



# KELLEY CAWTHORNE

ATTORNEYS &  
GOVERNMENT  
RELATIONS  
COUNSELORS

*Frank J. Kelley  
Dennis O. Cawthorne  
Patrick H. McCollough  
James G. Cavanagh  
Steven D. Weyhing  
David Gregory*

GOVERNMENT  
RELATIONS  
COUNSELORS

*Rob Elhenicky  
Dave Ladd  
Melissa Yutzey Bourke*

## PROPERTY MANAGEMENT ASSOCIATION OF MICHIGAN:

Legislative Committee Report

July 25, 2006

### I. RECENT DEVELOPMENTS & PRIORITY ISSUES

- A. AT-RISK PROPERTY PROTECTION ACT. HB 4473** remains on the second reading calendar in the House of Representatives. **Verbal update to be provided at Legislative Committee meeting.**
- B. BALLOT PROPOSALS TO CREATE FISCAL “PERFECT STORM”?** There may be two (2) conflicting proposals on next fall’s general election ballot which could in combination with SBT/business tax reform create a fiscal “Perfect Storm” of sorts. The first proposal is the so-called “**K-16**” initiative which would require at least inflationary annual increases in state funding to K-12, community colleges, and state universities. This would require an additional \$564 Million in additional state spending in FY 2007-08 if the proposal passes this fall. According to a recent poll, 7 in 10 likely voters favor this proposal with only 7% undecided.

On the other hand, we have the “**Stop Overspending**” ballot proposal which would:

1. cap state spending at the rate of inflation plus population growth;
2. require tax refunds and “rainy day fund” deposits in some cases;
3. eliminate legislative pensions; and
4. require local voter approval of fee increases.

This proposal is based on the “Taxpayer Bill of Rights” which passed in Colorado several years ago but has since been suspended in that state. It is being largely funded by out-of-state activists such as Americans for Tax Reform and is vehemently opposed by local government groups such as the Michigan Municipal League.

**C. BUSINESS TAX REFORM.** We expect the Legislature to pass a measure late this summer to speed up the **phase out of the Single Business Tax (“SBT”)** to December 2007 from the currently scheduled phase-out date of December 2009. The House Speaker and Senate Majority Leader recently named a special House/Senate Joint Committee to consider alternative business tax proposals, as well as possible cuts to the **personal property tax**. In our opinion, the SBT will be phased out and replaced with some other form of business tax, perhaps even a sales tax on services. Moreover, there will be winners and losers no matter what tax replaces the SBT. We will continue to closely monitor the situation to help you gauge the impact on your bottom line. Please note that the SBT generates approximately \$1.9 Billion in general fund revenues out of an approximately \$9.2 Billion state General Fund (does not include School Aid Fund)

**D. CABLE TV - STATEWIDE VIDEO FRANCHISING FOR TELCOS.** As directed by the Legislative Committee, we recently met with representatives of AT & T. They are seeking passage of a statewide video franchising act that would allow telcos to provide cable services under a single state franchise rather than requiring them to seek franchises with individual cities, villages and townships as is required of incumbent cable providers under current law.

We developed three (3) basic principles in consultation with the Legislative Committee:

1. PMAM supports increased choice for its residents;
2. PMAM opposes forced access by any provider without the consent of the property owner; and
3. PMAM opposes any ban or limitation on existing and future exclusive marketing agreements between providers and owner/managers.

**After meeting with AT & T, conducting independent research and consulting with NAA, we conclude that the current bills (HB 5895) deals only with public-rights-of-way and do not seek to change the current status quo on the issues of forced access or exclusive agreements.** The bills are silent on these issues.

Michigan law does not require or authorize forced access by any provider. However, two (2) states mandate video access for telcos and eighteen (18) states require video access for cable operators (conclusions rely in large part on research provided by NAA and NMHC). Please note that it is likely this issue will be dealt with in a different bill to be introduced later in the session.

AT & T seeks PMAM's support for the concept of statewide franchising legislation. There are pros and cons to signing on in support which we will discuss at our meeting.

- E. COMMERCIAL REDEVELOPMENT ACT. HB 6043** (Pastor, R-Livonia), would for the first time include multi-family units under the commercial redevelopment act, an act which provides for property tax abatements under certain circumstances. The purpose of the bill is to expand the program to include multi-family and smaller projects or buildings which is not currently allowed. **The bill passed the House 105-0 on June 29, 2006. PMAM supported bill in committee.**
- F. LANDLORD-TENANT – KNOWING RENTAL TO DRUG MANUFACTURERS.** Rep. Steve Bieda (D-Warren) introduced a bill on June 29, 2006, which would subject a lessor who “knowingly” allows the manufacture, delivery or possession of illegal drugs on rented premises to a \$5,000 fine and/or 180 days in jail. The bill was referred to the Judiciary Committee.
- G. LICENSURE/CARPENTERS.** We have obtained a draft bill which would require licensure of carpenters and the use of only licensed carpenters in repair work. The bill, if passed, could increase industry costs.
- H. LICENSURE/LEASING PROFESSIONALS.** We now have an official draft bill which reflects a considerable amount of input from PMAM. MHC's efforts appear to have slowed for the time being. No bill introduction at this time. **PMAM and MAR to discuss the issue this summer.**
- I. LEASE CANCELLATION - DOMESTIC VIOLENCE.** Sen. Garcia (R-Howell) changed course and introduced a bill (**SB 808**) allowing victims of domestic violence to terminate a lease unilaterally. However, he has committed to addressing the issues and concerns we presented prior to moving the bill. The bill is in the Senate Judiciary Committee. **Sen. Garcia has agreed to work with PMAM in adopting a Colorado-type approach to this legislation.**
- J. LEASE CANCELLATION – MILITARY DUTY.** Rep. Frank Accavitti (D-Eastpointe) introduced a bill, **HB 5477**, which would allow a person called up to active National Guard or military reserve duty to cancel a lease on 30 days notice. Bill was referred to House Government Operations Committee in December 2005.
- K. NON-ATTORNEY REPRESENTATION.** Rep. Sak (D-Grand Rapids) introduced a bill (**HB 4732**/Judiciary Committee) to allow a non-lawyer with personal knowledge of the facts in dispute to represent another party in certain landlord-tenant cases. Sen. Cropsey (R-DeWitt) has introduced a bill (**SB 815**) to allow property managers with direct knowledge of the

facts in dispute to represent themselves in certain landlord-tenant matters when the amount in dispute is \$3000 or less. The bill is in the Senate Judiciary Committee which he chairs. Rep. Mortimer (R-Horton) introduced **HB 5625** to allow real estate agents to represent landlords in small claims court in security deposit disputes under certain circumstances. Referred to House Judiciary Committee.

- L. SOURCE OF INCOME.** Sen. Toy (R-Livonia) introduced a bill (**SB 574**/Judiciary Committee) to include “source of income” in the state’s Elliot Larsen Civil Rights Act. Sen. Toy’s office says she has no intention of running the bill in the near future. However, this presents an opportunity to educate her on the issue and possibly to include language that would clarify that locals cannot require owners/managers to accept Section 8 vouchers. Rep. Chris Kolb (D-Ann Arbor) has re-introduced similar legislation in the House (**HB 4984**/Government Operations Committee). Rep. Kolb (D-Ann Arbor) has re-introduced an identical bill in the House (**HB 4984** referred to Government Operations Committee).

#### IV. OTHER LEGISLATION OF INTEREST

- A. AFFORDABLE HOUSING/INCLUSIONARY ZONING. HB 4180** (Hunter, D-Detroit). Referred to Commerce Committee. Bill would authorize locals to zone or enter into developer agreements for affordable housing.
- B. BLIGHT/CONDEMNATION.** Rep. Tobocman (D-Detroit) has introduced a bill (**HB 5202**, referred to House Local Government Committee) which would amend Michigan’s existing blight condemnation law.
- C. BUILDING CODES/LOCAL AMENDMENTS.** Sen. Hardiman (R-Kentwood) introduced a bill (**SB 490**/Local Urban and State Affairs) that would allow a local unit of government to adopt local changes to a fire prevention or property maintenance code under the Single State Construction Code. It appears Senator Hardiman introduced this bill at the behest of the City of Grand Rapids.
- D. BUILDING OFFICIALS/PENALTIES. SB 150** (Kuipers, R-Holland). Referred to Economic Development, Small Business and Regulatory Reform Committee. Bill would add new penalties and complaint investigation procedures for wrongdoing by building officials. A similar bill, **HB 4507**, sponsored by Rep. Rick Baxter (R-Jackson) introduced and referred to House Commerce Committee.
- E. CONDOMINIUM ACT/OMBUDSMEN.** Rep. Gosselin (R-Troy) introduced a bill which would create an office of a condominium ombudsmen modeled after a Florida law. **HB 6199** was referred to the House Government Operations Committee.

- F. **HOME INSPECTIONS/LICENSING. HB 4134** (Lemmons, D-Detroit). Referred to Regulatory Reform Committee. A reintroduction of a bill from last term that would include home inspectors in occupational licensure code.
- G. **HOUSING IMPACT STATEMENTS.** Reps. Ward (R-Brighton) and Huizenga (R-Holland) introduced **HBs 4836 and 4837** which would require local governments to provide affordability impact statements on new ordinances or regulations which affect housing. Referred to House Natural Resources and Great Lakes Committee. Bills recently received a committee hearing and are backed primarily by the Home Builders.
- H. **LANDLORD SELF REPAIR. HB 4171** allowing for reimbursement for landlord and property managers for the costs of self-performed repairs passed the House and was referred to the Senate Judiciary Committee on March 2, 2006. **The bill now includes property managers thanks to our joint lobbying efforts. Became 2006 PA 147.**
- I. **LANDLORD-TENANT/TECHNICAL CHANGE.** The House passed a bill, HB 5030, sponsored by Rep. Steil (R-Cascade) which makes a purely technical change to a notice provision in the landlord-tenant act. The bill is currently in the Senate Local, Urban and State Affairs Committee.
- J. **LIABILITY/LEAD PAINT/MOLD. HB 4182** (Hunter, D-Detroit). Referred to Judiciary Committee. Would amend RJA to make a person who “knowingly” rents, leases, or sells real property with lead-based paint, toxic mold or asbestos without disclosure is liable for triple damages, costs, and attorneys fees in a civil suit.
- K. **METH LABS/NOTIFICATION. UPDATE: Bills became PA’s 258 and 260 of 2006 on July 12, 2006. SB 1112 (S-1)** would amend the Housing Law of Michigan to transfer from the Department of Environmental Quality to the Department of Community Health responsibilities regarding potential contamination of property that was the site of illegal drug manufacturing. Under the Housing Law, a State or local law enforcement agency must notify the enforcing agency and the DEQ regarding the potential contamination of any property or dwelling that is or has been the site of illegal drug manufacturing. Within 14 days after receiving the notification or as soon thereafter as is practically possible, the DEQ, in cooperation with the enforcing agency, must review the information received from the law enforcement agency, emergency first responders, or hazardous materials team that was called to the site and make a determination regarding whether the premises are likely to be contaminated and whether that contamination may constitute a hazard to the health or safety of those who may occupy the premises. The fact that property or a dwelling has been used as a site for illegal drug manufacturing must be treated by the DEQ as prima facie evidence of likely contamination that may constitute a hazard to the health or safety of those who may occupy the premises.

The bill would refer to the DCH, rather than the DEQ, in these provisions. The bill also would require a law enforcement agency to give notice of potential contamination to the local health department, if it were not the enforcing agency. Currently, the DEQ must promulgate rules. **Bill presented to Governor on 6/23/06.**

**HB 5798 (S-1)** (Schuitmaker, R-Lawton) would transfer the responsibility for serving as the State's environmental health agency from the Department of Community Health to the Department of Environmental Quality. It would also require that the DCH, in consultation with the DEQ, develop a cleanup of clandestine drug labs guidance document within six months after the bill's effective date. It would further prescribe procedures that law enforcement agencies, the DCH, and local health departments would have to follow after the discovery of an illegal drug manufacturing site. The Senate added the following provision regarding steps a property may take to “decertify” a property as contaminated:

PROPERTY OWNER MAY ESTABLISH THAT THE PROPERTY IS DECONTAMINATED BY SUBMITTING A WRITTEN ASSESSMENT OF THE PROPERTY BEFORE DECONTAMINATION AND A WRITTEN ASSESSMENT OF THE PROPERTY AFTER DECONTAMINATION, ENUMERATING THE STEPS TAKEN TO RENDER THE PROPERTY DECONTAMINATED, AND A CERTIFICATION THAT THE PROPERTY HAS BEEN DECONTAMINATED AND THAT THE RISK OF LIKELY CONTAMINATION NO LONGER EXISTS TO THE ENFORCING AGENCY. THE PROPERTY OR DWELLING SHALL REMAIN VACATED UNTIL THE ENFORCING AGENCY HAS REVIEWED AND CONCURRED IN THE CERTIFICATION.

- L. **TAXATION –ENERGY EFFICIENCY CREDITS.** Rep. Kolb (D-Ann Arbor) introduced **HB 5741** to provide a tax credit for landlords who upgrade energy efficiency of residential rental property; provide for. Amends. Referred to House Tax Policy Committee.
- M. **TAX CREDIT/RENTING TO ARTISTS.** Rep. Mayes (D-Bay City) introduced a bill, **HB 6177**, which would provide a tax credit for landlords who rent to artists. Referred to Commerce Committee in June 2006.
- N. **UNIFORM CONDEMNATION & RELATED ACTS/PROCEDURAL AMENDMENTS.** Public Act 40 of 1965 (MCL 213.352) generally requires public agencies obtaining land for a public purpose through purchase or condemnation to pay the necessary and reasonable moving expenses of an occupant of the land. The act caps the payment at \$1,000 for individuals and families, and \$15,000 for businesses, including farming operations and nonprofit organizations.

**HB 5817, passed by Senate on 6/22/06 laid over, (Tobocman, D-Detroit)** would increase cap on payments made to individuals and families to \$5,200. The bill would not, however, increase the cap on payments made to businesses. Also, the bill specifies that occupants of residential property with a leasehold interest of less than six months would be entitled to a fixed moving

allowance of \$5,200. Further, the bill provides that the court could award reasonable attorney fees and costs to an occupant with a leasehold interest of less than six months who bring a successful action to recover the moving allowance.

In addition, the act requires an occupant to vacate the property before payment is made. The bill provides that a payment may be made to an occupant before he or she moves, if the payment is necessary to enable to occupant to move.

The Uniform Condemnation Procedures Act (MCL 213.66) generally provides that a condemning agency is not required to reimburse a person challenging the necessity of the taking or the validity of the proceedings for attorney or expert witness fees if the challenge is unsuccessful. **HB 5818, passed by Senate on 6/22/06, laid over, (Drolet, R-Macomb)**, provides that the agency would be required to reimburse attorney and expert witness in an unsuccessful challenge if the person's annual income is at or below 125 percent of the federal poverty level.

**HB 5819, advanced to Senate Third Reading calendar on 6/21/06, (Garfield, R-Oakland County)**, would amend the Uniform Condemnation Procedures Act (MCL 213.59) to require that property owners be paid at least 30 days prior to dispossession of their property. Any disputes that arise after payment is made would have to be resolved at an appropriate hearing before dispossession.

Further, the bill provides that if dispossession requires an occupant of a residential dwelling on the property to move, the occupant could not be required to move unless he or she has been provided a reasonable opportunity to relocate to a comparable replacement dwelling and has been paid the moving allowance as provided under Public Act 40 of 1965.

The Uniform Condemnation Procedures Act (MCL 213.58) permits a public agency to bring a state or federal cost recovery claim against a property owner to remediate any environmental contamination, and further permits the court to allow a portion of the just compensation payment to a property owner remain in escrow as security for the remediation costs. **HB 5820, bill remains in Senate Transportation Committee, (Lemmons, III, D-Detroit)**, provides that money wouldn't remain in escrow as security for remediation costs if the property is a residential dwelling.

The Uniform Condemnation Procedures Act (MCL 213.55) generally provides that before an agency initiates negotiations to purchase a property, it must provide the property owner with a good faith written offer of "just compensation" for the property. If the agency and the owner cannot agree on the purchase price, the agency may file an action in the circuit court of the county where the property is located, asking the court to determine the amount of just compensation. When an action is filed, the agency must place an

amount it believes to be just compensation in escrow and set aside for the property owner.

**HB 5821, the bill remains in Senate Transportation Committee, (McConico, D-Detroit),** provides that at the time the agency provides the property owner with its good faith offer of just compensation, it must also notify the property's occupants of the condemnation proceeding, stating their basic rights in the process, including the fact that a person with a leasehold interest of less than six months is entitled to a \$5,200 moving allowance, and that occupants of a residential dwelling could not be displaced until they have had a reasonable opportunity to relocate to a comparable dwelling and have been paid the moving allowance.

The act also permits a property owner to file a written claim with the agency stating property the owner believes was not included or fully included in the agency's good faith offer, and requires that such claims be filed within 90 days after receiving the written offer or 60 days after a complaint is filed. The act also requires that the agency ask to court to compel the property owner with additional information necessary to evaluate the claim within 60 days after receiving the claim. The bill would delete these time requirements, and provide that the property owners claim would have to be filed along with the appraisal, unless otherwise required by the court. The bill would also require the property owner to provide available information necessary to permit the agency to evaluate any claim that has not fully accrued or is continuing in nature.

- O. **ZONING/NON-CONFORMING USES.** Rep. Steve Tobocman (D-Detroit) has introduced a bill (**HB 5203** referred to House Local Government Committee) which would amend the city zoning act to make clear that a local ordinance can call for the termination of a non-conforming use after a period of amortization.
- P. **ZONING VIOLATION FINES.** Rep. Hune (R-Fowlerville) introduced a series of bills (**HBs 5294-96**) which would amend municipal zoning statutes to create a 30 day grace period to correct a zoning violation prior to liability for a fine. The bill would also limit such fines to the lesser of the following: i) \$500 for a criminal fine only; ii) \$250 for each day of violation; or iii) or 3% of SEV. **The bills passed out of committee and are currently on the House floor.**

