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capitol currents

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A Legislative Update for Township Officials

House Acts on Energy Bill; Removes Local Zoning Pre-emption

The Michigan House of Representatives rejected changes made by the Senate to one of the main bills in the energy package on July 23, including language that would have pre-empted local zoning authority regarding wind generation. The House, which returned for one day during their summer legislative break to address budget bills, discharged Senate Bill 213 from committee and immediately addressed the bill on the floor. The House quickly amended SB 213 without debate to match previous legislation already approved by the House months earlier. The House changes included no language threatening to local zoning authority.



The energy package has been circulating around the Capitol for most of the year, however, the inclusion of a local zoning pre-emption just entered the debate in recent weeks. On June 27, the Senate adopted a 66-page substitute (S-5) to SB 213 that was loaded with new concepts, including sections on wind energy resource zones that require the Michigan Public Service Commission (MPSC) to issue "expedited siting certificates to electric utilities, affiliated transmission companies or independent transmission companies."

The bill also says, "A wind energy conversion facility that is issued an expedited siting certificate is exempt from any local zoning ordinance except for provisions regulating setbacks and noise." The bill outlines circumstances under which the MPSC is required to grant an expedited siting certificate and says that "If the commission grants an expedited siting certificate, the certificate shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of a transmission line for which the commission has issued a certificate."

The House also sent SB 213 to a conference committee anticipating that the House and Senate may be able to reach agreement by mid-August when they are tentatively scheduled to return for another one-day session. (See below for a list of the conference committee members.)

Since the threat to local zoning related to wind generation was first raised on June 27, by a last minute substitute to SB 213 on the floor of the Senate, there has been no good opportunity for local governments to be heard. At each point of action, the bill has been on the floor where it is more difficult to communicate with House and Senate members. It is important that township officials immediately communicate with both their state senator and state representative and members of the SB 213 conference committee to inform them about the language that pre-empts local zoning.

Let these lawmakers know that each local community should have a say about where wind towers are located and how transmission lines connect to them.

Contact info for state Senate and House Members

Senate: www.senate.michigan.gov/senators/senfull2007.htm

House: www.house.michigan.gov/replist.asp

SB 213 House Conferees:

E-mail *Rep. Frank Accavitti* at frankaccavitti@house.mi.gov or call (517)373-0854. Send faxes to (517) 373-5911.

E-mail *Rep. Kathy Angerer* at kathyangerer@house.mi.gov or call (517)373-1792. Send faxes to (517) 373-7757.

E-mail *Rep. David Palsrok* at davidpalsrok@house.mi.gov or call (517)373-0825. Send faxes to (517) 373-9461.

SB 213 Senate conferees:

E-mail *Sen. Patty Birkholz* at senpbirkholz@senate.michigan.gov or call (517)373-3447. Send faxes to (517) 373-5849.

E-mail *Sen. Dennis Olshove* at sendolshove@senate.michigan.gov or call (517)373-8360. Send faxes to (517) 373-9230.

E-mail *Sen. Randy Richardville* at senrrichardville@senate.michigan.gov or call (517)373-3543. Send faxes to (517) 373-0927.

MTA thanks you in advance for your willingness to communicate with lawmakers on an issue as important as local control. We will continue to keep you updated on the status of the conference committee as well as the legislation. ■

General Government Budget Approved by Legislature

The state appropriations bill containing funding for revenue sharing and new funding for large utility property tax appeals was approved by both the House of Representatives and Senate on July 23 and 24. The House and Senate, each holding one-day sessions during their summer break, approved several budgets including the general government budget, House Bill 5816, sponsored by Rep. Marsha Cheeks (D-Detroit).



The bill has been sent to the governor where her approval is expected. Revenue sharing was a key issue within the general government budget bill. The portion containing revenue sharing payments made up of statutory revenue sharing amounts for the next fiscal year (beginning Oct. 1, 2008) will see a 2 percent increase compared to the current year. All constitutional revenue sharing payments for next year will be no less than the current year level. Use the following link to review the projected revenue sharing amount for your township, http://www.michigan.gov/documents/treasury/FY08FY09RevMayCon_235265_7.pdf.

Another important budget item within the general government budget includes a half million dollar line item for large utility property tax appeals. MTA has been working to involve the state when utility companies challenge their property tax assessments. Local assessors use tax schedules, approved by the State Tax Commission, when assessing utility property; however, utility companies have been challenging these assessments costing local governments significant legal fees and long-term reductions in tax revenue. The state has not been involved in several recent cases. This line item is an attempt to invoke the state into the process. ■

Reform Michigan Government Now! a Controversial Ballot Proposal

A group called Reform Michigan Government Now! (RMGN) has submitted enough signatures to place a controversial amendment to the state constitution on the November general election ballot. Actually, RMGN is not a single amendment to our constitution; it is a laundry list of issues that impact various portions of the constitution. It changes the way elections are run, reduces the number of legislators and judges, changes how legislative districts are established, increases state departments and changes how they are organized under the governor, changes the amount legislators and other state officers are paid and changes who may sue in courts.

The proposal has been met with serious early opposition from both political parties, as well as groups like the Michigan Chamber of Commerce who filed a formal campaign finance complaint against RMGN with the secretary of state on July 23. The Chamber, which has highlighted numerous problems with the ballot proposal, is claiming that supporters of the RMGN plan began their efforts in 2007 and therefore failed to file the appropriate campaign organization papers in 2007. RMGN did not file with the state as a ballot committee until February of 2008. On July 24, Citizens Protecting Michigan's Constitution filed a lawsuit in the Michigan Court of Appeals to try to prevent RMGN from even getting on the ballot. The plaintiff has asked for a ruling by Aug. 21, which is the date that all lower courts must act on issues involving the November election, as determined by the Michigan Supreme Court.

The first issues addressed in the proposal are how elections are to be held. The amendment takes all election control away from the secretary of state and vests the authority in the director of elections, who will head an agency under the control of the governor. The director of elections will be appointed by the State Civil Service Commission. The amendment further states that any elector may receive an absentee ballot in any election without needing to provide a reason. The proposal would require laws to be established to punish those who commit election or petition fraud. The proposal then requires election audits, a required program that would double check the work of all election activities. It also requires that no matter what election voting system is used, it must produce a durable paper trail that allows for the verification of how a person votes. This would mean that if a touch screen computer system is ever used in Michigan in the future, a paper receipt indicating who that person voted for would need to be produced as soon as the voter casts their ballot on the screen.

From the position of township officials, one of the greatest concerns within the proposal is a line that reads as follows: "No state or local government official having responsibility for administering or supervising an election shall endorse or give political support to any candidate or ballot question in that election." This should be of obvious concern to all township clerks. What does it mean for their own elections? Would it prohibit a clerk from administering an election when they are on the ballot? At this point, that is undetermined.

Of course, for township clerks this means the largest election that is



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held, the presidential election, would be impacted. The issue also spills into other offices. In a general law township, the clerk, supervisor and treasurer form the election commission, so they all could be impacted. In charter townships, it is the clerk and two trustees. Election commission membership could be quickly modified by law if this was to pass, but the issue of clerks not running elections is much more problematic, don't forget that county clerks are on the same ballot.

The proposal modifies the way the citizens may approve or reject laws through the power of initiatives or referendum. The proposal modifies one paragraph to further define what bills can't be subjected to a vote of the people, but then does not include several paragraphs of the current constitution that describe the procedures to be followed. Many believe the proponents made a mistake and forgot to list these paragraphs, which mean they would be deleted from the constitution. It would also mean that the ability to require a referendum or initiate a law would be severely compromised.

The ballot proposal would reduce the number of state senators from 38 to 28 and require that the election of the membership be staggered beginning in 2010. In that year, 14 senators would be allowed to run for two-year terms and the remainder for a four-year term. Senators would run for four-year terms thereafter. The House of Representatives would be reduced from 110 members to 82 starting in 2010.

Legislative districts would be reapportioned prior to the election in 2010 and then reapportioned again in the following year when the census numbers become available. The constitution amendment also states that legislative and congressional districts may only be modified once a decade. This is likely a response to a recent United States Supreme Court decision that decided it could be done more often.

The ballot proposal creates a significant problem when it created staggered Senate terms. How can Senate districts be reapportioned for the census when only half of the membership is up for election in any given election? In some cases a person may have two senators, the one that they voted for two years prior and the new senator under the redistricting plan. Other people would have no Senate representation for two years due to redistricting.

Under the proposal, the Legislature would no longer create the redistricting plans. Instead a new commission would be formed. It sets up a "non-partisan" commission where each party nominates four members and then the eight appointed members choose a ninth person who shall chair the commission. If a third party candidate receives at least 20 percent of the vote for governor, that party may also appoint four members to the commission. Members of the commission may not hold any public office, state or local, and may not be lobbyists. They may not hold any such position for ten years after they leave the commission. If the commission can't decide on the chair of the commission, or which redistricting plan to adopt, the decision will be made by drawing lots.

The proposal creates a list of requirements for creating legislative districts. Exactly half of both the Senate and House districts must have a majority of voters who are Republican and half must be districts where the majority of the voters have a Democratic voting tendency. Under this proposal, voting tendency is measured by overall votes for State Board

of Education as well as University of Michigan Board of Regents, Michigan State University Board of Trustees and Wayne State University Board of Governors measured over three elections.

The proposal further states that at least eight Senate seats and 18 House seats must be competitive, where the majority party would receive no more than 53 percent of the expected vote. Again, half of these competitive seats must have a majority for each party. Half of the 26 competitive seats are required to have a 50/50 split in expected voting behavior. The constitution would ignore the development of a third party. Redistricting will only consider the two top parties in votes cast.

The proposal prohibits state courts from reviewing these complicated redistricting plans. Instead, the constitution states that only a federal judge may review the plans. If the plan violates any federal law by a federal court, it shall be remanded back to the commission to be modified. The language offers no remedy if it violates the provisions of the state constitution.

Under the proposal, legislators may not lobby for two years after leaving office. Candidates for the Legislature, governor, lieutenant governor, secretary of state, attorney general and all judges must report all of their assets to the public. The salary for all of these elected offices will be rolled back to the amount received effective on Dec. 31, 2000, except for judges who would see a flat 15 percent reduction in salary. There is also language that limits pension and post retirement benefits for these same officials, it says that they can not exceed the highest benefit payable to a retired employee in the classified civil service.

Some advocates are indicating this would require these office holders to have the same pension plans as state employees. A reading of the language indicates that they can't receive a bigger pension than the person who has the largest pension in the state employee plan. This limit would not appear to impact any elected official under their current pension structures.

The proposal would also reduce the number of departments that may exist at the state level from 20 to 18. The proposal also seems to delete some very critical language regarding the highest elected offices in the state. Language that describes how the candidates for lieutenant governor, secretary of state and attorney general are nominated at party convention is deleted. The direction that the governor and lieutenant governor run together and that one vote applies to both people is also removed. The proposal also deletes the language that specifies how vacancies in the office of secretary of state and attorney general are filled.

The number of Supreme Court judges is reduced from seven to five. This would be achieved by eliminating the position of the two justices that will be up for election in 2010. The state appeals court is reduced from 28 to 21. Again, the reduction takes place by eliminating the seats held by judges up for election in 2010. The proposal requires the state to add 10 circuit court judges no later than Jan. 1, 2010. The judicial tenure commission shall be replaced with the judicial performance commission.

Finally, the proposal seeks to change a recent state Supreme Court decision that limits who can sue in certain cases. The proposal states that: "the legislature may provide that the citizens of this state shall have standing to bring suit in a court of this state to insure such protection and to seek both

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Sign Up Now for NATaT's America's Town Meeting in Washington, D.C.

The National Association of Towns & Township's (NATaT) *America's Town Meeting* Legislative Conference in Washington, D.C. is not far off. This year's annual two-day conference will be held Sept. 30 through Oct. 1. at the Hyatt Regency Washington Hotel on Capitol Hill.

The conference is your opportunity to be the voice for your township regarding federal issues affecting local government. Some of these issues include federal support for local infrastructure, ensuring an accurate 2010 census count, tax benefits for volunteer first responders, tax relief for public service volunteers and ensuring no additional federal mandates are enacted affecting the election process just to mention a few.

Don't miss out! Join hundreds of local government officials from across the nation and Michigan as they converge on Capitol Hill to network, attend educational sessions, and meet with lawmakers.

Visit the MTA's Web site for more information and to download a registration brochure: <http://www.michigantownships.org/NATaTconference.asp>. The **deadline is Sept. 2** for the discounted conference and hotel registration costs! ■

Using Off-Road Vehicles on Roads Now Legal

Legislation allowing the use of Off-Road Vehicles (ORVs) on roads in northern Michigan was signed into law by Gov. Jennifer Granholm on July 17. House Bills 4323 and 5999, both sponsored by Rep. Joel Sheltroun (D-Ogemaw Twp.), became Public Acts 240 and 241 of 2008, respectively. The new laws allow the county board of commissioners to adopt an ordinance authorizing the operation of ORVs on the maintained portion of roads located within the county. The new laws apply only to counties located north of Town Line 12 (Clare County).

The new law reflects changes made by the Senate made to HB 4323 that allows townships to opt-out of a county ORV road ordinance and allows townships to adopt an ordinance to allow such ORV use when a county doesn't. Authority for townships to adopt an ordinance allowing ORV use on roads is delayed until one year after the effective date of the act. This authority for townships begins on July 17, 2009. Further, language in the law states that the board of a township located in an eligible county may adopt an ordinance to close a road to ORV use.

MTA appreciates the efforts of Rep. Sheltroun and Sens. Stamas and Birkholz for working with MTA and allowing the authority of townships to be included in the law. ■

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preliminary and permanent injunctive relief and other remedies to abate the pollution, impairment and destruction of the state's air, water and other natural resources."

The proposal will be reviewed by the State Board of Canvassers beginning at the end of August for approval to be placed on the November ballot. Critics have already identified one reference within the proposal that points to a nonexistent section of the constitution. In the past, this kind of error has pushed other proposals off the ballot. Opponents will also likely challenge whether this proposal meets constitutional standards for amendments. The proposal has so many unrelated issues, it is pointed out by critics that it is not an amendment; it is a redrafting of our constitution.

The final issue that may sink the proposal is a section of the constitution that states that any amendment to the constitution must be described on the ballot in no more than 100 words and shall consist of a true and impartial statement of the purpose of the amendment. This statement is prepared by the director of elections within the secretary of state's office. To illustrate this challenge, it should be noted that the very first paragraph of this article consists of exactly 100 words. ■