

Government Relations Coordinator Report to the AAUW of Michigan Executive Board

January 11, 2019
By Mary Pollock

The new year brings the beginning of a new 2-year legislative session, the 100th Legislature in Michigan history. Also new is the all-female team of Governor Gretchen Whitmer, Secretary of State Jocelyn Benson, and Attorney General Dana Nessel. Within her first week, the Governor issued an Executive Directive prohibiting the salary history question in state employment (see below)! Elections matter!

LAME DUCK

The 2018 Lame Duck session was the most prolific legislatively in Michigan history. The 99th Legislature passed 351 bills before the November 6 election and 408 after it, many in a 22-hour marathon session on the last day of Lame Duck, December 20. There were 883 roll-call votes taken in the Senate and House in November and December 2018, far outpacing the number of votes taken in recent lame-duck sessions.

With a Republican dominated legislature facing the prospect of a new Democratic Governor on January 1, bills to enhance legislative power and restrict executive branch and general electorate powers were high priority. Then-Governor Snyder signed 340 bills and vetoed 56 that were approved after the November election. Here are some of the bills passed, defeated, or ignored by the GOP-controlled Legislature and the Governor:

Minimum wage and paid sick leave signed – The Republican-majority in the Legislature approved these two voter-initiated laws in September to keep them off the ballot and make it easier to amend them in the future.

Just after the election, bills were introduced to gut the two laws. Under **SB 1171**, now PA 368 of 2018, the minimum wage would only increase to \$12.05 by 2030 instead of \$12 by 2022 and the tipped minimum wage would remain 38 percent of the regular minimum wage, meaning \$4.58 per hour by 2030, instead of reaching the full minimum wage by 2024. The inflation escalator in current law was eliminated in the new law. Minimum wage workers lost and employers won during Lame Duck.

Under the voter-initiated law on paid sick time, employers of 10 or more employees would have had to provide one hour of paid sick time for every 30 hours worked up to a maximum of 72 hours per year. Under Senate in **SB 1175**, now PA 369 of 2018, only employers with 50 or more employees would have to provide one hour for every 35 hours worked up to a maximum of 40 hours per year. With these changes, only 45 percent of Michigan's workforce would be covered by paid sick time requirements.

A legal challenge is expected about whether the Legislature has the right to amend a voter-initiated act in the same legislative session as it enacted it. Although there is the possibility under Michigan law of gathering enough voter signatures within 90 days of the end of session to put a referendum to repeal the amended laws on the ballot, such an effort is unlikely to be successful in the dead of Michigan's winter. The organizers of the paid sick time initiative have said they might run another petition drive to put their proposal before the Legislature in 2020 when the adopt-and-amend strategy

will be unavailable to the Republican legislative majorities because Democratic Governor Whitmer would presumably not sign such legislation.

Restricting ballot access – **SB 6595**, now PA 608 of 2018, will make it more difficult to get an initiative on the ballot because it will require no more than 15 percent of a ballot petition's signatures from any single congressional district, require each petition to identify whether circulated by a volunteer or paid individual, make it a crime to misrepresent the content of the initiative (thus discouraging petition circulators), and require the 100-word summary on the petition and on the ballot be identical. The measure was opposed by groups on the left and right who have been active in petition campaigns. Voters Not Politicians, the ballot committee backing Proposal 2, considered mounting a referendum petition drive to overturn PA 608 but ultimately decided against it.

Voting rights – A package of bills to amend voter registration laws to conform to, and fill gaps in, the new voting rights constitutional amendment passed in Proposal 3 are contained in **SBs 1238 – 1242**, now PA 603 – 607 of 2018.

Although the backers of Proposal 3 anticipated that same-day voter registration would be conducted at the voting precinct, the main bill, **SB 1238**, requires a same-day registering voter to both register at the city or township clerk's office and cast an absentee ballot there. The stated reason is access to the on-line qualified voter file is needed, which means secure and reliable internet access would have to be available at all precincts.

Legislative intervention – **HB 6553** would have allowed either the House or Senate to intervene in court cases that challenge the constitutionality of a state law, or the validity of legislation or legislative acts at any stage in the proceedings. The bill was seen as limiting the power of Governor Whitmer and Attorney General Nessel. However then-Governor Snyder vetoed the bill, saying the current system of legislative intervention by permission of the court has worked and should continue.

Mackinac Straits tunnel – In one of his last initiatives, then-Governor Snyder negotiated a deal for Enbridge to construct a tunnel beneath the straits and relocate the pipeline within it. The Legislature passed authorizing legislation, now PA 359 of 2018, establishing a new three-person commission to oversee building a utility tunnel under the Straits of Mackinac to house Line 5. The commission, at its first meeting on December 19, approved initial agreements toward constructing the tunnel.

Governor Whitmer, in her first full day in office, asked Attorney General Nessel for a formal opinion on the constitutionality of the newly enacted Mackinac Straits Corridor Authority and the proposed utility tunnel beneath the Straits of Mackinac that will house Enbridge Energy's Line 5 oil pipeline. Whitmer and Nessel, during their respective campaigns, both called for closing Line 5 and were opposed to the tunnel because it would leave Line 5 exposed for 10 years during construction of the tunnel.

Telemedicine abortion – A 2013 Michigan law set to expire December 31 banned doctors from prescribing abortion pills via telemedicine. Under **SB 1198**, the ban would have been made permanent. Then-Governor Snyder vetoed the bill explaining that telemedicine holds great promise for more access to health care and one medical procedure should not be eliminated from its use.

Letter grades for schools – Although the MEA, AFT, and school administrators opposed it, Michigan schools will now be graded on a scale of A – F under **HB 5526**, now PA 601 of 2018. The current dashboard will remain. The bill originally would have created a new education panel not accountable to the state Board of Education or the Governor, but that was stripped out to win votes for passage.

Nassar scandal bills – Then-Governor Snyder signed a number of bills on December 17 designed to strengthen Michigan law in response to the Nassar sexual assault scandal at MSU. **HB 5539**, now PA 371 of 2018, amends the 2013 student safety law establishing the OK2Say hotline in the Attorney General's office to include receiving and responding to reports of sexual abuse, assault and rape.

HB 5658, now PA 372 of 2018, expands an evidentiary standard to permit evidence of past sexual assaults in the last ten years to be admissible in court. The bill further allows evidence older than ten years if the assault was reported to law enforcement within five years, a sexual assault evidence kit was collected, or if DNA evidence from the prior investigation pointed to the defendant.

Bills were signed to increase the maximum penalty for aggravated possession of child sexually abusive material to 10 years in prison, and 25 years for anyone caught distributing such material. They also mandate 5-year minimum sentencing requirements for repeat offenders.

HB 5794, now PA 375 of 2018, adds grandparents, siblings, spouses and more to the list of those who can make an impact statement on behalf of a victim who was a minor at the time of the crime before a defendant is sentenced.

Dark money – Then-Governor Snyder vetoed SB 1176, legislation shielding the personal information of donors to nonprofits, including political groups. The bill would have made it a misdemeanor for a public official in Michigan to disclose personal information about donors to nonprofit organizations, including political groups, given a 501(c) determination by the federal Internal Revenue Service.

Restrict executive branch - HB 4205, now PA 602 of 2018, would bar state agencies from adopting rules that are more stringent than the federal government's rules unless the agency's director determined there was a "clear and convincing need" to exceed federal standards.

Cyberbullying – Then-Governor Snyder signed **HB 5017**, now PA 457 of 2018, which makes cyberbullying a crime.

State budget- Then-Governor Snyder signed a \$1.3 billion supplemental budget plan that diverts new online sales tax revenue from schools to environmental cleanup, roads and other priorities.

School safety – Then-Governor Snyder signed laws to create a state Office of School Safety and require that schools develop emergency operations plans and conduct safety assessments with local law enforcement. School districts and charter schools will have to consult with police before building a new school or doing a major renovation. The bills were developed in the wake of mass shootings in Florida and Texas.

Annuities – Then-Governor Snyder vetoed **HB 5230 and 5231** which would have required the state to offer school and state employees the option to purchase annuities as retirement options. Mr. Snyder wrote it is inappropriate for the Legislature to decide what benefit options are available to employees.

Dead bills - Bills that never made it to a final vote, included banning marijuana home-grows, requiring unionized workers to vote every two years on whether to continue union representation, allowing ballot selfies, ending Michigan's bottle deposit law, expanding the Freedom of Information Act to include the Governor and Legislators, reforming the Michigan Auto No-fault insurance system, banning labor contract provisions that allow public school employees to conduct union business during their work day, and stripping the campaign finance oversight from the Secretary of State and putting it into a new, bipartisan commission. Abolishing the pension tax bills never got a hearing.

2019

On January 1, a crowd of about 1500 witnessed the traditional swearing in of the Governor, Lieutenant Governor, Secretary of State, Attorney General, two Supreme Court Justices, and the state-wide education boards. Governor Whitmer emphasized building bridges between the parties to accomplish common goals. An evening celebration was held at Cobo Hall in Detroit.

In her first week, the Governor issued Executive Directives concerning internal operations of state government. EDs do not have the force and effect of law but rather are internal policy statements

meant to be followed by the Governor's departments. EDs require no approval from the legislature. In a nod to the Flint water crisis and the PFAS contamination problems, Governor Whitmer's first [Executive Directive 2019-1](#) requires that any imminent threat to public health, safety or welfare be immediately reported, assessed, and investigated by department employees, department directors, and agency heads. She also sent a letter to all state employees on her first day on the job expressing her appreciation for their work and explaining her expectations.

[ED 2019-2](#), requires state departments, agencies and their employees to report any irregularities in the use of any public monies or properties.

[ED 1903-3](#) establishes basic ethical standards for all department directors, gubernatorial appointees and state workers. It says all are to place, "loyalty to and compliance with the Constitution and the laws of the United States and the State of Michigan, and the highest ethical principles above private gain." State workers and appointees are also expected to give a "full day's labor for a full day's pay," disclose waste, not represent personal opinions as the opinion of the governor. They are not to use confidential information received through the state for personal gain.

In [ED 2019-4](#) Whitmer made plain what is already in state law - that officials and workers are to make no campaign contributions, or provide personal services, that involve public funds or property.

In [ED 2019-6](#), Whitmer requires coordination of all departments with the State Budget Office. Each agency is required to examine activities for budgetary implications, which includes any planned or prospective program changes.

In [ED 2019-7](#) requires department legislative activity to be coordinated with the executive office through the director of legislative affairs and the state budget director.

In [ED 2019-8](#), the Governor seeks to expand opportunities for businesses in Michigan's opportunity zones, or communities that have been cut off from capital and have experienced a lack of business growth.

In ED 2019-9, Governor Whitmer went to Affirmations in Ferndale to sign civil rights protections for the LGBTQ community. The Directive:

1. Clarifies that employment protections cover all state employees, including classified and unclassified employees.
2. Requires all recipients of state contracts, grants and loans to extend protections to their employees.
3. Prohibits discrimination in state services.
4. Extends prohibitions on discrimination to include discrimination on the basis of sexual orientation and gender identity or expression – which will now be consistent with the action taken by the Michigan Civil Rights Commission in May, 2018.

In ED 2019-10, Governor Whitmer banned the salary history question in state employment, a major step forward in addressing barriers to narrowing the pay gap between men and women, at least in state employment. I released the following statement on our behalf through Bernie Porn of EPIC-MRA very soon after the Directive was issued:

Official Statement from Mary Pollock, Government Relations Coordinator for the American Association of University Women of Michigan.

As the former Michigan Civil Service Commission's Equal Employment Opportunity Coordinator and an activist on pay equity issues since the 1980's, I commend Governor Whitmer and her legal team for issuing this comprehensive Executive Directive to prevent salary history as a factor in hiring and assigning compensation in state government employment. Salary history is one of the

primary reasons the pay gap between men and women persists despite our laws banning sex-based wage discrimination. Using past wage rate of an applicant to establish a new compensation package continues any wage discrimination perpetrated by a past employer. Our laws require that employers pay employees on the basis of skill, effort, responsibility, working conditions, and training or education required, not the gender of the incumbent. Other Michigan employers in both the public and private sector need to issue similar internal policies.

In an EPIC-MRA poll the AAUW of Michigan commissioned last June, an overwhelming percentage of respondents agreed that Michigan needs to strengthen its laws on equal pay. Governor Whitmer's Directive is a shining example of responding to the interests of Michigan's citizens. Specifically, an 84 percent majority supported new laws to ensure that women are compensated fairly, including a 67 percent majority of Michigan voters who were strongly supportive.

Quotes from this statement were included in many stories about the Directive. I also sent a more personal thank you to the Governor's Public Affairs Director who had given me a heads-up the day before and advised her on a couple other things the Governor could do on pay equity that don't need legislative approval.

Other news - The Governor also announced her intention not to break up the Department of Health and Human Services and has announced many department director and executive office appointments.

The Senate majority leader Mike Shirkey on the opening day of the Senate outlined his key priorities including no-fault auto insurance changes. House Speaker Lee Chatfield (R-Levering) included as his top priorities auto insurance reform, infrastructure funding and expanding government transparency.

The Governor's State of the State address has been scheduled for February 5 at 7 p.m.

Supreme Court Justice Bridget McCormack, who is a leader in what has become a bipartisan majority on the court, was elected chief justice for the 2019-20.

Attorney General Dana Nessel has announced that Michigan will file an amicus brief in a lawsuit started by Massachusetts and California challenging rules changes proposed by the Trump administration allowing employers to use religious or moral objections as an excuse for not providing contraception coverage for their employees. In a prepared statement, Nessel said the state had a compelling interest in joining the case for the health, well-being and economic security of its residents. Michigan did not join any of the lawsuits on this subject while Attorney General Bill Schuette was in office.

Former State Senator Margaret O'Brien was chosen by the Senate Majority Leader as the new Senate Secretary, basically running the administrative function for the body.

Although there is no news about former Governor Snyder's future plans, former Lieutenant Governor Brian Calley has been appointed the Small Business Association of Michigan's new president in charge of the organization's legislative lobbying and communications efforts.