their taxes within 60 days of the certificate being issued. The exemption includes the tower and generators within the unit. House Bill 4521 extends the exemption to also include the pad that supports the tower as well as the easement on the property. Other items related to the operation of the wind turbine have been included as well. ■

### SAVE THE DATE!!

The Summer Legislative Conference is taking place Aug. 12-14, at the Bavarian Inn Lodge in Frankenmuth.

More details coming later this spring!



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## New definition of law enforcement officer raises concern

Almost a year ago, without much fanfare, the Michigan Commission on Law Enforcement Standards (MCOLES) adopted a new rule defining “law enforcement officer” that would declassify nearly 400 law enforcement officials in the state. The move was made after receiving advice from the attorney general’s office that a clearer definition of law enforcement officer was needed. MCOLES, apparently concerned about potential lawsuits, felt that defining a police officer as a “regularly employed” member of a law enforcement agency would help.



In April 2008, MCOLES unanimously adopted a standard of regular employment as 520 hours annually. The commission estimates that of the approximately 26,000 police officers in Michigan, 391 current law enforcement professionals would not be classified as “regularly employed.” The standard doesn’t go into effect until 2012. MCOLES members argued in a written report that the new rule is good for officers and will improve public safety.

The Senate Homeland Security and Emerging Technologies Committee held a committee hearing at the state Capitol in early March to learn more about the rule and the impact it might have on law enforcement agencies. The committee heard strong objections to the new rule from members of the law enforcement community across Michigan. Columbia Township Police Chief David Elwell said small police departments depend on part-time officers and said MCOLES was operating “with blinders on.” He argued that without the part-time officers, calls would shift to sheriff’s departments and the Michigan State Police. He

also questioned MCOLES’ numbers and said that more officers would be affected.

MTA also went on record to oppose the new rule as many local governments hire part-time officers and temporary officers during peak summer times and special events. MTA understands that this would be one of (if not the most) rigid definitions of a law enforcement officer in the country. MTA believes this is not the time to make it more difficult to find qualified law enforcement personnel. The new rule would cause considerable challenges and likely the elimination of law enforcement departments in many communities.

Several others lined up in opposition to the new rule including Oakland County Sheriff Mike Bouchard, who noted in a letter that all of his court deputies are part-time, most of whom are retired from other law enforcement agencies with 25 to 35 years of experience. More than a dozen local governments also have passed resolutions against the rule. The Branch County Board of Commissioners’ resolution said it’s an “unfunded mandate that takes away local control, will exacerbate budgets, and will ultimately jeopardize public safety.”

Committee Chair Cameron Brown (R-Fawn River Twp.) held the hearing to listen to both sides of the issue and is attempting to work out a compromise. ■

### Resolution Reminder

Do you have a new policy idea in mind for MTA? Under the rules adopted by the MTA’s Board of Directors, advance resolutions involving legislative policy must be submitted to MTA 150 days prior to the Annual Meeting. **The deadline for submissions is Wednesday, Sept. 2, 2009.** Resolutions adopted at the Annual Meeting in January 2010 will be the basis for MTA’s 2010 Policy Platform.