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# capitol currents

Official Publication of the Michigan Townships Association

march 2007



## A Legislative Update for Township Officials

### New Planning Act on the Horizon



Last year, the Michigan Legislature combined the three zoning acts for cities, townships and counties into a single new law, PA 110, otherwise known as the Michigan Zoning Enabling Act.

This year, the focus is on combining the three planning acts into a single new law. SB 206, introduced by Sen. Patty Birkholz (R-Saugatuck Twp.), would create the new Michigan Planning Enabling Act. While the current planning acts have much in common, they also differ in many ways. The new legislation will recognize the current variations, but in many situations it moves the planning process towards being more uniform, regardless of whether the planning is taking place at the county, city or township level.

SB 206 seeks to standardize notice requirements, using the new zoning act as the standard. The bill would also incorporate greater flexibility on the composition of the planning commission, allowing for the appointment of no more than one nonresident to the commission. The entire township board would make appointments to the commission, but the supervisor is granted the authority to make the appointment if the township board is unable to provide a majority vote for a single candidate. The supervisor would be eligible to serve on the planning commission under the new legislation along with all other members of the township board. The term of the board member serving on the commission would

coincide with their term of office. The bill retains the provision that the board member on the planning commission may not serve as the chair of the planning commission. The legislation further states that any township with a sewer or water system will prepare a capital improvement plan each year that identifies needed capital improvements for six years into the future.

The legislation is expected to move through the Senate by the end of March. ■

### Special Report: The Governor's Budget Proposal



When Governor Jennifer Granholm presented her budget proposal to the members of the House and Senate Appropriations Committee, just two days after her State of the State address, she laid out plans for additional revenue sharing, saving schools from budget cuts and sending more money to certain cities for additional police protection. She also offered a plan to cut personal property taxes for businesses by approximately 50 percent while protecting the revenue to local units of government, including townships.

Of course, all of her proposals depend on the Legislature also supporting her plans, which include replacing the Single Business Tax with a new business tax and the even more controversial plan to create a new tax on services. Republicans are responding that problems in the state budget should be resolved with cuts to the state budget. They have also taken the position that any new state business tax should result in a net tax reduction for businesses to spur the state's economy.

#### An Explanation of the Governor's Revenue Sharing Proposal

Governor Granholm touched briefly on her revenue sharing plan during her State of the State address on February 6. During the same speech, she also began to unveil her plans to address the fiscal crisis facing the state. The governor is calling for a blend of cuts (\$300 million)

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## MTA Offering Workshops on the New Cable Law

Cable franchising authority has been dramatically changed under PA 480 of 2006. The new law creates a significant regulatory change that will impact your local community. To help township officials better understand the new law MTA is offering workshops that focus on how local governments would operate under the new law even though there is still much debate about whether the new law will withstand a legal/constitutional challenge. In March, MTA will sponsor four workshops

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and an expansion of the sales tax (collection of \$1.5 billion annually) to services and a new business tax (that would collect \$480 million less than the SBT) to address the \$3 billion shortfall in state revenues. She proposed a 2.5 percent increase in revenue sharing payments for local governments that "demonstrate that they are sharing services [with other local units of government] as a way to save taxpayer money." Specific details on the complicated revenue sharing proposal have been slow in coming, and many questions remain. MTA has learned that the 2.5 percent proposal for revenue sharing is not as simple as it first had seemed and is predicated on approval of the governor's new tax plan. State Budget Director, Bob Emerson, highlighted the governor's proposed budget before a joint appropriations meeting on February 8. There were several good questions raised by House and Senate Appropriations Committee members about how the revenue sharing proposal would work. Senator Roger Kahn (R-Saginaw Chtr. Twp.) asked the State Budget Director for a definition of cooperation for local governments. Freshman State Representative Richard LeBlanc (D-Westland) asked Emerson what "joint agreements" mean under the governor's revenue sharing plan and if it would include agreements already in place today. Emerson explained that the proposal would apply to those who have agreements in place and those who are moving toward cooperation. Senator Mark Jansen (R-Gaines Chtr. Twp.) stated that if the state is going to require locals to do local cooperation that the state should do the same.

that delve into the new law and explain possible action items for your township. The new act states that cable companies have until April 30, 2007, to notify communities that they are replacing their current franchise with the new state one.

Sessions will be held on:

Wednesday, March 21, 12:00-4 p.m., Treetops Resort, Gaylord  
Thursday, March 22, 12:00-4 p.m., Comfort Inn, Mt. Pleasant  
Wednesday, March 28, 12:00-4 p.m., Holiday Inn, Ann Arbor  
Thursday, March 29, 12:00-4., Van Buren Co. Lawrence ISD

To find out more or to register, visit [www.michigantownships.org](http://www.michigantownships.org) or call MTA at 517-321-6467. ■

The governor is proposing another freeze for revenue sharing for fiscal year 2008 (beginning October 1, 2007). However, she is proposing an additional \$27.2 million in total "bonus" revenue sharing amounts. The "bonus" amount would be distributed to townships, cities and villages that first report to the Dept. of Treasury that they are involved in a "signed cooperative agreement." As MTA understands the proposal, all townships (including those currently only receiving constitutional payments) will be eligible for the "bonus" funding. "Bonus" payments will average 2.5 percent of a community's total revenue sharing amount; however, they are being calculated by using the revenue sharing formulas created in 1998 (which have been abandoned over the last six years). As a result, bonus amounts will vary widely amongst all communities (most will fall below 2.5 percent with just a handful above).

Revenue sharing numbers have been shared with MTA, but there is no document yet available that itemizes the percentage amount that each local unit of government would qualify for in "bonus" payments. MTA has, however, been reviewing the projected numbers to detect any trends. It is certain that most communities (townships, cities and villages) will not only see much less than a 2.5 percent "bonus" payment but it appears that most would see an average "bonus" amount between 1 percent and 2 percent. Under the proposal, there are just a few communities that would qualify for more than a 2.5 percent "bonus" payment. For example, the City of Highland Park is in line for a 7 percent "Bonus" amount (or \$285,401); the City of Hamtramck would receive a "Bonus" amount of 6.2 percent (or \$239,002); the City of Detroit would receive a 4.6 percent "Bonus" amount (or \$12,685,076), which is almost half of the total "Bonus" funding (\$27.2 million) for the entire state; Royal Oak Township would receive a 4 percent "Bonus" (or \$26,621). Townships should further be aware of other items that will have a negative impact on your township's (including those townships receiving constitutional only) revenue sharing payment: State sales tax projections for the remainder of fiscal year 2007 are almost flat as compared to 2006 (.2 percent decrease). Current payments were based on much a rosier economic outlook that produced projections of a 3.5 percent increase. Your township will see reduced revenue sharing payments over the months remaining in the current state fiscal year (Febru-

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ary-September) compared to payments made in the first-half of the budget year.

## The Two Percent Solution



Governor Granholm has proposed that the state implement a 2 percent service tax on many services that are offered in this state. Many refer to this as a 2 percent sales tax on services, but that is technically an incorrect description of the plan. If this were a sales tax on services, the vast majority of the money would then go to schools and local government, as required by the constitution. Instead, this tax is designed to be neither a sales tax nor a use tax, as both have constitutional stings attached, instead it will be an excise tax on services.

The governor projects that the tax must be in place by June 1 to generate revenue to avoid large scale budget cuts in the state's current fiscal year. This would mean that the Legislature must pass the legislation before Easter to give the appropriate time to ramp up the bureaucracy to collect the tax.

The list of services that would be subject to the 2 percent tax is extensive. Examples include: taxi or limousine service, marina services, real estate commissions, hair cuts, health or athletic clubs, dry cleaning, janitorial services, lobbying, security guards, travel agents, car washes, bowling, movies, professional sports events, concerts, bookkeeping, accounting, legal services, engineering, veterinarians, general construction and labor related to almost any repair or construction project. Services that will not be taxed include: any form of health care, nursing homes, childcare and educational services.

### New Business Tax: Local Government Impact

When the Legislature eliminated the Single Business Tax last fall, they left a gaping hole in the state budget. As with any tax, the controversy related to eliminating a tax is minor compared to the debate needed to replace the tax. Adding to this complication is the fact that virtually all parties want to add in the issue of personal property taxes when discussing the future of business taxation for this state.

When the governor offered her new plan for business taxes to the Legislature this month, she included a provision that reduced personal property taxes on commercial and industrial property by over 50 percent. The important part of the proposal, from the local government perspective, was that the property taxes dedicated to local government operations were untouched. Under the governor's plan, businesses would no longer be required to pay the 6-mill state education tax nor the 18-mill principal residence tax to school districts for any commercial or industrial personal property. This would create a significant shortfall to the school aid fund, but that revenue loss would be offset by revenue from the new 2 percent service tax.

The Republican-controlled Senate came out with its own plan for a new business tax that included revisions in the personal property

tax laws. The Senate Finance Committee passed SB 96 earlier this month. SB 96 would exempt all new industrial personal property from taxation. This type of proposal would have a steadily increasing impact on local government operations. Industrial personal property taxes currently generate approximately \$700 million per year in tax revenue. Of that amount approximately 50 percent goes to fund schools and the rest is collected for the operations of all other taxing jurisdictions including cities, townships, counties, fire authorities, libraries, etc. Existing industrial personal property will continue to depreciate, or be replaced each year. This means that the \$700 million would be reduced each year and eventually diminish to zero. The Senate plan offers no replacement revenue to local governments or schools. Such a plan would impact every local government in a different manner. There are many local governments where over one-third of their property tax revenue comes from personal property sources. Such a plan would have a potentially devastating impact on their governmental operations. In other cases, the local government may have a relatively insignificant reliance on this form of taxation and would not notice a significant change in their revenue stream.

MTA passed a policy resolution at the Annual Meeting during the Educational Conference in Detroit that opposed plans that reduced personal property tax revenues to local governments, but supported plans that held locals harmless from any business tax cut. As such, MTA can support the governor's plan for personal property taxes and opposes Senate Bill 96.

### Is it Time to Check Principal Residence Status Again?

In its efforts to find revenue for the state without raising taxes, the Senate Finance Committee held a hearing this month on some old issues. The committee brought up the issue of performing audits to ensure that no one was inappropriately receiving a principal residence exemption. Each exemption could be worth hundreds if not thousands of dollars to the school aid fund each year. This same issue was explored several years ago to prop up the state budget at that time. The Department of Treasury was responsible to find questionable exemptions based on affidavits on file as well as income tax records. While the efforts did result in some exemptions being revoked, it also resulted in many legitimate exemptions being questioned by local assessors. This was a situation that was not appreciated by those who were questioned and found to be compliant with the law.

The committee also explored the issues uncovered by the State Auditor General three years ago which found instances where local property tax collecting entities had directed tax revenues to wrong accounts. This included improper disbursement of PA 198 tax abatements, improper accounting on DDA tax captures and in the case of the City of Flint, not disbursing some property tax revenues to cover a severe city financial crisis.

### Other Items of Interest in the Proposed State Budget

The budget recommendation for the Department of Transportation



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## Storm Water Phase II Case Nears Conclusion

In an opinion issued November 27, 2006, Kalamazoo Circuit Court Judge J. Richardson Johnson ruled in favor of the **Charter Township of Kalamazoo** and **Comstock Charter Township** (Kalamazoo Co.) in their suit challenging the townships' Storm Water Phase II permit liability. The judge ruled that the two townships are not subject to rules promulgated by the Michigan Department of Environmental Quality (MDEQ) relating to Municipal Separate Storm Sewer Systems (MS4s) and, therefore, are not required to comply with the Phase II permit requirements or pay annual permit fees to the MDEQ.

The key issue in the case revolved around whether or not the townships "owned or operated" an MS4. The townships argued that they didn't own or operate an MS4 as either the county drain commissioner or the county road commission handled these functions. The MDEQ argued that, because townships have "jurisdiction" and thus "power and authority" over disposal of sewage, industrial wastes, storm water, or other wastes, they were subject to the rules of the MDEQ.

The townships also argued a second point that, should the court rule in favor of the MDEQ on the first matter the rules were new and mandated obligations and thus were not binding on the townships under the Headlee Amendment without state funding of all costs.

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(MDOT) calls for a 2.2 percent overall funding cut. This includes more than \$102 million in reduced funding for road and bridge programs in the following manner: State Trunkline Roads—\$61,735, 500; County Road Commissions—\$26,051,100; and Cities and Villages—\$14,524,600.

Again, the judge found that the townships were not "owners or operators" of the storm sewer system because, though they had the power and authority to create such a system, the townships had not done so. The judge further declined to rule on the Headlee issue as it became a moot point once it was determined that the townships were not owner/operators.

Following the court decision, the real question became how broad the decision could be applied. In other words, would it apply to other townships? In a declaratory judgment issued January 22, 2007, Judge Johnson ruled that the MDEQ rules apply only to those identified units that own or operate a municipal separate storm sewer system (MS4), and that MDEQ's attempt to apply rules to governmental units that are not an owner or operator "is an unauthorized and undelegated expansion of such storm water rules and regulations by MDEQ and is accordingly invalid and unenforceable."

Following the January 22 decision, the MDEQ had 21 days to appeal the decision to the Court of Appeals. The MDEQ decided not to appeal the decision to the higher court and is instead working on a "guidance document" to help townships determine whether or not they are an owner/operator of an MS4 and if they need to comply with the MDEQ rules and permits. The guidance document should be available in the near future, and MDEQ has indicated a willingness to allow MTA input before the final guidance is issued. Once a final guidance document is available, MTA will make it available to our members through the MTA Web site and other means. ■

The Department of Environmental Quality (DEQ) budget is predicated on \$20 million in fee renewals or increases. Local-government-related items include NPDES permits, groundwater discharge fees and solid waste fees. ■