

THE SIMMONS LEGAL NEWS

Volume 7 Issue 2

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December 2012

President Barack Obama was re-elected, yet the people cannot and should not rest, as there is still much work to do.

LAME DUCKS UPDATE

By Shawndrica Simmons, Esq.

What is a lame duck session? You hear it all the time, but do you really know what it means? A "lame duck" session of Congress occurs whenever the Congressional body (*your elected state & federal government officials*) meets after its successor is elected, but before the successor's term begins.

Michigan's general election took place a little over 6 weeks ago, so our Republican controlled state legislature just went buck wild and passed as many bills it could during its lame duck session. These laws (if signed by the Governor) will greatly impact our lives and how we govern ourselves in the state of Michigan.

What is happening in Lansing?

Currently, at our State Capitol at least 19 bills that if signed by the Governor would dramatically change how we operate as a states. This edition will give you a brief overview of those bills.

Hot Topic 1: Indigent Defense

A House bill to create a full-time commission has been created to address the issue of improving the system of providing legal counsel to criminal defendants. The purpose of the legislation is to hold counties accountable that fail to allocate proper funding for legal assistance for low-income defendants. In Michigan, the counties are fully responsible for funding indigent defense.

Did you know?

The lame ducks failed to take action on this bill.

Hot Topic 2: Construction Safety Standards

The Construction Safety Standards Commission will be disbanded under a bill on its way to the governor's desk after final passage in the Senate. The commission's power to approve changes to construction safety standards will be transferred to the Director of the Department of Licensing and Regulatory Affairs.

Hot Topic 3: Community College Degrees

Currently, Michigan community colleges can only issue 2-year degrees.

Did you know?

Community colleges will be able to award bachelors degrees in cement technology, maritime technology, energy production technology and culinary arts under a bill sent to the governor.

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Hot Topic 4: K-12 Education

The Education Achievement Authority (EAA) currently only exists in Detroit alongside Detroit Public Schools (DPS) via the Emergency Manager's (EM) unilateral implementation. Governor Snyder wants to ensure that EAA can exist by drafting Senate Bill 1358 to protect it. Governor Snyder has also proposed school finance reform through his Michigan Public Education Finance Act of 2013, where the money follows the student via individual classes and expands our current schools of choice program.

Did you know?

Two bills dealing with changes to public education failed to make it to the finish line. One bill allowing teachers or parents to vote to convert a failing public school into an independent charter school did not make it out of the House. Lawmakers delayed until next year codifying the Education Achievement Authority's operation of 15 Detroit schools and expanding its scope to include up to 50 schools in the bottom 5 percent of academic performance in Michigan. GOP lawmakers will continue work on the EAA bill when the 97th Legislature convenes.

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Hot Topic 5: Second Parent Adoption

There were bills pending that address second-parent adoption in Michigan. If passed, Senate Bill 167 would allow two unmarried people to adopt a child together. Both people would have full parental rights over the child. If passed, this bill would give all unmarried couples the right to adopt a child together and still have the same parental rights.

In contrast, House Bill 5764, if passed, would give religious adoption organizations the right to choose not to allow same-sex couples to adopt a child or any couple they deem conflicts with their morals and/or religion even if placement is in the best interest of the child.

Did you know?

The lame ducks failed to take any action on either bill.

Hot Topic 6: Juvenile Lifers

In June the United States Supreme Court ruled that mandatory sentencing of minors to life in prison with no possibility of parole is cruel and unusual punishment that fails to account for a young person's potential cognitive and character development. Michigan, along with a host of other states is attempting to overhaul its current laws to comply with the ruling. Bills have been introduced seeking to address the issue retroactively and rewrite current state law.

Did you know?

The lame ducks failed to take any action.

Hot Topic 7: Retail Fraud

An anti-crime package creates a crime of "organized retail fraud" punishable by up to five years in prison; the two-bill package sent to the governor will also establish an organized retail fraud task force within the Michigan State Police.

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Hot Topic 8: Medical Malpractice

Bills are pending that would change how personal injury cases are handled in Michigan and add more requirements in order to prove wrongdoing in a medical malpractice case.

Did you know?

The lame ducks failed to take any action on the measure.



Hot Topic 9: Health Care

Given that President Barack Obama was re-elected, the Patient Protection and Affordable Care Act won't be repealed during his tenure, so the states must work toward complying with certain mandates. Legislators must work toward establishing an online health insurance exchange and laws to govern the exchange; and revise laws that may conflict with how Medicaid is administered within the state. Although not a mandate, Blue Cross Blue Shield of Michigan, our largest health insurance provider will now become a nonprofit mutual insurance company, lose its tax-exempt status and will no longer be the insurer of last resort.

Did you know?

The lame ducks failed to take action to establish the required exchange! See Hot Topic 10 for what they did take action on!

Hot Topic 10: Petting Zoos

Petting zoo patrons would be able to touch bear cubs up to 36 weeks or 90 pounds under a Senate bill sent to Snyder. Zoos and animal sanctuaries are currently restricted to letting patrons pet bear cubs younger than 20 weeks old. **Really?!? This was a priority?!?**

Hot Topic 11: Sexual Abuse

Michigan could become the fifth state to adopt "Erin's Law." A law requiring K-12 children be taught about sexual abuse under a bill sent to Snyder.

PROTECT WORKING FAMILIES & STOP DISENFRANCHISING MAJORITY MINORITY COMMUNITIES!

Hot Topic 12: Right-To-Work

Compiled by Shawndrica Simmons, Esq.

A right-to-work law whether for public employees or employees in general would greatly impact your right to unionize your workplace. Right-to-work laws exist in 23 states, mostly in the south and the western part of the U.S. Such laws are allowed under the 1947 federal Taft-Hartley Act. The District of Columbia and 27 states do not have right-to-work laws. Republicans want to destroy unions and keep workers from making decent wages to support their families. Here is the reality about right-to-work IN MICHIGAN:

Unions took the biggest hit of all when right-to-work legislation was rammed through the Legislature in days, without committee hearings or public input. The legislation makes it illegal to require a financial contribution to unions as a condition of employment, giving employees the benefits of union representation in union shops, without having to pay the dues or fees. Organized labor, which has about 700,000 members in the state, could see declines in membership, and more importantly revenues, to support issues and candidates as well as leverage in negotiating contracts.

For those of you confused or unaware, these laws allow workers who do not pay union dues to obtain the same benefits, including legal representation from unions, as union members without paying for them. So it is a freedom to freeload off of the union negotiated benefits while not having to pay dues. It doesn't stop you from joining a union or get rid of current union contracts. It modifies how we operate internally as it relates to dues and dues collection. So it's not an incentive for businesses as the Governor would have you believe. It is to prevent the Union from raising money to represent its members and prevent unions from supporting political candidates that are worker friendly.

What many don't understand is that once the majority or a slight majority of union members opt out of paying union dues, the Union will most likely opt out of representing, because it can't afford to give representation. You will then become at-will workers who can be terminated at any time for anything. You would also be subject to working conditions that the employer unilaterally chooses, like Welfaremart. You would also be subject to loss of seniority and benefits. Why? Because the union is the entity that has negotiated those things. If the union leaves, your negotiated rights are soon to follow. That would be going backwards. Let's not go backwards, let's move forward and encourage our co-workers, family and friends to continue in the fight.

As written the current law won't take effect for 90 days once the lame ducks vacate session. So any contracts currently in place will not be affected. However, if you are in negotiations and do not reach a new contract prior to the expiration of the 90 days, the law would apply to your contract despite any controlling language regarding dues collection. The right-to-work law already exempts police and firefighters because they are covered by an existing law requiring that their labor disputes be settled through binding arbitration.

We must prepare ourselves to get and keep a majority of worker friendly legislatures and a worker friendly governor. We must not forget to vote for judges that support workers and not corporate interest. We have a lot of work to do to prepare for 2014, so let's get started now, by forwarding this email to all your co-workers, friends and family and making a commitment to vote and take at least one person with you when the time comes!



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STOP DISENFRANCHISING MAJORITY MINORITY COMMUNITIES!

Hot Topic 13: Emergency Managers

Michigan voters repealed Public Act 4 (PA4) during the general election. PA4 gave over-reaching powers to an emergency manager over school districts and municipalities. PA4 disenfranchised majority minority communities and school districts by stripping the elected officials of their powers and duties. While those same communities/school districts were required to pay the unelected emergency manager to govern as he/she saw fit with no input from the communities/school districts over which they governed. Due to the repeal of PA4 and current legal challenges to the previous emergency financial manager law Public Act 72, select legislators are working to push a new law that would allow emergency managers and/or emergency financial managers to still exist. Republican legislators are totally ignoring the will of the people. The people don't want to be disenfranchised. The people want to govern themselves with no interference from the good old boys in search of contracts and land for their friends and family.

Did you know?

Despite the will of the people, the Legislature passed a replacement emergency manager bill, called the Local Financial Stability and Choice Act, that can't be repealed by the people because they attached appropriations to it, e.g. money. The Snyder administration would have you believe that it gives distressed local units of government more options and better financial support than a 2011 law, Public Act 4 that voters repealed at the polls last month. But in reality it is virtually the same law that was repealed because it disenfranchised citizens.

The new proposed law gives financially distressed cities and school districts four options once a financial emergency is determined: a consent agreement, mediation, an emergency manager or Chapter 9 bankruptcy. The only thing good about it is that it makes the State pay-- rather than the cash-strapped local unit. The State will pay the salary of the emergency manager and other related costs like the many law firms and consultants they hire to "manage." The bill also provides guidance on how a city or school district can exit from receivership but doesn't give a timeframe for doing so.

The bill did not get immediate effect in the House and is expected to take effect in March. The bill is headed to Snyder, who is expected to sign it into law.

Hot Topic 14: Medical Marijuana

Michigan currently has a voter-approved law that allows use of marijuana for medical purposes, but the law has a lot of flaws as it relates to interpretation and implementation.

Did you know?

Major reforms governing the possession, transport and exchange of medical marijuana were adopted with the three-quarters majority of each chamber needed to amend the constitution. A bill also was sent to Snyder that makes selling marijuana to somebody without a medical marijuana card a felony punishable by two years in prison and a \$2,000 fine. Sweeping regulations governing implementation of the ballot proposal failed in the Senate to get the 2/3 majority needed to amend the constitution. Legislation passed to strengthen affirmative defense of medicinal cannabis use, making the doctor-patient relationship more stringent and allowing law enforcement access to the database of marijuana patients.

Hot Topic 15: Department of Corrections

The State Employees Retirement Act was amended to allow retired Department of Corrections workers to return to work while continuing to draw retirement benefits. The bill, which was sent to Snyder for signing, will mean \$10 million in savings because retirees will receive just 80 percent of their pay with no benefits.

Did you know?

Another controversial action the Legislature took was approving a bill that would allow the Department of Corrections to contract out operations of a state prison for adults if the bid costs 10 percent less than the agency spends with public sector workers and unions.

Slavery anyone?! Prisons for Profits, Really!?!

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Hot Topic 16: Auto Insurance

Drivers in Michigan are required to carry no-fault insurance which provides unlimited lifetime medical care for auto-related injuries. Bills are pending that would allow motorists to opt for less coverage in exchange for limited personal injury protection coverage. If passed this bill could possibly leave motorists underinsured and devastated personally if they are seriously injured in an accident.

Did you know?

The lame ducks failed to take action.

Hot Topic 17: Abortion

Legislation passed that prohibits health plans from including coverage for elective abortions, unless an employee purchases an optional rider. Legislation passed that requires more abortion providers to become licensed as freestanding outpatient surgical facilities with the state. That would add inspection and licensing requirements for the facilities, including an annual licensing fee that is now \$238 annually and go could higher. But opponents of the bill say the real costs would come with physical changes to buildings that would be required at some clinics.

Did you know?

It also includes some screening requirements aimed at harassing women before they can have abortions. The bill also deals disposal of fetal remains. It would prohibit the use of "telemedicine" related to abortion – such as webcam consultations.

Hot Topic 18: Personal Property Tax

A package of bills to eliminate \$600 million in taxes businesses annually pay on computers and equipment was headed to Snyder's desk.

Did you know?

That not one bill has been drafted to replace the revenue that would be lost to local governments and schools that rely on these funds

Hot Topic 19: Cell Phones and Teen Drivers

Lawmakers sent the Governor a bill known as "Kelsey's Law" that would ban cell phone use for inexperienced drivers with Level 1 or Level 2 probationary license.

Hot Topic 22: Hunting

Legislation passed creating hunting seasons for the grey wolf which was once on the verge of extinction. Snyder is expected to sign the bill.

Hot Topic 20: Regional Transit Authority

Lawmakers authorized formation of a Metro Detroit regional transit authority that could ask voters in Wayne, Oakland, Macomb and Washtenaw counties to approve a new vehicle registration fee to fund public transportation projects. Other bills empowering bypass zoning issues and create dedicated lanes for rapid transit buses narrowly cleared the Legislature.

Hot Topic 21: Lighting Authority

Legislation passed that would allow Detroit and other cities to establish public authorities to run their lighting systems while another would allow part of a utility users' tax to fund public lighting repairs.

Hot Topic 24: Election Recalls

The Legislature passed bills making it tougher to recall state lawmakers by tightening the time to collect petition signatures to 60 days from 90 days. The law also limits recall attempts to one per lawmaker per term.

Did you know?

Republican lawmakers also tacked on a new ballot box citizenship affirmation requirement to this bill. Snyder vetoed a bill in July containing a similar requirement that Secretary of State Ruth Johnson attempted to impose administratively until a federal judge halted her actions in October.

Hot Topic 25: Concealed Handguns

Legislation passed that would allow concealed weapons permit holders with additional training to carry concealed pistols inside churches, schools, day care centers and stadiums. Private businesses could choose to opt-out and still prohibit concealed guns. Snyder has yet to sign.

Hot Topic 23: Prescription Drugs Donation

Awaiting Snyder's signature is legislation that would allow medical facilities to donate unused drugs to needy patients.

Hot Topic 26: New Detroit Arena

Lawmakers green-lighted Mike Ilitch's companies to capture downtown development money to help fund a new arena for his Detroit Red Wings despite his reported tax delinquency to the City of Detroit.