

# CAPITOL NEWS UPDATE

## WEEK OF FEBRUARY 17, 2025



### FROM THE PARTNERS DESK

*Rusty Merchant*

#### Divided Government Passes First Big Test

Governor Jeb Bush once said, “In a divided government, you cannot just say it is my way or the highway.” For the past seven weeks, Lansing has embodied that sentiment as Republicans reclaimed control of the House, ending two years of one-party rule. The question dominating the Capitol halls has been clear: Could Democrats and Republicans come together to alter the pending implementation of the tipped wage and earned sick time law set to take effect today? This was the first real test of the new legislative session. While opinions may vary on who won or lost, one thing is certain—the Legislature passed its first major challenge. Governor Whitmer signed the legislation today.

The road to this moment has been anything but smooth. In 2018, a citizen-initiated law was presented to the Legislature, offering three choices: adopt the initiative, draft an alternative and place both on the ballot, or take no action and let voters decide. With the Republican trifecta nearing its end, lawmakers took an unconventional approach—adopting the initiative and then amending it within the same session to make it more palatable to their interests.

That decision was immediately met with legal challenges. Opponents argued that lawmakers could not adopt and amend a citizen initiative in the same session. Last year, the Michigan Supreme Court sided with them, ruling that the original law must take effect on February 21, 2025. Since then, the issue has consumed Lansing, leaving little room for other legislative priorities.

With Democrats in full control last year, altering the law was a non-starter. The pressure from their base was too great, despite some party leaders quietly acknowledging the need for revisions. Meanwhile, Republicans refused to let the issue fade, using it as leverage in nearly every legislative negotiation. Their final stand came during Lane Duck when they walked out of session and never returned.

Everything changed when divided government returned. Both sides now had clear incentives to negotiate. Left unchanged, Republicans would have tied this issue to every major budget and infrastructure debate for the next two years, effectively grinding the legislative process to a halt. For Democrats, failing to act meant risking legislative paralysis, making it nearly impossible to advance their agenda. A budget shutdown—still a looming possibility—would have become a near certainty.

Faced with this reality, lawmakers got to work. In the House, Speaker Matt Hall led negotiations, while in the Senate, Majority Floor Leader Sam Singh took the reins. Ironically, both men had previously served as House

Minority Leader in the last decade. Their efforts produced a compromise that garnered strong bipartisan support (details in the following story).

No one walked away with a total victory, but both sides won something they could sell as a win. The real question now is whether this was a one-time deal or the beginning of a pattern. With critical debates ahead on the state budget, infrastructure, and a transformational project in Mundy Township, Lansing is holding its breath to see if cooperation was an exception—or a new norm.

## **NEWS**

### **PAID SICK LEAVE CHANGES CLEAR LEGISLATURE UNDER THE WIRE**

Lawmakers reached a bipartisan deal Thursday night to amend the state's paid sick time law prior to the 12:01 a.m. Friday deadline, making changes to how much time employers must provide and doing a wholesale rewrite of how the law must be administered.

Senate members voted 26-10 on the S-3 substitute version of HB 4002, with all 18 Republicans joining eight Democrats in voting yes. The Senate also mustered more than the necessary 25 votes for immediate effect.

In the House, the bill passed 81-29. All 29 no votes were Democrats.

Senate Democrats said the sick leave requirements are the strongest in the nation while Republicans and business groups said the amendments saved the state's economy.

"The mark of a good compromise at the end of the day, bringing both sides together for policy solutions that improve the bottom line for the small businesses and the workers of the state of Michigan," Rep. Bill Schuette (R-Midland) said. "I don't think anyone was entirely satisfied, but I do think that this represents a remarkable step forward from where we would have been on Friday had the Legislature not acted."

Earlier in the day on Thursday, the Senate gave SB 8, the bill related to preserving a lower tipped minimum wage, immediate effect. The bill increases the minimum wage to \$15 by 2030, and it will increase tipped minimum wage to 50 percent of the minimum wage by 2031. The 50 percent is an increase compared to the current 38 percent, but the law that would have taken effect if the Legislature had not acted phased out the lower wage completely.

Despite both chambers passing legislation to change the laws as they are set to go into effect prior to the deadline, Governor Gretchen Whitmer had not signed the bills into law as of 12:30 a.m. on Friday. SB 8 was presented at 8:42 p.m. on Thursday. The Legislature's website did not show HB 4002 as being presented at time of publishing.

House Speaker Matt Hall (R-Richland Township) said he hoped that the Department of Labor and Economic Opportunity would be lenient in enforcing the law prior to the new legislation going into effect.

"I'm counting on the LEO Department," Hall said prior to the legislation's passage. "There's a lot of confusion here. I mean, these people don't know what the law is going to be in just a few hours ... so I think we can have some reasonable enforcement."

Senate Democrats sought to portray the agreement as providing Michigan workers with the strongest paid sick time policy in the nation.

As of December 2024, 18 states and the District of Columbia had paid sick time laws in place.

"We were working hard to make sure that we could get something that was still preserving the original intent of the initiative but added provisions to deal with the administration of it all and make sure that we were responding to concerns that were raised from our constituents, both employees and employers," Senate Majority Leader Winnie Brinks (D-Grand Rapids) said. "We are very pleased to be able to solve a lot of problems and address some issues before they became problems in real life."

Brinks added that she had no doubt in her ability to establish a working relationship with Hall and find a compromise on the two laws.

"We're really proud that we were able to put all these things back into the law and make sure that this was the strongest policy in the entire country," said Sen. Sam Singh (D-East Lansing), who played a lead role in the negotiations.. "I think if you compare Michigan to these other 18 you will see that Michigan is a leader when it comes to the amount of hours, as well as some of the other policies that are undergirding it."

Backers of the original proposals, however, had been pressuring Democrats to let them take effect as written. One Fair Wage earlier Thursday promised a referendum on SB 8.

Senate Minority Leader Aric Nesbitt (R-Porter Township) said Republicans had led on averting what he called a pending disaster for Michigan businesses and workers in negotiating on a solution and providing the lion's share of votes for the bills.

"This was all improvements from what the status quo was," Nesbitt said. "It's better than what these out-of-state special interests were trying to shove down the throat of small businesses. ... This is a House and Senate Republicans win in trying to save small businesses and provide flexibility for working families across the state."

Nesbitt was asked about Sen. Ruth Johnson (R-Groveland Township) showing up to vote despite being in the process of recovery from back surgery and Sen. Dan Lauwers (R-Brockway) briefly entering the chamber to vote despite being sick. Nesbitt said the two senators wanted to ensure that if the bills did not get to the governor by the Friday effective date that it wasn't the fault of Republicans..

The final Senate hurdle, granting immediate effect, was also achieved largely with Republican votes. There were 26 votes for granting SB 8 immediate effect: 16 Republicans and 10 Democrats. For HB 4002 there were 28 votes for immediate effect, coming from Republicans and 10 Democrats.

The key basic concept in the Earned Sick Time Act, brought by citizen activists in an initiative petition in 2018, remains: workers earn one hour of paid sick time for every 30 hours worked. But the way employers will administer the act will look far different from the law that would have otherwise taken effect Friday.

A key change in the final version of the bill gives small businesses with 10 or fewer employees until October 1 to comply with the act's requirements. Those small businesses must provide 40 hours of paid sick time under the bill. The original law's provision for smaller business to also provide 32 hours of unpaid leave was scrapped. Another major change exempts nonprofits from the law.

The biggest point of contention during negotiations was the definition of a small business, House Republicans said.

Other changes would allow employers to designate paid time off as a combined paid time off/sick leave bank, explicitly allow employers to provide all sick time hours frontloaded at the start of the year – and exempt employers frontloading time at the start of the year from having to record the accrual of sick time. The system the

initiated law put in place to tilt the scales in favor of employees in any complaint alleging their employer violated the law is also scrapped in the legislation.

As passed, employers with 11 or more employees would be required to provide 72 hours of paid time, with a 72-hour carryover cap from year to year.

Employers could frontload paid sick time, and employees would be capable of using it immediately. For frontloading, there would be no requirement for paying out sick time at the end the year, and there would be no requirement for calculating and tracking accrual of sick time.

Further, employers who frontload sick time at the start of the year would not have to allow employees to carry over unused sick time from year to year.

For employers using a combined leave bank, 72 hours of time would be subject to Earned Sick Time Act provisions, with anything beyond that being able to be used according to an employer's vacation or paid time off policy or usage requirements.

Additionally, small businesses that begin operating after Friday will have three years before needing to comply with the paid sick time requirements.

Changes were also made to provisions governing notification requirements, including a requirement for seven days' notice for foreseeable usage.

For unforeseeable use of sick time, reporting would be required as soon as practicable or in compliance with an employer's policy on using sick time, if the employer notifies the employee of their policy in writing and the policy allows employees to provide notice after the employee is aware of the need to use sick time. This language was targeted at concerns the initiated law, as written, would allow employees not to show up for work with their employers having no recourse until three days had passed at which point they could request the employee provide a note from their physician.

Several employee exemptions were also included.

For seasonal employees, they would be unable to use sick time within 120 days of employment unless sick time is frontloaded. Unless the employee is rehired by the same employer within two months, the employee would have to start over on sick time accrual.

Variable hour employees would also be exempt, as would unpaid trainees and unpaid interns.

Part-time employees would be subject to proportional frontloading based on the initial estimate provided by their employer at the time of hire. If the employee works more than the estimated amount, hours would be accrued at the normal rate of one hour per 30 hours worked.

"We had to reach further across the aisle, but they did move our way a little bit," Hall said ahead of final passage of the legislation in the Senate. "This outcome will avert the crisis, and that's a good outcome."

Both House Republicans and Democrats were optimistic that the negotiations on SB 8 and HB 4002 would open the doors to further cooperation throughout the term.

"This is the first trial balloon of divided government," Schuette said. "We can say that House Republicans really delivered for the people of the state of Michigan."

Hall was also optimistic.

"This could lead to other productive things happening in the Legislature," he said, citing a roads deal or legislation promoting increased transparency.

Rep. Alabas Farhat (D-Dearborn) expressed similar optimism that with negotiations complete on tipped wage and earned sick time, the Legislature could move forward on a long-term roads funding solution.

"We've shown the ability to come together and get things done in a bipartisan way, I really hope we begin to shift the focus to long-term road funding," he said. "The governor's brought a really good proposal, Speaker Hall has brought a good proposal, and they're actually closer than people think. ... We need to get this done. People are expecting us to get road funding done."

## **HOUSE VOTES TO CLOSE THE DOOR FOR LAWMAKERS-TURNED-LOBBYISTS**

The House passed bills on Thursday to prevent people who are serving in the Legislature from immediately becoming lobbyists when they leave office.

"It just leaves a bad taste in the public's mouth and our constituents' mouth if we're not giving our full attention to the job that they elected us to," said Rep. Jerry Neyer (R-Shepherd), one of the bill sponsors.

The House passed HB 4062, HB 4063 and HB 4064. The bill package would require a two-year cooling off period for state representatives, state senators and department directors before becoming a lobbyist and prevent current members of the Legislature from lobbying in another state HB 4062, which creates a two-year cooling off period for lawmakers, passed 98-11. Rep. Steve Carra (R-Three Rivers), Rep. Kimberly Edwards (D-Eastpointe), Rep. Phil Green (R-Watertown Township), Rep. Jaime Greene (R-Richmond), Rep. Josh Schriver (R-Oxford), Rep. Helena Scott (D-Detroit), Rep. Phil Skaggs (D-East Grand Rapids), Rep. Bradley Slagh (R-Zeeland), Rep. Curt VanderWall (R-Ludington), Rep. Greg VanWoerkom (R-Norton Shores) and Rep. Regina Weiss (D-Oak Park) voted no.

HB 4063, which creates a cooling off period for department heads, passed 96-13. Rep. Samantha Steckloff (D-Farmington Hills) and Rep. Stephanie Young (D-Detroit) joined the no votes.

Finally, HB 4064, which prohibits lawmakers from working as lobbyists in another state, passed 103-6. Carra, Edward, Schriver, Scott, Slagh and Weiss voted no.

"Twenty years ago, January 2005, this chamber passed a cooling-off legislation package because the preceding five House speakers became lobbyists upon leaving office," Tisdell said. "We have an opportunity to show Michigan voters that the Legislature is not simply a steppingstone for career advancement."

House Speaker Matt Hall (R-Richland Township) celebrated the bills' passage.

"HEAT is moving," Hall said, referring to his transparency plan, which he calls the Hall Ethics Accountability and Transparency plan. "We know this is the most significant ethics accountability and transparency reform that has happened in most of the careers of the people who work here in the Capitol."

The House Government Operations Committee reported other transparency legislation on Thursday, the legislation would prohibit lawmakers from signing non-disclosure agreements (see separate story).

## **CLEMENT TO RESIGN FROM SUPREME COURT, GIVING WHITMER A CHANCE TO NOMINATE A REPLACEMENT**

After nearly a decade on the Supreme Court and two terms serving as its leader, Chief Justice Elizabeth Clement announced Wednesday that she will resign from the bench in the next few months.

Clement in a news release said she notified Governor Gretchen Whitmer that she plans to step down no later than April 30. That would give Whitmer a chance to nominate her successor, and potentially make the bench a 6-1 majority for the Democratic Party. Clement was one of two remaining justices nominated by the Republican Party, and her exit will leave Justice Brian Zahra as the court's sole conservative voice.

"Leading our state's highest court has been an opportunity to continue a proud record of independence, fairness, and commitment to the rule of law," Clement said in a statement. "I am thankful to my colleagues for their support and friendship, as well as for their willingness to seek common ground in serving the people of Michigan."

It is unusual, but not unheard of, for a justice nominated by the opposite party of the governor to resign and allow the governor to flip a seat with a replacement choice.

The late Justice Elizabeth Weaver was estranged from the Republican Party when she resigned late in the second term of Democratic Governor Jennifer Granholm and allowed Granholm to appoint a successor. Former Justice Conrad Mallett angered a number of Democrats when he resigned in the 1990s and allowed then-Governor John Engler to name a replacement, which was Robert Young Jr.

Clement praised the State Court Administrative Office and said it has "consistently made it clear that no one works harder in the fight to make our justice system more efficient, more accessible, more transparent, more accountable, and more data driven."

"I am especially proud of the work we have done to increase our capacity to collect and analyze data by connecting local trial courts to a statewide system," she said. "At the same time, our efforts to support implementation of juvenile justice reform will ultimately make sure every youth who needs help can get the support they need to succeed."

Clement added that SCAO during her time on the bench has become a "force for good toward achieving our shared goal of a justice system that works better for everyone."

The chief justice could not be reached for a comment on Wednesday and did not respond to a request for an interview at the time of publication.

Clement did not indicate what her immediate next steps were but said she will "continue working to find ways to bring people together, to put data to work, and to make a difference in the lives of people so that interactions with our justice system result in safer communities and stronger families."

The National Center for State Courts on Wednesday announced on social media that Clement was appointed to be its next president.

"Beth is an outstanding generational leader and an ideal President for NCSC to drive innovation and progress in our state courts and justice systems," said Indiana Chief Justice Loretta Rush, chairperson of the presidential search committee, in a statement. "She has worked as a problem-solver in every branch of government and has significant experience with state court administration. Besides tackling many important initiatives as chief justice of Michigan, Beth previously served as deputy chief of staff, cabinet secretary, and chief legal counsel to Governor Rick Snyder

in the executive branch, as well as policy advisor and legal counsel to the Michigan Senate majority in the legislative branch. She is known for her bipartisanship. The Board is confident that Beth will lead NCSC into a new era as we continue to improve access to justice for all."

Clement in a statement released by the NCSC said she was honored to serve as NCSC's next president.

"As a witness to NCSC's important initiatives, I am excited to work with the organization's talented team to extend the reach of its critical work," Clement said. "I look forward to building on NCSC's strong services as we strengthen judicial systems across the country and the world, enhancing accessibility, transparency, and efficiency."

Whitmer in a statement said Clement has been a dedicated public servant for almost two decades and served the people of Michigan admirably in all three branches of state government.

"Throughout her distinguished tenure on the Michigan Supreme Court, Chief Justice Clement was an independent minded jurist who upheld the rule of law, protected our constitutional values, and stood strong for the principles of justice," Whitmer said. "Notably, she cemented equal protections for all Michiganders in state law regardless of who they love when she authored *Rouch World v Department of Civil Rights*, which held that the state's Elliott-Larsen Civil Rights Act prohibited discrimination on the basis of sexual orientation.

Whitmer also praised her work as chief justice for the past few years.

"She was an incredible leader who ensured our highest court functioned well and led landmark decisions that made a real difference in people's lives. As governor and as a Michigander, I am grateful to her for her service," Whitmer said. "We will ensure a smooth transition for Chief Justice Clement and take action to appoint her replacement after a thorough review."

Clement was appointed to the high court in 2017 by Governor Rick Snyder and elected to a full term in the 2018 general election. Clement had been Snyder's legal counsel in the Executive Office and had worked her way up through the ranks in Republican politics. Clement worked for then-Senate Majority Leader Mike Bishop (R-Rochester) and she was a policy advisor in the Senate Majority Policy Office. Prior to that she had her own legal firm.

Although she was nominated by the Republicans, Clement consistently bucked party-line thinking as an independent-minded jurist.

During the 2018 nomination process, Clement drew the wrath of her party's activists over two rulings: she held school districts have the legal authority to regulate firearms on school campuses and that the proposal to change redistricting and prohibit gerrymandering met legal muster to go on the November ballot. In both cases, Clement joined with another Snyder appointee to the court, Justice David Viviano, as well as the court's two justices nominated by the Democratic Party, Justice Richard Bernstein and the former Justice Bridget McCormack.

At the party's convention that year, Clement and former Justice Kurtis Wilder were running as incumbents. Neither needed their party's nomination to appear on the ballot, so it was more of a formality. Wilder was greeted with cheers while Clement was booed. Former House speaker and then-convention chair Jase Bolger had to gavel down the crowd and close the nomination as "nays" flooded the hall over the "ayes."

Clement was eventually nominated and won the race. Wilder, on the other hand, did not.

The justice stayed on the court through multiple ideological shifts. When she was appointed and won reelection, Clement was part of a 4-3 Republican majority court. She's leaving it during a 5-2 majority, which will soon become a 6-1 majority once Whitmer identifies and appoints her replacement.

Still, Clement routinely acted as a sort of wildcard on the bench, often siding with her Democratic colleagues to form a majority against her fellow Republicans. In other instances, she held firm with her Republican colleagues to form a minority in decisions that saw Democrats band together in majority decisions.

Clement told Gongwer News Service in an interview from 2023 that independence was at the core of who she was.

"I think I have a reputation from when I was in the Legislature and when I was working in the executive branch of being open minded and being a listener more than a talker. Someone that wanted all of the information, wanted to hear every voice, and take all of that in and make really thoughtful decisions and recommendations," Clement said (See Gongwer Michigan Report, January 9, 2023). "And I brought that experience with me to the court starting day one as a justice. ... I had never been a judge before, but I think the experience that I had prior to that really made it a transition that that felt natural. At bottom, the role of the judiciary is to be independent."

The situation is also interesting for Whitmer because there are also two vacancies on the Court of Appeals: Both Judge Mark Cavanagh and Judge Jane Markey have resigned, and the Court of Appeals website lists both of them as retired. Both were serving terms that expired after the 2026 election and both were ineligible to run because of the constitutional prohibition on people running for judge once they turn 70.

Cavanagh was appointed to the bench by former Governor Jim Blanchard, making his decision to depart and allow a Democratic governor to choose a successor unsurprising. However, Markey is a conservative – she was once nominated by the Michigan Republican Party for the Supreme Court – making her decision a surprise.

Whitmer will be able to place three judges on benches before the 2026 elections, where each of her appointees will be able to run as incumbents – which get a special designation on voter ballots and gives at least some advantage to those with that tag.

It will be Whitmer's second appointment to the Supreme Court and ninth and 10th appointments to the Court of Appeals, meaning Whitmer will have hand-picked 10 of the 25 judges on the appellate bench.

It is unclear at this moment whom Whitmer will appoint to fill all three roles.

What is clear that Republicans will now have to identify two candidates, nominate them and support them through 2026 to at least hold the line on the current 5-2 majority Democratic Party court or expand the minority to an even 4-3. Aside from whomever is appointed by Whitmer, Justice Megan Cavanagh is also up for reelection, although the latter has not made her intentions to seek reelection known.

As for potential candidates for the Supreme Court, the Republicans could look to their most recent nominees – Former Rep. Andrew Fink and Judge Patrick O'Grady – as potential candidates. Fink, however, has a job as the general counsel of the House Republican caucus, and may not be apt to get back into electoral politics any time soon.

Court of Appeals Judge Mark Boonstra also ran for the nomination in 2024. He was endorsed by President Donald Trump and lost in the nomination hunt, but his name recognition makes him an option to consider.



## **HFA JANUARY REVENUE REPORT: INDIVIDUAL INCOME TAX LOWER THAN EXPECTED, SALES TAX STRONGER**

General Fund revenues were slightly below expectations with weaker than anticipated individual income tax and business collections offsetting stronger than expected sales and use tax collections in January, the House Fiscal Agency said in its monthly report.

Greater than expected sales tax collections pushed the School Aid Fund slightly higher than the consensus reached last month.

During January, the General Fund came in at \$1.4 billion, about \$135 million below projections. The School Aid Fund was \$1.4 billion as well, about \$51.7 million above projections.

Although individual income tax collections were lower than expected, net income tax revenue through January was higher than last year. Net business taxes were \$256.3 million through January 2025 than a year ago, HFA said.

Revenue from consumption taxes – sales, use, beer and wine, liquor and tobacco – were \$96.6 million higher than last year, on a year-to-date basis. Sales and use tax revenue offset weaker tobacco tax revenue, HFA said.

Cannabis and online gaming revenues in January were higher than last year, HFA said. Recreational marijuana tax revenue was up \$1.3 million while online gaming tax revenue was up \$30.5 million.

### **CALENDAR OF EVENTS**

**Feb. 25**

**Rep. Brian BeGole (R) - Birthday Breakfast**

Governors Room, Karoub Associates, 121 West Allegan Street, Lansing

**Rep. Helena Scott (D) - Valentines Day Fundraiser**

Kelly Cawthorne, 208 North Capitol Avenue, 3rd Floor, Lansing, 8:15 a.m.

**Rep. Kathy Schmaltz (R) - Lunch Reception**

Michigan Municipal League, First Floor, 208 North Capitol Avenue, Lansing, 11 a.m.

**Rep. Alabas Farhat (D) - Birthday Fundraiser**

Michigan Health and Hospital Association, Suite 1200, 110 West Michigan Avenue, Lansing, 12 p.m.

**Rep. Laurie Pohutsky (D) - Winter Happy Hour**

Hop & Vine Room, Michigan Beer and Wine Wholesalers Association, 332 Townsend Street, Lansing, 4:30 p.m.

**Feb. 26**

**Gov. Gretchen Whitmer - 2025 State of the State**

Michigan House Chambers

**Rep. Dave Prestin (R) - Reception**

Governors Room, Karoub Associates, 121 West Allegan Street, Lansing, 8 a.m.

**Rep. Angela Rigas (R) - State of the State Pregame**

Michigan Beer and Wine Wholesalers Association, 332 Townsend Street, Lansing, 11:30 a.m.

**Feb. 27**

**Rep. Ken Borton (R) - Breakfast Reception**

Michigan Beer and Wine Wholesalers Association, 332 Townsend Street, Lansing, 8 a.m.

**Rep. Parker Fairbairn (R) - Lunch Reception**

Michigan Beer and Wine Wholesalers Association, 332 Townsend Street, Lansing, 11:30 a.m.

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