

CAPITOL NEWS UPDATE

WEEK OF AUGUST 24, 2020

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UNUSUAL AUGUST CONSENSUS REVENUE ESTIMATING CONFERENCE BRINGS MIXED REVIEWS

Federal stimulus checks and unemployment benefits buoy revenue compared to May estimates

Michigan's budget revenue projections are up for the 2020-21 fiscal year compared to what was projected in May, according to state budget experts who met Monday for an unusually timed Consensus Revenue Estimating Conference. Although the state's budget will remain less than pre-COVID-19 levels, Federal stimulus checks and expanded unemployment benefits appear to have bolstered Michigan's economy over the last few months, slowing an ongoing recession.

The additional August conference was scheduled this year due to tax deadlines being delayed during the COVID-19 pandemic.

In May, officials had projected a \$3 billion deficit for the fiscal year 2020-21 that begins in October. The new numbers show a projected deficit of less than \$1 billion compared to May's numbers.

Earlier this year, the Legislature and the Administration had agreed to close the budget deficit in the current fiscal year. With higher revenues and lower deficit, however, the 2020-21 budget, which begins in October, will now be somewhat easier to balance.

For the current Fiscal Year 2019-20:

- Revenues are up about \$2.3 billion from May estimates including with \$1.3 billion for the General Fund and \$1 billion in the School Aid Fund.
- Combined numbers still remain \$926 million less than January estimates for the School Aid Fund and General Fund.

For Fiscal Year 2020-21:

- Revenues are up about \$579 Million from May estimates with General Fund estimates up by \$257 million and School Aid Fund revenues are up by \$321 million from the May estimates.
- Combined numbers still remain \$2.47 billion less than January estimates for the School Aid Fund and General Fund.

For Fiscal Year 2021-22:

- Combined School Aid Fund and General Fund revenues are \$1.71 billion less than estimated in January.

Overall, the revenue projections were boosted mostly due to money from the CARES Act programs that added almost \$43.3 billion to Michigan's economy during the second quarter of 2020, according

to officials from the Department of Treasury, and both the House and Senate Fiscal agencies. This money included providing \$16 billion in loans to businesses in the state, \$13.4 billion in federally funded unemployment assistance and \$8.3 billion in payments to residents

Other revenue changes included the change in the state's withholding payments from the federal unemployment assistance. In addition, officials said that consumers spent more than elsewhere in the country, and more than expected.

Originally in May, state economists lowered state sales tax collections for the current fiscal year from \$8.7 billion to \$7.5 billion. These projections were raised back to \$8.2 billion at the August conference.

Additional changes:

- Restaurant tax collections down 23%
- Total vehicle sales are down, but people buying autos are purchasing more expensive ones.
- Building materials, gardening supplies, and home improvement projects are up.
- Michigan Lottery sales are up \$160 million this year, helping the state's School Aid Fund.

Legislators and budget officials on both sides of the aisle gave their opinion on what should happen going forward, with Republican leaders including House Appropriations Committee Chair Rep. Shane Hernandez (R-Port Huron) giving credit to the federal assistance for "buying us time" but insisting "federal money is not a permanent solution."

Budget Director Chris Kolb called for an additional federal stimulus package citing "dramatic revenue losses in fiscal years 2021 and 2022, totaling nearly \$4.2 billion."

COURT OF APPEALS RULES FOR WHITMER IN BATTLE OVER EMERGENCY AUTHORITY

In a 2-1 opinion last week, the Michigan Court of Appeals ruled in favor of Governor Gretchen Whitmer's use of emergency authority through a little-known law to create executive orders during the COVID-19 pandemic.

Judge Jane Markey and Judge Kirsten Frank Kelly wrote that Whitmer was within her right to renew a state of emergency in the face of a growing pandemic. Judge Jonathan Tukel disagreed with the opinion.

Markey ruled that the Court agreed with Whitmer's interpretation of the Emergency Powers of the Governor Act of 1945 (EPGA), which Whitmer argued offered her the ability to issue a state of emergency, and in turn enact executive authority in a time of crisis.

"We conclude that the governor's declaration and extensions of a state of emergency, along with the associated EOs, were actions all falling within the scope of the governor's authority under the constitutionally-sound EPGA... The Legislature is thus not entitled to relief even if it has the requisite standing to sue the governor," Markey wrote.

Republicans argued that Whitmer could not use the EPGA to justify a statewide emergency and sidestep the legislative branch.

House speaker Lee Chatfield (R-Levering) and Senate Majority Leader Mike Shirkey (R-Clarklake) pledged to appeal the Court of Appeals ruling and said they believe the governor's actions violate the law.

"They ruled that constitutional provisions such as checks and balances and separation of powers no longer exist. This decision is incredibly dangerous, begins a terrible precedent and is blatantly unconstitutional," Rep. Chatfield wrote in a Facebook post following the ruling.

The Supreme Court had pre-scheduled oral arguments for September 2, but these were recently postponed until Sept. 9 due to a key staffer for Justice Richard Bernstein being diagnosed with COVID-19

The Supreme Court will address certified questions in another similar challenge to the Emergency Powers of the Governor Act of 1945, and also hold a hearing on the appeal of the lawsuit between the legislature and executive branch.

If the Legislature loses in the Supreme Court, options include repealing the EPGA on its own (although this would have to be signed by the Governor) or supporting a citizen's petition.

COURT SAYS BENSON HAS POWERS TO MAIL ABSENTEE BALLOT APPLICATIONS TO REGISTERED VOTERS

A Michigan Court of Claims ruling this week dismissed three consolidated lawsuits against Michigan Secretary of State Jocelyn Benson, finding that the SOS has the power to mail absentee ballot requests to registered voters.

The lawsuits claimed that Benson had acted outside of her lawful powers by mailing absentee ballot applications to the state's registered voters before the August and November elections.

Judge Cynthia Diane Stephens wrote that in consideration of Proposal 3, a 2018 ballot initiative that amended the state's Constitution to allow each resident the self-executing right to request an absentee ballot with no questions asked, Ms. Benson has the authority to send out absentee ballot voter applications to registered voters whether or not they ask for them.

"Given the ubiquitous attention paid to the importance of social distancing and limiting large gatherings, particularly indoor gatherings, the notion that it would be advisable to inform this state's electorate of its constitutional right to vote by absentee ballot, as opposed to in-person voting, cannot reasonably be disputed. Furthermore, it must be noted that all that has been sent are applications for absent voter ballots, not absent voter ballots themselves," Stephens wrote.

Republican legislators, including former Secretary of State, Sen. Ruth Johnson (R-Holly), opposed Benson's move to mail absentee ballot applications to Michigan's registered voters. There are additional cases regarding the matter pending in the U.S. District Court.

MICHIGAN DEPARTMENT OF CIVIL RIGHTS CHOOSES DETROIT POLICE OFFICIAL FOR EXECUTIVE POST

The Michigan Civil Rights Commission voted 5-3 this week to offer Detroit Police Department Assistant Chief James White the position of executive director of the Michigan Department of Civil Rights. If accepted, White would begin the position Sept. 21.

White, a graduate of Wayne State University, has been with the Detroit Police Department for almost 25 years. He also holds a mental health counseling license and is working to become a fully licensed counselor. White spoke with the commission about better improving community-policing interactions, saying that while he does not support any initiatives to defund police departments, better transparency and communication between police and the communities they serve is necessary to create better relationships.

According to the commission, a diverse group of seven candidates were considered. Appointed by the Governor, the commission investigates alleged discrimination against any person because of religion, race, color or national origin, genetic information, sex, age, marital status, height, weight, arrest record, and physical and mental disability.

White would replace former MDCR Executive Director Agustin Arbulu who was removed from the position last year after he was accused of making comments objectifying women.

The commission had also previously announced a finalist earlier in the process, Harvey Hollins III, but rejected his appointment in June due to his ties to the Flint Water Crisis.

MHSAA SAYS SEVERAL FALL SPORTS WAITING FOR GO AHEAD FROM WHITMER

The Michigan High School Athletic Association has cleared several fall sports to play over the past few weeks, but is waiting on Gov. Gretchen Whitmer to see when and how high school sports relying on indoor venues could be played.

Although Gov. Whitmer's return to school roadmap (EO 2020-142) clears schools in regions that are at least in Phase 4 of the governor's COVID-19 restart plan to play high school athletics, a different Executive Order (EO 2020-160) orders gymnasiums and other sports facilities in the state (other than in the Upper Peninsula and 17 northern Lower Peninsula counties) to remain closed.

If Whitmer opens the gyms and facilities for schools, private gymnasiums and ice arenas owners will press even harder to let them reopen in the areas where they are closed.

Currently, the MHSAA has ruled that volleyball, boys' soccer and girls' swimming teams can continue practicing outdoors in Phase 4 regions, but not compete. The teams can, however, travel to Regions 6 and 8 in the UP and northern Lower Michigan to compete.

MHSAA Executive Director Mark Uyl said they are working with the Governor's office on a resolution.

We have to make sure that we are following all current executive orders, which essentially right now is the issue," Mr. Uyl said. "The governor's office is aware of that right now and we are continuing to work together right now on the resolution."

Previously, Gov. Whitmer said athletics could resume as long as the school in question was in a region at least in Phase 4 and gave responsibility for decisions to the MHSAA as long as the region was at least in that phase.

Currently, MHSAA has postponed football to the spring, and is allowing schools to go ahead with practices and competitions in golf, cross-country and tennis in Regions 1-5 and 7 because they are outdoors and are not in conflict with social distancing requirements.

MM&A Briefs

\$600 Million Settlement for Flint Water Crisis Victims

Gov. Gretchen Whitmer and Attorney General Dana Nessel announced a \$600 million settlement for Flint residents affected by the Flint water crisis last week. The announcement included some details of the settlement which will include a claims process. Nessel said more information will be released once the agreement is finalized.

Ferguson Not Seeking Re-election to MSU Board

Longtime Michigan State University trustee Joel Ferguson announced earlier this month that he will not be seeking reelection to the MSU Board of Trustees. A Democrat who was first elected to the board in 1986, Ferguson said he plans to remain politically active and will be endorsing Rema Vassar's nomination for the Board of Trustees. Ferguson is a developer in the Lansing and Detroit area. He has come under fire for hiring former GOP Gov. John Engler as an interim university president, dismissive comments about women, and not releasing documents to Michigan's Attorney General.

Calendar of Important Events

Aug. 29 Rep. Mary Whiteford (R-Casco Twp.) PAC Fundraiser

Location: 4 p.m., Whiteford Family Farm, 46 North 68th St., South Haven

Aug. 31 Rep. Pauline Wendzel (R-Watervliet) Golf Outing

Location: 9 a.m., Point O'Woods Golf Course, 1516 Roslin Road, Benton Harbor

62nd House District candidate Dave Morgan (R) Fundraiser

Location: 6 p.m., JB Whiskey's, 3905 West Dickman Road, Springfield

Rep. Ryan Berman (R-Commerce Twp.) Fundraiser

Location: 6 p.m., Edgewood Country Club, 8399 Commerce Road, Commerce Twp.

Sept. 1 Sen. John Bizon (R-Battle Creek) Fundraiser

Location: 5 p.m., The Exchange, 314 East Michigan Ave., Lansing

Sept. 2 House Speaker Lee Chatfield (R-Levering) Majority Fund Breakfast

Location: 8 a.m., Governor's Room, Karoub Associates, Lansing

Sen. Peter MacGregor (R-Rockford) Fundraiser

Location: 5 p.m., Rooftop of Lambert & Co., 47 Commerce Ave., SW, Grand Rapids

Sept. 3 Rep. Julie Alexander (R-Hanover) Fundraiser

Location: 4:30 p.m., Jackson Country Club, 3135 Horton Road, Jackson

- Sept. 3 Rep. Rodney Wakeman (R-Saginaw Twp.) Fundraiser (Special guest U.S. Rep. John Moolenaar)**
Location: 6:30 p.m., The home of Sen. Ken and Veronica Horn, 401 Nickless St. Frankenmuth
- Sept. 8 Rep. Mari Manoogian (D-Birmingham) PAC Fundraiser**
Location: 8 a.m., Michigan Beer and Wine Wholesalers, Lansing
- Rep. Angela Witwer (D-Delta Twp.) Fundraiser**
Location: 11:30 a.m., Michigan Municipal League, Lansing
- Rep. Doug Wozniak (R-Shelby Twp.) Fundraiser**
Location: 4 p.m., Michigan Beer and Wine Wholesalers, Lansing
- Senate Republican Campaign Committee dinner**
Location: 5 p.m., University Club, 3435 Forest Road, Lansing, 5 p.m.
- Sept. 9 Rep. Jack O'Malley (R-Lake Ann) PAC Fundraiser**
Location: 7:30 a.m., Governor's Room, Karoub Associates, Lansing
- Rep. Scott VanSingel (R-Grant) PAC Fundraiser**
Location: 7:30 a.m., Michigan Beer and Wine Wholesalers, Lansing
- Rep. Pam Hornberger (R-Chesterfield) Fundraiser**
Location: 9 a.m., Lambert, 114 West Allegan St., first floor, Lansing
- Rep. Graham Filler (R-DeWitt) PAC Fundraiser**
Location: 11:30 a.m., Governor's Room, Karoub Associates, Lansing
- Rep. Tim Sneller (D-Burton) Fundraiser**
Location: 11:30 a.m., Michigan Beer and Wine Wholesalers, Lansing
- Michigan Republican Party Fundraiser**
Virtual, 5 p.m. Zoom link with RSVP to 517-599-6935
- Rep. Beth Griffin (R-Mattawan) Fundraiser**
Location: 5 p.m., Michigan Licensed Beverage Association, Lansing
- Rep. Padma Kuppa (D-Troy) Fundraiser**
Location: 5 p.m., Michigan Beer and Wine Wholesalers, Lansing
- Sept. 10 Rep. Annette Glenn (R-Midland) Fundraiser**
Location: 7:30 a.m., Governor's Room, Karoub Associates, Lansing
- Sept. 11 Sen. Kim LaSata (R-Bainbridge Twp.) Fundraiser**
Location: 10 a.m., The Dunes Club Private Course, 10600 Marquette Dr., New Buffalo