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ADDENDUM: RECENT DEVELOPMENTS REGARDING THE SEX OFFENDERS REGISTRATION ACT

By Patrick Affholter, Legislative Analyst

The May/June 2002 issue of *State Notes: Topics of Legislative Interest*, included an article discussing recent developments regarding the Sex Offenders Registration Act (SORA). In part, that article reviewed a Federal District Court case in which SORA's provision allowing information from the sex offender registry to be available to the public, including via the Internet, was ruled unconstitutional (*Fullmer* v *Michigan Department of State Police*). As noted in the previous article, the District Court judge enjoined the State from enforcing SORA's public disclosure provisions.

The State appealed that ruling to the U.S. Court of Appeals for the Sixth Circuit, asking the Circuit Court to stay (or put on hold) the lower court's ruling pending the appeal of the case. The State also moved to stay further appellate proceedings until the U.S. Supreme Court addresses a similar case concerning the Connecticut sex offender registry. Citing the potential loss of Federal law enforcement grants and the public interest, on August 21, 2002, the Sixth Circuit Court granted the stay of the District Court's injunction pending appeal. This order thereby allows registry information to be made available to the public, including being posted on the Department of State Police website. The Circuit Court refused, however, to hold up the appeal pending the Supreme Court's ruling in the Connecticut case.

The previous *State Notes* article also discussed a recent decision of the Michigan Court of Appeals, which found that SORA is *not* unconstitutional (*People* v *Wentworth*). To clarify the impact of the conflicting rulings, it should be noted that the *Wentworth* decision does constitute precedent for State courts in Michigan, although the State itself is subject to the rulings in *Fullmer*.

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K-12: A MOVING TARGET

by Joe Carrasco and Kathryn Summers-Coty, Fiscal Analysts

Where Have We Been?

Prior to the implementation of Proposal A, about 80% of a school district's revenue was raised at the local level through property taxes. Since Proposal A went into effect in the 1994-95 school year, about 80% of a school district's revenue comes from the State while an estimated 20% is raised through local property taxes. On the property taxpayer side, homeowners went from paying an average K-12 education millage rate that was close to 33 mills before Proposal A, to paying an average of just six mills since Proposal A. Nonhomestead property owners went from an average millage rate of 33 mills to an average of 18 mills since the implementation of Proposal A. Proposal A also brought about a new funding mechanism called a foundation allowance, which is a per-pupil amount that is guaranteed each year and provides the majority of a school district's operating revenues.

The amount of State funding a school district receives is determined by the difference in the amount of foundation allowance revenue that is guaranteed and the amount of revenue raised through local property taxes. The majority of school districts raise their local revenues through the statutorily determined millage rate of 18 mills on nonhomestead property. Both homestead and nonhomestead property owners pay a State Education Tax (SET) of six mills that does not stay locally but goes directly to the State, which in turn helps fund the portion of a district's foundation allowance that is not raised through its local property tax millage. The amount of State funding is capped each year; thus, districts that need additional revenue to ensure that they receive their full foundation allowance must levy "hold harmless" millage. Less than 10% of Michigan's school districts are allowed to levy hold harmless millage on property. With voter approval, these districts may levy additional millage (first on homestead property up to 18 mills, then uniformly on all property) up to the amount necessary to receive their full foundation allowance.

By the time fiscal year (FY) 2003-04 arrives, it will have been nine years since Proposal A was first implemented in the 1994-95 school year. In those nine years, the gap in per-pupil funding between the highest foundation allowance district and the lowest will have been narrowed by exactly $1,000 per pupil. In FY 1994-95 the minimum foundation allowance was $4,200 per pupil, while the highest foundation allowance (excluding the island school districts) was $10,454. The gap between highest and lowest was $6,254. In FY 2003-04, the minimum foundation allowance will be $6,700 while the highest (again, excluding the island school districts) will be $11,954, a difference of $5,254. The growth in the foundation allowances for those at the minimum over nine years will have been $2,500 per pupil in total while the per-pupil total increase over the same nine years for the highest foundation allowance district will have been $1,500, thus narrowing the gap between highest and lowest by $1,000 per pupil.

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Table 1

FOUNDATION ALLOWANCE HISTORY

Year	Basic Foundation Allowance	Increase from Prior Year	Additional Payments	Minimum Foundation Allowance	Average Foundation Allowance	Highest Foundation Allowance*
1993-94	N/A	N/A		2,762**	5,272**	10,294**
1994-95	5,000	N/A		4,200	5,942	10,454
1995-96	5,153	153		4,506	5,685	10,607
1996-97	5,308	155		4,816	5,876	10,762
1997-98	5,462	154		5,124	6,059	10,916
1998-99	5,462	0	$51 suppl. payment (not incl. in base)	5,170	6,068	10,916
1999-2000	5,700	238		5,700	6,342	11,154
2000-01	6,000	300		6,000	6,648	11,454
2001-02	6,300	300	$200 equity payment (included in base)	6,500	6,952	11,754
2002-03	6,700	400-200 = 200		6,700	7,229	11,954
2003-04	6,700	0		6,700	7,229	11,954

* Excludes island school districts.
** This was the amount of the base calculation that was used to determine the FY 1994-95 foundation allowance.

Table 1 illustrates how the basic foundation allowance has grown over the years and how, beginning in FY 1999-2000, the basic and minimum foundation allowances have become one and the same. (The basic foundation allowance is used to determine the amount of per-pupil increase for each school district. Districts at or above the basic foundation allowance receive only the per-pupil amount of increase while, previously, districts below the basic foundation allowance received up to twice the amount of increase depending on how far below the basic foundation allowance was their actual foundation allowance. With all 554 local school districts now being at or above the basic foundation allowance, the gap between the school district with the highest foundation allowance and those at the minimum (the basic foundation allowance) is permanently reduced. From now on, all school districts will receive exactly the same amount of per-pupil increase in their foundation allowances in years that an increase is provided by the Legislature, unless a new formula is enacted.)

Budget Bills

The seven years since Proposal A was implemented have seen a total of 14 K-12 School Aid appropriations bills adopted. At an average of two budget bills per year, school aid in Michigan has been anything but quiet. While the adjustments to the foundation allowance in all but one of those seven years remained intact (meaning that there was only once a change in the amount of the original per-pupil adjustment to the

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foundation allowance in years when a supplemental and/or multiple-year budget bill was enacted), several policy changes have come and gone, most notably, those dealing with the *Durant I* and *Durant II* court cases. Table 2 provides a brief history of the budget bills that have been passed since the details of Proposal A were first laid out in Public Act (P.A.) 336 of 1993.

Table 2

K-12 BUDGET BILL HISTORY

P.A. #	Year	Bill #	Bill Contents
336	1993 (Dec.)	HB 5123	FY 1993-94 Supplemental FY 1994-95 original appropriation & Implementation of Proposal A
283	1994 (July)	HB 5463	FY 1994-95 1st supplemental
360	1994 (Dec.)	SB 887	FY 1994-95 2nd supplemental
130	1995 (June)	HB 4436	FY 1995-96 original appropriation
300	1996 (June)	SB 851	FY 1995-96 supplemental FY 1996-97 original appropriation
93	1997 (Aug.)	HB 4310	FY 1997-98 original appropriation Veto of At-Risk appropriation
142	1997 (Nov.)	SB 178	*Durant I* FY 1997-98 supplemental FY 1998-99 original appropriation
339	1998 (Oct.)	HB 5516	FY 1998-99 1st supplemental FY 1999-2000 original appropriation
553	1998 (Dec.)	SB 240	FY 1998-99 2nd supplemental FY 1999-2000 1st supplemental
119	1999 (July)	HB 4498	FY 1998-99 3rd supplemental FY 1999-2000 2nd supplemental FY 2000-01 original appropriation
297	2000 (July)	SB 1044	*Durant II* FY 1999-2000 3rd supplemental FY 2000-01 1st supplemental FY 2001-02 original appropriation FY 2002-03 original appropriation
121	2001 (Sept.)	HB 4371	FY 2000-01 2nd supplemental FY 2001-02 1st supplemental FY 2002-03 1st supplemental
191	2002 (April)	SB 1107	FY 2001-02 2nd supplemental FY 2002-03 2nd supplemental
521	2002 (July)	HB 5881	FY 2002-03 3rd supplemental FY 2003-04 original appropriation

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Beginning with the fall of 1997, the K-12 budget bills have been multiple-year appropriations. Public Act 142 of 1997 contained supplemental appropriations for FY 1997-98 as a result of the settlement of the first *Durant* lawsuit and began the trend that continues today by also including the initial appropriations for FY 1998-99 while in the middle of the 1997-98 fiscal year. This first multiple-year budget bill was enacted to secure funding for the upcoming fiscal year in order to relieve the uncertainty that many school districts were experiencing because of the possibility that their funding may be decreased as a result of the settlement of that first lawsuit. As seen in Table 2, the trend progressed from two-year budget bills to three-year budget bills with the enactment of P.A. 297 of 2000. Public Act 297 contained supplemental appropriations for FYs 1999-2000 and 2000-01 to address the second *Durant* lawsuit. Again, in order to secure funding for future years, the Legislature enacted a budget for FY 2002-03 as well as FY 2001-02. Both of those fiscal years have been supplemented three times since the enactment of P.A. 297, most recently with the enactment of P.A. 521 of 2002 which also contains the initial appropriation for FY 2003-04. The contents of P.A. 521 are discussed in more detail below.

Where Are We Now?

Declining revenues were confirmed at the January 2002 revenue estimating conference, necessitating a revised K-12 budget to balance anticipated revenues with expenditures, both for FY 2001-02 and for FY 2002-03. The basic foundation allowance had already been enacted for FY 2002-03 with a $200 per-pupil increase, which would not be sustainable without a dramatic increase in revenues. The Governor released a budget plan in February 2002, providing the necessary revenues to balance the FY 2001-02 budget and supporting the $6,700 basic allowance in FY 2002-03, which incorporated three one-time funding sources: 1) moving ahead the collection of the State Education Tax (generating revenue estimated at $474.3 million); 2) transferring $350 million from the Budget Stabilization Fund to the School Aid Fund (SAF); and 3) transferring $79.5 million from an account within the Michigan Employment Security Act Contingent Fund to the General Fund for use in the K-12 budget. Senate Bill (S.B.) 1107, predicated upon these three funding sources and various budget-balancing appropriations, was enacted in April, and became P.A. 191 of 2002.

At the time the Governor's FY 2002-03 budget was presented in February, it appeared as though there would be a sufficient fund balance in the School Aid Fund at the end of FY 2002-03 to support a continuation budget in FY 2003-04. However, by the May 2002 revenue estimating conference, this prediction was overturned. Not only was a continuation budget impossible for the following year, but the recently-enacted FY 2002-03 budget would face an estimated deficit of $73 million.

During the same time, the Governor and the Legislature began discussions on increasing the cigarette tax as a means to help balance the FY 2002-03 General Fund (GF) budget. The discussions centered initially on a 30-cent per-pack increase in the tax, but in a new plan that emerged toward the end of June, a 50-cent per-pack increase was proposed, with 20 cents per pack dedicated to the SAF. In this manner, the deficit

for FY 2002-03 would be eliminated and a continuation budget for FY 2003-04 could be positively sustained. It is anticipated that the additional revenue from the 20-cent per-pack earmarking will generate $225 million between August 1, 2002 (the implementation date for the tax increase) and September 30, 2004. These revenues, combined with an estimated $54 million in new revenues from a Sunday lottery drawing, are expected to eliminate the deficit projected, given the assumptions that the economic growth of the SAF is at least 4.5%, the continuation budget remains in place without further supplementals, and $198 million is again transferred from the GF to the SAF (as was the case in FY 2001-02 and will be for FY 2002-03).

The result of these negotiations was the adoption and subsequent enactment of House Bill 5881 (P.A. 521 of 2002), a K-12 budget that includes two changes from S.B. 1107 for the 2002-03 fiscal year and a continuation budget for FY 2003-04. The upcoming changes comprise rolling $15 million into Detroit Public Schools' foundation allowance (which will remain in place as long as the reform board administers the district), and providing funding for declining enrollment grants in Upper Peninsula districts (rather than only for Lower Peninsula districts, as previously provided). The main purpose of P.A. 521, however, was to enact an FY 2003-04 continuation budget, which maintains all funding from the previous year with the exception of three items: 1) a one-time appropriation of $5.4 million to pay the debt service on the School Bond Loan Fund; 2) a one-time appropriation of $4.6 million to reimburse local treasurers for administrative revenues lost from the (one-time) one-mill reduction in the SET (which accompanied the acceleration in collections); and 3) discontinuation of declining enrollment grants for Upper Peninsula districts.

In conclusion, the budget supporting K-12 education in Michigan is a steadily moving target, responding with alacrity to changes in revenue forecasts. At this time, an FY 2003-04 continuation budget has been enacted, the first State budget to be enacted for that fiscal year. Given the uncertainty of the economy, the political climate, and the trend of K-12 School Aid appropriations over the past several years, it is nearly assured that the appropriations for FY 2003-04 will be revisited.

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ALTERNATIVE ENERGY DEVELOPMENTS

by George Towne, Legislative Analyst

Current and Developing Energy Systems

Modern society uses vast amounts of fossil fuels. For over a century, the internal combustion engine, using petroleum-based gasoline and diesel fuel, has been the dominant device used to power vehicles and other types of transportation. At the same time, oil, coal, and natural gas have been burned at large, centrally located power plants for conversion to and distribution of electricity, to satisfy the ever-increasing demands of consumers for this highly useful type of energy. Many people would agree that dependence on oil, gas, and other fossil fuels for the production of usable power, to run vehicles and machines and to heat or cool structures, is problematic in that these resources are finite and will one day become scarce. Further, many would agree that the burning of these fuels over a period of time has polluted the air, increased the "greenhouse" effect on the atmosphere, and caused a number of other environmental problems.

Though opinions vary widely concerning the length of time existing resources will last and the degree of environmental damage to date, given the widespread belief that increased use of nonrenewable fuels is unwise, and perhaps damaging, numerous individuals, private concerns, and governments have spent many years and millions of dollars searching for and researching alternative energy sources. While the development of alternative energy technologies has advanced, none of these energy sources has replaced traditional power production on a mass scale. Nevertheless, some believe that the conversion from fossil fuel dependence to alternative energy sources may be near.

A study conducted for the Michigan Economic Development Corporation (MEDC) addresses this issue, particularly as it relates to vehicles and the implications it may have for the future of this State. In "Positioning the State of Michigan as a Leading Candidate for Fuel Cell and Alternative Powertrain Manufacturing"[1], the author states the following:

> The automotive industry enters the 21st century on the verge of a new powertrain paradigm. Recent technological developments suggest the internal combustion engine (ICE), which has been the driving force over the first 100 years, may have a major competitor within the coming decades. Many industry participants believe that fuel cell technology has the potential to replace the ICE as the

[1] Brett C. Smith, Senior Industry Analyst, the Center For Automotive Research at Erim, Inc., August 2001

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primary source of propulsion for automotive applications. Although there are significant hurdles yet to be overcome in the development of a cost-effective automotive fuel cell and a viable infrastructure, the implications for the automotive industry and the State of Michigan could be truly profound. Currently there are 33 engine plants and 14 transmission plants in North America. Importantly, there are 10 engine plants and 5 transmission plants in Michigan and nearly 27,000 people are employed in these facilities (Harbour 2000). The development of a cost-competitive automotive fuel cell would likely make many of those powertrain facilities obsolete. As these plants close, they could be replaced by out-of-state facilities specially built for the new fuel cell technology.

Recent reports show that experimental models are already in production. In California, Honda has announced that it will begin leasing hydrogen-powered FCX (fuel cell experimental) four-passenger vehicles to government and institutional users (although Honda evidently has no plans to mass-market its FCX to consumers). The vehicles carry 41 gallons of hydrogen, have a top speed of 96 mph and a range of 220 miles, and have been certified as having zero emissions (*Detroit Free Press*, July 26, 2002). Despite these achievements, and the benefits displayed by fuel cells, there are technological barriers to their development that must be overcome.

A fuel cell is a device that consists of an anode, cathode, and electrolyte, and operates by converting chemical energy into electrical energy. Unlike batteries, fuel cells do not run down and do not require recharging, but do require fuel. When hydrogen is used as the fuel, reportedly the only byproduct from the conversion to electricity is water, and because a fuel cell has no moving parts, this method of producing energy is clean and efficient. While an individual fuel cell produces a small amount of electricity, cells may be stacked to produce greater, usable outputs. Because hydrogen appears to be the most abundant element in the universe, some people view its use in fuel cells as a solution to the need to reduce dependence on fossil fuels and the pollution that results.

NextEnergy Proposal

Governor Engler addressed the issue of alternative energy in his 2002 State of the State Message, stating, “It is no longer a question of whether, but when, we will leave behind an economy powered by fossil fuels.” The Governor further stated that it cannot be assumed that Michigan will maintain its dominant place in the auto industry, and that the State must develop a strategy to prepare for the transformation of the auto industry, and society in general, from fossil fuel dependence to alternative energy sources.

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In April, the Governor presented an economic development plan referred to as "NextEnergy", designed to promote the research, development, commercialization, and manufacture of alternative energy technologies, such as hydrogen fuel cells. As developed by the MEDC, the major components of the NextEnergy plan are, in part, to establish a NextEnergy zone in which to build a cluster of alternative energy industries; establish a NextEnergy center; provide incentives to alternative energy technology companies to locate in Michigan; and market Michigan as the location for the alternative energy technology industry.

In response to the Governor's proposal, legislation was introduced to create in statute a tax-free alternative energy zone on parcels of State-owned land in York Township in Washtenaw County; create an authority to oversee the zone and an alternative energy technology park; and provide tax exemptions and credits for certain alternative energy systems and businesses against personal property taxes, the single business tax, the sales tax, and the use tax.

Some components of the legislative package have been enacted. Public Act 512 of 2002 (House Bill 6071) amended the Michigan Renaissance Zone Act to allow the Michigan Strategic Fund board to designate one renaissance zone as an alternative energy zone for up to 20 years. Within the alternative energy zone, eligible businesses that promote, research, and develop alternative energy technologies may be eligible to claim certain exemptions against property and single business taxes. Public Act 531 (Senate Bill 1322) amended the Single Business Tax Act to allow a taxpayer to claim a credit against the tax for certain qualified business activity (research, development, or manufacturing of an alternative energy system, vehicle, or technology, or renewable fuel) if certified by the Michigan Next Energy Authority as a taxpayer eligible to claim the credit. Public Act 549 (House Bill 6074) amended the General Property Tax Act to exempt from personal property taxes alternative energy personal property if certified by the Michigan Next Energy Authority.

Bills to create the Authority and grant exemptions from the sales tax and use tax have not been enacted to date. The major bill in the package has passed both the Senate and the House of Representatives, and is currently in the House pending concurrence in Senate amendments. This bill (Senate Bill 1316) would create the Michigan Next Energy Authority Act and the Next Energy Authority, prescribe the powers and duties of the Authority, and transfer to the Authority parcels of State-owned land in York Township for the alternative energy zone.

An analysis of a recent version of the legislative package is available through the Senate Fiscal Agency website (www.senate.state.mi.us/sfa/). As the legislation changes, the analysis will be updated.

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Present Activity

Unless, or until, Senate Bill 1316 (or similar legislation) is enacted, progress toward building a cluster of alternative energy industries may be limited. While the property tax and single business tax exemptions are in place as an incentive for businesses to locate in the alternative energy zone, apparently taxpayers will not be able to claim the exemptions until certified by the Authority, which is proposed by Senate Bill 1316. If the bill is enacted, the Authority will not be operational until the Governor appointed its board, which also is proposed by the Senate bill.

Under Public Act 512, the Michigan Strategic Fund board may designate an alternative energy zone. Although it has not done so yet, and the land for the zone has not yet been transferred from the State to the Authority (as proposed by Senate Bill 1316), the MEDC reports that its representatives have met with the York Township board to seek approval of the zone's designation (which is required to create a zone within a local unit's boundaries), and that the township board will meet on the issue in the near future.

Further, the MEDC reports that even though the Authority, which would be charged with developing and operating the zone property, has not been created, progress continues with other local units close to the proposed zone. Reportedly, the Ypsilanti Community Utility Authority provides water and sewer services to the property, and the sewage eventually flows to Pittsfield Township. Service agreements are being negotiated with the utility authority and the township. The MEDC also is in contact with various Federal agencies regarding possible Federal funding for alternative energy activities in the zone, and Federal regulations that may be pertinent to it.

Some people believe that if the legislation to establish the Next Energy Authority and zone is enacted, it will help the State to encourage alternative energy companies to locate alternative energy research and development facilities within the zone. Other states also are striving to become a center of research and development for alternative energy systems, especially systems that will be practical to power vehicles. While General Motors has a fuel cell research facility in Warren, Michigan, it recently opened a new fuel cell research center in New York. In addition, other states, such as California and Ohio, reportedly have been aggressively recruiting automotive companies to locate fuel cell research centers within their borders.

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