

From The Capitol - December 2011

12/22/2011 James G. Cavanagh

Before adjourning for the year the Legislature enacted several measures and advanced others toward anticipated passage next year. Among the bills enacted were measures that:

- Provided a **supplemental appropriation** critical for Medicaid Health Plans to bridge the gap between termination of the use tax and the beginning of the claims tax.
- Lifted the cap on the number of allowable **charter schools**.
- Made significant amendments to the **workers' compensation act**.
- Replaced the **Low Income Energy Fund (LIEEF)**.
- Created a new **film incentive program**.
- Created new **economic development** and **community revitalization programs** to replace MEGA, the Brownfield and Historic Tax Credit Programs.
- Continued, but reduced, two major **battery tax credit** projects.
- Allowed accelerated payment of **unemployment compensation debt** owed to the Federal government.

MEDICAID PLANS GET NEEDED FUNDING

After some delay and controversy over the inclusion of funding for a number of programs, the Senate decided to concur in a House Substitute to **HB 5014**, a supplemental appropriations bill critical toward adequate funding of **Medicaid health plans**. The Senate had offered its version of the supplemental which included funding for **graduate medical education, disproportionate share of hospital payments** and **\$9.8 million** for further implementation of a healthcare insurance **exchange** required under the federal Affordable Care Act (ACA). Upon getting back to the House, the Republican Majority stripped the provisions for further spending the Senate had added. In fact, House Republicans are so adamantly opposed to the ACA, a/k/a "**Obamacare**," funding for the healthcare insurance exchange was a non-starter. In the end, the Senate Republican majority pragmatically agreed to the House version of the bill so that Medicaid health plans would not be left short of funds. However, the leader of the Senate effort, **Roger Kahn (R-Saginaw)**, indicated he will be back next

year with another supplemental appropriation bill which would include funding for these “Senate priorities.”

GOODBYE TO MEGA, BROWNFIELD AND HISTORIC TAX CREDITS; HELLO TO DEVELOPMENT AND REVITALIZATION PROGRAMS

Governor Snyder has signed into law a **five bill package** creating the Michigan Business Development and Michigan Community Revitalization Programs which will provide **\$100 million** in incentives for competitive projects. The program replaces the Michigan Economic Growth Authority (**MEGA**) **Brownfield** and **Historic Tax Credit** programs that were eliminated under the new corporate business tax enacted earlier last spring. Senate Bills 556, 566-568 and 644, now **Public Acts 250-254 of 2011**, would among other things:

- Create the **Michigan Business Development Program** to provide loans and grants to qualified businesses;
- Create a new **Michigan Community Revitalization Program** to provide grants, loans and other assistance up to **\$10 million** per project that will revitalize urban areas; and,
- Reuse vacant land or historic buildings for **sustainable development**.

The contribution of **Warner** attorneys **John Byl** and **Troy Cumings** were key to enactment.

COUNTY ROAD COMMISSIONS STAY: AT LEAST FOR NOW

As part of his transportation message to the Legislature this fall, the Governor suggested the possibility of elimination of county road commissions, another layer of local government deemed unnecessary by some.

HB 5125 and **5126** were introduced nearly at the same time the Governor’s message was delivered. The bills allowed county commissions by resolution to place the question of whether to eliminate a county road commission on the ballot for the people to decide. If the voters approved the measure, the county commission would assume the duties of the road commission. On the last day of session, the Senate adopted its **fifth substitute** to HB 5125. These bills allowed those road commissions to be dissolved if existing road commissions were appointed by county commissions. If road commissioners were elected, the voters would have to approve. This fifth substitute called for a sunset in 2015.

Republicans who hold large majorities in both Houses were split on the issue, with suburban lawmakers favoring the substituted version. However, GOP lawmakers from rural and northern Michigan, where politics is very local and relationships in the political game, especially at the county level, are forged over time with mutual trust, were dead set against elimination of the road commission altogether. In addition, with the passage of the Senate substituted version, House Democrats pulled the support they had given previous versions. As the day wore on, it was clear House Republican leadership did not have the votes to carry the day and the bill was not considered and will not be given further consideration until next year.

CHARTER SCHOOL UNBOUND BY A CAP

The Legislature enacted **SB 618**, now **Public Act 277 of 2011**, which lifts the **150 school cap** on university sponsored charter schools after December 31, 2014. Charter schools would also be required to demonstrate they were making measurable progress toward meeting education goals and be subject to having their progress reports being posted online. Lifting the cap on charter schools has been vehemently opposed for years by the Michigan Education Association, the Michigan Association of School Boards, the Michigan Association of School Administrators and much of the **public school education establishment**.

TAX INCENTIVES FOR NEW FILMS PASSES

In addition to the elimination of MEGA and the Brownfield and Historic Tax Credit Programs, last spring the Legislature also eliminated the generous film credit program and replaced it with **\$25 million** in incentives for film makers. **SB 569** sponsored by Senate **Majority Leader Randy Richardville (R-Monroe)** directs how the state is to divide the \$25 million and also provides tax incentives between 25 percent and 32 percent.

STATE PASSES NEW EMERGENCY MANAGER BILL

Over the heated protests of Democrats, the Senate GOP majority passed a substitute to **Senate Bill 865**. The bill would:

- Authorize the Governor to remove local government from receivership or, if the financial emergency had not been rectified, and appoint a **receivership transition advisory board**.
- Specify the **powers** of the board.
- Empower the Governor to appoint a **new emergency manager** if the financial condition of the local government had not been corrected.

Rather than amend **Public Act 4**, which was enacted earlier this year and greatly expanded the role of emergency managers, SB 865 creates a new act. By so doing, Democrats contend Republicans are attempting to sabotage the petition drive seeking a **referendum** on PA 4, an effort that appears will be successful in garnering enough signatures to place the matter on the November general election ballot. In essence, Senate Republicans are adding “**insurance**” in the event Public Act 4 is placed on the ballot and overturned by the people, the Governor will still have a strong law to handle the financial emergencies of local governments. House passage of the legislation is expected early next year.

UNEMPLOYMENT INSURANCE: MICHIGAN BUSINESS PAYS BUT GETS SOMETHING IN RETURN

Michigan’s **unemployment trust fund** is severely in debt (estimated \$3 billion) to the federal government due in large measure to the loss of manufacturing jobs both prior to and during this recession. Simply put, the number of unemployment claims far exceeded the amount held in the trust fund to pay those claims. The fund is supported entirely by a tax levied on Michigan employers. Consequently, with any new plan to pay off the debt would come insistence by employers for changes in the unemployment compensation system, some of which would require the recipient to be **more diligent about becoming re-employed**. **Senate Bill 483**, now **Public Act 267 of 2011**, creates the “**Employment Security Financing Act**” and permits the Michigan Finance Authority to issue bonds to pay off the debt incurred by the trust fund, continue to pay unemployment benefits and avoid additional advances. **Senate Bill 484**, now **Public Act 268 of 2011**, amends the **Michigan Employment Security Act** to, among other things:

- Create the “**Obligation Trust Fund**.”
- Mandate that employers pay an **unemployment assessment** to be deposited into the Fund.
- Require the **Department of Licensing and Regulatory Affairs** to spend fund money for payment of expenses and debt.

Senate Bill 806, now **Public Act 269 of 2011**, will among other things:

- Require claimants to be **actively engaged in seeking work**, and to report details of the work search in order to qualify for benefits.

- Increase the **taxable wage base** from \$9,000 to \$9,500.
- Allow certain employers with **25 or fewer** employees to apportion their first quarter contributions.
- Provide that claimants will be considered **unavailable for work** if they fail to communicate with their chargeable employer or the Unemployment Insurance Agency, or cannot be reached by mail or phone.
- Require of a claimant who has received benefits for half of the year to accept employment if that employment pays **at least 120% of weekly benefit amount**.

CHANGES MADE TO WORKERS' COMPENSATION ACT

House Bill 5002, now **Public Act 266 of 2011** amends the **Workers' Disability Compensation Act** and does the following with regard to injuries incurred on or after its effective date:

- Require that an injury be **medically distinguishable** from an employee's **prior condition**.
- Provide that **limitation of wage earning capacity** would occur only if an employee was unable to perform all jobs paying the maximum wages in work suitable to his/her qualifications or training.
- Change the definition of "**wage earning capacity**" to include wages an employee earns or is capable of earning and provides that an employee has an **affirmative duty** to seek reasonably available work.
- Includes **pension and/or retirement benefits** that an employee was entitled to receive among the amounts that must be **deducted from weekly benefits**.
- Allows an employee to be **treated by his/her own physician** after **28** days rather than after **10** days as was the case under the previous law.

The vote was along political party lines on this GOP initiative which is meant to codify recent rulings made by the Republican majority on the Michigan Supreme Court.

HEATING AID FOR THE POOR

Last summer the Michigan Court of Appeals ruled the Public Service Commission did not have the authority to manage the **Low Income Energy Efficiency Fund** part of a program in which a **surcharge** was placed on the bills of customers of large utility companies. The companies would in turn pay that amount to the Fund to **assist the poor** with their **heating bills**. With the Court of Appeals decision, the money collected was placed into an escrow account until the Legislature rectified the problem.

Senate Bill 864, now **Public Act 274 of 2011**, replaces LIEEF with the **Vulnerable Household Warmth Fund** which will be funded in a similar manner as LIEEF. Under the bill, money held in escrow would be **refunded** to utility companies who in turn would be required to refund the money to customers. Utilities would continue to charge their customers a surcharge for the Fund until it reached **\$58 million** or until **September 30, 2012**, whichever comes first. By September 30, 2012, the Public Service Commission is required to issue an order reducing the retail rates of the customers that contributed to the Vulnerable Household Warmth Fund. Finally, the bill dictates that when money in the Fund is appropriated it be spent on **assisting low-income people** with their heating costs.

BATTERY TAX CREDITS SCALED BACK

Senate Bill 855 which was passed and sent to the Governor extended but trimmed back tax credits for two battery plants. The two credits to **Townsend Energy Solutions** in Wixom and **Johnson Controls, Inc.**, in Holland originally amounted to **\$100 million** each. The bill trims the Townsend credit in half to **\$50 million** over four years and the Johnson Controls credit by a fourth to **\$75 million** over three years. With the credits, the companies are required to produce jobs and in the event those jobs are not produced, the **clawback provision** in the bill requires a tax payment. With this savings to the state of \$75 million, advocates for repeal of the personal property tax say this amount can be used to replace revenue obtained by local governments from that tax. The Governor is expected to sign the bill.

ON THE HORIZON

- **Blue Cross and Blue Shield** will make its move in the first few months toward pursuing legislation which will either remove or drastically **curtail Attorney General oversight** of its rate setting.
- Look for introduction of legislation regulating **pharmacy benefit managers** and establishing a **protocol for audits** of pharmacies.
- An effort will be made by the Michigan Nurses Association to move either **Senate Bill 481** or **House Bill 4771**, the bills that expand a **nurse's scope of practice**. Specifically,

according to the bills nurse practitioners would be authorized to **order, conduct and interpret diagnostic tests** including **imaging**.

- The **Department of Community Health** will move methodically toward a plan which will integrate “**dual eligibles**” into managed care. The Department is being politically sensitive toward the **fears and concerns** of recipients.
- **Right to Work** legislation will be introduced in January. At this time bill sponsors will be **Sen. Patrick Colbeck** (R-Canton Twp.) and **Rep. Mike Shirkey** (R-Clark Lake).
- High on the agenda of the Governor and Republican leadership will be **repeal of the personal property tax** paid by business and relied upon by local government. Local government officials don't care where the revenue comes from, but would like some **guarantee of revenue** written into the constitution. That is not likely to happen, and any state assistance in revenue will be short term, such as the **\$75 million** the state saved when the Legislature trimmed back **battery tax credits**.
- Don't look for passage of a **health care insurance exchange (SB 693)** until the U.S. Supreme Court rules on the constitutionality of the ACA which is not expected until at least May 2012.
- Early next year look for another **supplemental appropriation** bill coming from the Senate which will restore some of the items removed by the House in the last go-round, including money for **graduate medical education** and **disproportionate share of hospital adjustment payments**.
- Republican U.S. Senate candidates will continue to attempt to tie U.S. **Senator Debbie Stabenow** with former New Jersey Governor and Senator **Jon Corzine**, former CEO of the now defunct **MF Global** which lost investors over \$6 billion, with over **\$1 billion** unaccounted for.
- Look for a push to require health plans, health insurers and Blue Cross and Blue Shield to be required to cover treatment for autism.