SCHOOL EQUITY CAUCUS

Making a difference for the public school children of Michigan

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Dear Colleagues:

The Legislature is currently out on Spring Break, but there continue to be a number of developments in Lansing. Here is a summary of some of the latest things happening:

1. Tax Bill Becomes Law

On March 7 Governor Whitmer signed **HB 4001** (sponsored by Rep. Witwer) into law as **P.A. 4 of 2023**. However, the bill failed to be approved with immediate effect and therefore some of its provisions were impacted, and the law will not go into effect until 90 days after the end of the current legislative session. (For additional discussion on recent legislative wrangling over the immediate effect process, please reference last month's newsletter).

As it stands the law provides for:

- A gradual rollback of the pension tax by 2026 (with a taxpayer option to continue being taxed under current law instead, if preferred). The School Aid Fund would be protected by increasing the share of income tax revenue allocated to the SAF.
- An increase in the Earned Income Tax Credit from 6% to 30% of the federal amount.
- A $500 million allocation for the Strategic Outreach and Attraction Reserve Fund (a business incentive mechanism) along with allocations for the Michigan Housing and Community Development Fund and the Revitalization and Placemaking Fund.

The bill also included a $180 rebate for each income tax filer, structured as an "advance payment" refund for the 2023 tax year that would have avoided a rollback in the state's income tax rate, but with the inability of the legislation to be implemented with immediate effect, this provision will not apply (see also next item below).

With the passage of this law, General Fund revenues are expected to be reduced by $560 million in the current state fiscal year, with future revenue reductions of $1.73 billion in FY 2023-24, $1.39 billion in FY 2024-25, $944.6 million in FY 2025-26, and just under $1 billion each year after that. Needless to say, this level of revenue reduction will have an impact on the state's General Fund (GF/GP) – a fund that was projected at the most recent Consensus Revenue Estimating Conference (CREC) to have annual revenues hovering around the $15 billion mark for the next few years (these projections were made <u>prior</u> <u>to</u> the passage of this legislation). We will get an updated view of the impact of this legislation on state revenues at the next CREC that will take place in mid-May.

2. **<u>Income Tax Rate Reduction Trigger Kicks In</u>**

On Wednesday the Michigan Department of Treasury confirmed that the state income tax rate for 2023 would be dropping by 0.2% (from 4.25% to 4.05%). This drop is expected to result in a loss of approximately $650 million in state revenue in 2023.

The rate cut was brought about by provisions in a 2015 road funding law passed during the Snyder Administration that mandated an income tax cut if the growth in state revenue ever significantly outpaced the rate of inflation – a situation that has now taken place. This provision was necessary to include in the road funding bill so that there would be enough Republican votes to get it through the legislature.

The income tax rate drop came following last-ditch attempts by Democrats to reduce the state's official fund balance through a preemptive "advance payment" to taxpayers. This mechanism was made moot by the refusal of legislative Republicans to give P.A. 4 (the tax cut legislation discussed above) immediate effect.

The 2015 legislation states that the "current" income tax rate "shall be reduced" if revenue growth in the immediately preceding fiscal year (2022) significantly outpaces inflation. However, in announcing the tax rate cut State Treasurer Rachel Eubanks referenced an opinion issued earlier in the week by Attorney General Dana Nessel that the rate cut would only be in place for one year. The Attorney General's opinion interpreted the term "current" to mean the statutorily enacted tax rate, and further interpreted that the rate would return to the original starting point (the "current" rate) each year.

In her opinion, Nessel stated, "Because that situation (excess revenue collection) is only temporary, it makes sense that, rather than provide a permanent tax reduction based on the (perhaps unusual) economic circumstances of a single fiscal year, the Legislature intended the relief to taxpayers to be only temporary as well." As might be expected, Republicans (including in a joint statement by former Governor Snyder and the legislative heads of the House and Senate at the time) immediately decried this interpretation and indicated that the original legislative intent was for any rate reduction to be "permanent". At this point it is not clear whether there will be any legal challenges made to the Attorney General's interpretation.

Although the state's coffers are currently bulging with one-time funding, actual ongoing revenues and expenditures have been more or less in balance – that is, prior to any reduction in tax rates, such as the tax cuts in P.A. 4 and the income tax rate cut. Lower ongoing revenue, along with the proposed expenditure increases currently being discussed for both this and next year's budgets, will take a significant chunk out of the state fund balance. Further analysis is ongoing, and we will be watching closely as we get closer to the May CREC and as the budget process plays out.

3. **<u>"Right to Work" Provisions Repealed</u>**

Last week Governor Gretchen Whitmer signed **P.A. 9 (2023)** into law. This legislation, formerly **HB 4004** (sponsored by Rep. Weiss), repeals the "Right to Work" portions of Michigan's Public Employee Relations Act (PERA) that were enacted in 2012. It also includes a monetary appropriation that will proactively prevent any potential ballot initiative designed to override the legislation. Due to the fact that this law was also not passed with “immediate effect”, its provisions will not go into effect until 90 days after the end of the current legislative session.

It is also important to note that there is likely to be far less impact from this appeal in the near future than there would have been some years ago. This is because of a 2018 U.S. Supreme Court decision, *Janus v. AFSCME Council 31*, in which the Court determined that the mandatory payment of union dues (or “agency fees”) without the consent of the employee amounted to a forced subsidy of union speech – something that would an employee has a right to avoid. Thus, although Michigan law now once again allows for the mandatory deduction of union dues or fees as a condition of employment (as it did before 2012), this provision will not have much true impact until the *Janus* decision is reversed or some other change is made to the First Amendment of the U.S. Constitution.

Additionally, P.A. 9 does not address the current ban on the collection of union dues on the part of a public employer that is another provision of PERA. However, that ban may become part of potential PERA changes that may be brought by the Legislature in few weeks (see related item below).

4. Prevailing Wage Requirements Returning

Last week Governor Whitmer also signed **P.A. 10 of 2023** (previously **HB 4007**, sponsored by Rep. Carter) into law. This law restores the prevailing wage rules on both state and local government construction projects that were in place until their repeal in 2018. However, as with the other legislation described above, the legislature failed to give the law immediate effect and it also will not officially take effect until 90 days after the end of the current legislative session.

For schools, these wage rules will be in effect on all “state-qualified” projects, meaning those for schools participating in the School Bond Loan Revolving Fund and those for which districts utilize the state’s credit rating in “qualifying” their bonds. Districts will need to work with their bond advisors and attorneys to determine if these rules apply to them, but in most cases they will since about 74% of districts across the state had state-qualified bonds as of the end of 2021.

A provision was included in the legislation that was intended to guarantee that projects being paid for with bond funds that have already been approved would be exempted from the impact of prevailing wage rules. However, legal review is indicating that this language may not be worded exactly correctly, necessitating additional clean-up legislation (or an Attorney General opinion) to clarify the legislature’s intent and protect the budgetary basis and project scope on which these bonds were approved by voters.

As with the right-to-work repeal discussed earlier, this legislation also contained an appropriation that will make it immune from any potential ballot initiative petition drive designed to override it.

5. Third Grade Reading Law Repealed

Last Friday Governor Whitmer also signed into law **P.A. 7 of 2023** (previously **SB 12**, sponsored by Sen. Polehanki). This law removes most of the provisions of the third grade retention legislation passed in 2016, while still requiring districts to provide intensive reading interventions to any pupil in 4th grade who has a reading deficiency as demonstrated on the 3rd grade state reading assessment and continue those interventions until the pupil no longer has a deficiency. This repeal is a most welcome return of retention decisions back to parents and schools, where these decisions belong. This law also did not meet the threshold to be given immediate effect.

6. Expanded Use of Sinking Fund Passes Senate

SB 63 (sponsored by Sen. Polehanki) has passed the Senate and been referred to the House Education Committee. This bill would expand the use of sinking funds to include the purchase of "student transportation vehicles". We are working on a minor clarification to the bill to specifically define this term to include both "school transportation vehicles" and "school buses" as referenced in the state's School Bus Inventory Report. Long-time observers know that such an expansion has been requested for many years, and this flexibility is important for districts to help address the costs of pupil transportation.

7. P.A. 152 and PERA Proposals Coming?

It would appear that there will be bill introductions in the near future that would in various ways seek to amend both (or either) the Public Employment Relations Act (PERA – including collective bargaining provisions) and Public Act 152 (which limits public employer spending on medical benefit plans). Those superintendents and district leaders who were a part of negotiations and administration prior to changes made in the last 12 years or so can readily describe how different things are today from what they used to be and how that has impacted students in the classroom.

As we await potential bill introductions, please proactively begin reaching out to legislators to share your thoughts on these issues so they know we are paying attention, and request the opportunity to work collaboratively with them to make sure schools have the flexibility to focus on meeting the needs of students. As always, it would be particularly helpful to have examples to share of the possible unintended consequences of rolling back various aspects of these laws, so legislators can better understand the real-world impact of any potential changes.

8. Other Legislative Action

Beyond the items described above, a couple of other significant issues are seeing action:

- **HB 4166** (sponsored by Rep. Koleszar) would eliminate the "A-F school report card" system, as well as the requirement that MDE develop an annual list of the state's lowest performing schools. A companion bill, **HB 4288** (also sponsored by Rep. Koleszar), cleans up other outdated references pertaining to districts designated as "lowest performing". These bills have passed the House and are now under consideration in the Senate Education Committee.

- **SB 161** (sponsored by Sen. Geiss) and **SB 162** (sponsored by Sen. McCann) have both passed the Senate Education Committee unanimously and are on the

Senate floor for consideration. Among other provisions, SB 161 expands teacher certification reciprocity with other states and countries, making it easier for teachers to receive a Michigan certificate and endorsements similar to those they have previously held in other locales. SB 162 similarly expands reciprocity for school counselors. Both bills have the support of MDE.

It's been a busy time for the legislature, and we anticipate the pace to continue to be rapid as legislators return from Spring Break. We will strive to keep you updated on key developments!

As always, please be in touch with questions or concerns.

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