



Strengthening the Legislative Branch of Michigan State Government

November 2, 2009

1. Introduction

Change is coming to the State of Michigan and its governing institutions. The high service, high cost government that Michigan has had for more than 50 years appears to be coming to an end.

Michigan, as an economy and a society, has been on a downward spiral and is becoming older, smaller and poorer relative to much of the World.

The economic crisis facing the People of Michigan and the related decline in state revenues creates a sufficient crisis to provide the impetus to address challenging political issues.

In 2009, Michigan's political institutions at the top – in its executive and legislative branches – are less able to effectively address the challenges and changes the state faces.

Michigan's legislative branch faces particular challenges because of the “mandatory inexperience” requirements of the Constitutionally-imposed term limits.

The challenges are not partisan or ideological. Whether the voters select a government to maintain a highly taxed, heavily regulatory, full service government or a lean government, low tax, market oriented system or something in between, there is need for government that works.

Regardless of ideology, an effective, modern government includes:

- Competent public officials and public servants
- Transparency and public support for government processes.
- A culture of integrity throughout government.
- A competitive and often adversarial, but not toxic, political system.

- Both partisan and nonpartisan policy staffs that understand complex policy issues and bring useful ideas to elected officials.
- Sufficient competent and experienced staff to manage a multi-billion dollar enterprise.
- Tax policies that make sense and achieve the revenue and policy goals of elected officials.
- Fiscal integrity and honesty in budgeting.
- Under Michigan's Constitution, a bicameral legislative branch that is an effective co-equal to a skilled Governor and executive branch.
- A legislative branch capable of performing its constitutional oversight function.

The issues are not new. In January, 2008 the Michigan Law Revision Commission addressed the leadership in both parties and both houses of the Legislature in part, as follows:

Strengthening Legislative Powers. At its last meeting, the Commission informally discussed a project designed to assist the Legislature in developing the tools needed to effectively carry out the law making function of State Government in a term limited era. Some of the issues we may address include legislative oversight responsibilities and powers, confidential records protocol and rules, legislative role in allocation of federal and other funds, preserving the plenary authority of the Legislature to determine procedural and other internal matters by legislative rule rather than by statute, legislative involvement in the administrative rules process in conformance with constitutional limitations, and improved role for Legislative Auditor General.

2. 2009-2010 Divided Legislature Provides Opportunity

The fact that (through at least 2010) the Michigan House is controlled by the Democrats and the Michigan Senate is controlled by the Republicans, provides a unique opportunity for the political leadership to take a serious and dispassionate look at the structure of the legislative branch of state government.

Legislators in both parties have an interest in making the government work. There exists a bipartisan interest in addressing the functioning of the legislative branch. Such an effort could both help fix things and dispel the media and public impression that in many ways the legislative branch is hopelessly dysfunctional.

But the press of legislative business and the inadequacies and lack of both experienced legislators and staff prevents the leadership from focusing on institutional strengthening efforts.

3. What Is the Goal of the Strengthening Michigan’s Governing Institutions Project?

The “Strengthening Michigan’s Governing Institutions Project” is designed to address the continuing dysfunction of the Michigan state government by developing strategies to strengthen the primary governing institutions, focusing initially on the legislative branch of state government.

The Legislative Branch is the political branch that has been most negatively affected by term limits. There is a broad consensus that Michigan’s government is broken. Some of the underlying causes have been identified as including:

- Michigan’s lifetime term limits on elected officials.
- Reductions in state work force eliminating many senior, experienced public servants.
- A declining state economy causing chronic budget challenges.
- Lack of transparency; Michigan is behind the curve in requiring transparency and public access to the operations of state government.
- Recent development of a toxic political culture in the Legislature with legislators focusing on politics rather than making governing decisions.
- A shift of legislative personnel resources to primarily partisan staff with limited experienced policy staff assisting largely inexperienced legislators.
- Reduction in nonpartisan resources of the Legislative Service Bureau (“LSB”) at a time when inexperienced legislators need greater assistance.

3. Major Elements of the Project

The Strengthening Michigan’s Governing Institutions is an effort designed to do more than issue a Report. The Project team will conduct needed research, develop and propose new approaches and provide ongoing private support for the key institutions in state government.

Key elements are:

- Focused research on strengthening the legislative function in a term-limited environment.
- Development of specific tools and action steps for the Michigan Legislature to take to strengthen its law making, oversight and budgeting functions.
- Conferences and meetings for legislators, staff and others involved in the legislative process to implement new tools.
- Involvement of Michigan legislators in national meetings of state legislators focused on the governing institutions.
- Development and proposal of strategies to enhance transparency in government, including both public access to information and inter-branch access.
- Creation of efforts to provide a more collegial, inter-personal relationship between members to foster problem solving and less partisanship.

4. Project Leadership and Structure

Coordinating Committee

A 5-person Coordinating Committee is proposed to manage the Project.

Staff resources

The Project outline is based on the belief that the present Michigan Legislature has neither the resources nor the personnel to undertake a reform effort internally. The Project will be private sector-funded and managed with the following staff resources:

- **Project Manager:** An experienced person, respected by both political parties, will be selected as a Project Manager to administer the Project.
- **Legal analyst.** Staff or retained legal counsel with an understanding of the legislative function will focus on strengthening the tools of government such as legislative oversight that have been lost due to term limits.
- **Budget process expert.** The Project will not focus on the specifics of the state budget, but on the process of budgeting and appropriations to identify more transparent, effective budgeting processes in a term limited institution.
- **Communications counsel.** With a goal of complete transparency, the Project will utilize retained communication counsel, to assure broad public understanding and participation in the Project.
- **Academic and Advisory Panel.** Successful former legislative officials and academic and community leaders will be asked to participate in advisory panels for the Project.

5. Budget and Financing:

The Project is budgeted is to be determined.

The source of financing is Michigan-based foundations, corporations and labor organizations.

The [TBD] will act as fiscal agent with sponsoring organizations given full access to and accounting of all expenditures.

As contemplated, the Project would be administered as a “virtual organization” without incurring extensive costs for office facilities and support staff.

6. Preliminary Subjects for Analysis

The Coordinating Committee and Project Manager, in cooperation with Legislators, will select a number of projects that appear to have the greatest potential for strengthening the effectiveness of the Michigan Legislature. Among those suggested for evaluation are:

1. **Developing a strong professional, full-time staff to serve the legislators.** Many observers believe that a term limited legislature, of necessity, must rely to a greater extent on professional

staff. It is simply not possible, for example, for a House member with 2-3 years experience to effectively manage an appropriations subcommittee spending billions of tax dollars each year.

- 2. Strengthening the Michigan Legislative Council.** The Legislative Council is a constitutionally-mandated entity, as follows:

There shall be a bi-partisan legislative council consisting of legislators appointed in the manner prescribed by law. The legislature shall appropriate funds for the council's operations and provide for its staff which shall maintain bill drafting, research and other services for the members of the legislature. The council shall periodically examine and recommend to the legislature revision of the various laws of the state. Art. IV, §1

The Legislative Council is an important institution in that it is a bi-cameral agency and is largely staffed by non-partisan professional staffs. It holds the promise of being the vehicle for many steps that could modernize and enhance the effectiveness of the law making process.

- 3. Legislative involvement in litigation and settlements.** The State is always involved in a wide range of litigation, including some cases that may risk hundreds of millions of dollars. These cases are conducted by the elected Attorney General and controlled by the Governor with limited legislative involvement. A strengthened legislative branch would better monitor litigation and its impact on budgets and state policy.
- 4. Bill drafting modernization.** Formal bill drafting in the Michigan Legislature is done by non-partisan lawyers working for the Legislative Service Bureau (LSB). But the quality of bill drafting has been impacted by term limits, budget cuts and retirements of experienced drafters. Other states may have better and more modern procedures to assure better law making processes.
- 5. Designing Legislative access to federal funds for planning.** Billions of federal dollars are appropriated annually under the Constitutional requirement that all funds be appropriated. As federal funds become a greater share of funds available for State programs, there may be a need to enhance legislative understanding and control over federal funds. In particular, many federal funds include allocations for “planning” that are spent by executive branch agencies and local units. A way should be found to make a small portion of those funds available for legislative planning and oversight.
- 6. Legislative oversight and investigatory power.** The “mandatory inexperience” implication of term limits creates opportunities for corruption and abuses in executive branch agencies. Without an effective legislative oversight and investigation function, the Legislature is not performing its constitutional function. At present, there is simply not adequate historical knowledge among sitting legislators of their constitutional oversight powers.
- 7. Inter-branch access to information.** Disputes over legislative access to executive branch information were a major element in legislative efforts to respond to executive branch failures in child welfare. The Legislature has insufficient rules and systems to acquire and preserve the confidentiality of information received as part of its oversight function. By establishing new rules and procedures for access to inter-branch information before a new Governor assumes

office on January 1, 2011, the Legislature will be better prepared to act as a co-equal branch of government.

- 8. Legislative involvement in multi-state groups.** Because of both budget cuts and a lack of experienced legislators, Michigan's legislative leaders and legislators do not participate adequately in essential organizations such as the Council of State Government (CSG) and the National Conference of State Legislators (NCSL). Broader public support, and possibly private financial support, should be identified to assure full participation in these critical organizations.
- 9. Legislative relationships with Judicial Branch.** The independence of the judiciary and Michigan's "One Court of Justice" requires limited contacts between the Legislature and the Supreme Court. Nevertheless, budgeting requirements for the courts, funding of reduction or expansion of judges, and complex inter-branch issues related to corrections and child welfare, for example, suggest that there should be regular contacts between legislative leadership and the Supreme Court.
- 10. Staffing balance between partisan staff and policy expertise.** There is a need for an external review of the tendency since term limits to reduce professional policy staffs and increase the proportion allocated to partisan activity.
- 11. Preserving the authority of the Legislature to determine procedural and other internal matters by legislative rule rather than by statute.** The Legislature does not have the institutional memory or commitment to retaining legislative power in the face of erosion through statute delegating power to the Executive Branch. Term limited legislators would benefit from efforts to educate, on an on-going basis, leaders on the importance of and methods to retain appropriate levels of legislative authority.
- 12. Role and relationship with elected Attorney General.** The elected Attorney General is an official in the Executive Branch of State Government but has asserted his or her common law role as legal counsel to the Legislature. In a term limited era, it would be wise to clarify the role of the Attorney General and perhaps enhance the Attorney General's advice and service to the legislative branch.
- 13. Continuity of government.** Since 9/11 Michigan has made limited changes in the law to deal with emergency issues. There may be important rule and procedural changes for the Legislature to undertake related to continuity of government in emergencies and such issues as hostage taking, pandemics, and terrorist threats.
- 14. Administrative rules process.** The 40+ year battle between the Legislature and the Governor over administrative rules of the executive branch having the force and effect of law remains unresolved. There may be procedures that could be established to better discipline the executive agencies from overreaching and establish a better balance between branches in this critical area.
- 15. Relationship with Indian Tribes as a result of the Supreme Court's TOMAC decision.** Since the Indian gaming compacts were adopted, the Michigan Supreme Court has identified the Legislature, not the Governor, as having the primary role in dealing with sovereign Indian

tribes. With the increasing number of Indian tribes and the expiration of gaming compacts beginning in 2013, the Legislature should examine structures other state legislatures have established to better structure a government-to-government relationship with Indian tribal governments.

16. Improved role for the Legislative Auditor General. While the Constitutional role of the legislative Auditor General is self executing, the Legislature should examine processes that would allow greater use of Auditor General Reports in conducting legislative oversight.

7. Why Not Just Eliminate Term Limits?

Michigan's constitutionally-mandated lifetime term limits is a major underlying cause of the government's dysfunction and should be repealed. However, the voters are unlikely to make a change.

The focus of the Project to identify ways to strengthen governing institutions in a term limited environment. Where the voters have imposed, and are unlikely to repeal, a law mandating that public officials have mandatory inexperience, there is a need to strengthen other institutions to give these well meaning, intelligence but inexperienced public officials the tools to accomplish their important tasks.

If desired by the sponsors, the Project could include analysis and education concerning alternatives to the lifetime term limits requirement.

8. Preliminary Proposed Time Frame

A preliminary timetable is as follows:

December 2009: Secure funding and identify Project Manager

December 2009: Announce Steering Committee, meeting with Legislative Leaders and announce Project

January 2010: Kick-off public conference on Project

February 2010 – June 2010: Staff work and research according to Work Plan to be developed

June – July 2010: Announcement of Project Proposals

August 2010: If a constitutional amendment is proposed, a vote on the August 2010 Primary is possible

Lame Duck legislative session, November-December 2010: Legislative adoption of recommendations to take effect in 2011

2011-2012: Implementation of strengthened legislative powers of the Michigan
Legislature

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November 10, 2009

Representative Kate Segal
MI House of Representatives
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via email: ksegal@housemi.gov

Representative Segal,

The City of Springfield has supported Legion Villa Inc's numerous attempts to gain sole ownership of the property that houses their facility for a number of years. We believe that their ability to market the unused portions of their property would have a great fiscal benefit on their organization as well as on the general fiscal health of the City of Springfield. Thank you for your efforts to produce the needed legislation to make this happen.

The property occupied by Legion Villa Inc. represents one of few remaining undeveloped tracts of land in Springfield. We feel that Legion Villa will be readily able to find a purchaser for the property, and the investments made in this property will benefit Legion Villa and the entire Springfield community.

I ask that you and your colleagues please support House Bill 5329.

If you have any questions or comments, please do not hesitate to contact me anytime at 269-719-9146.

Sincerely,

Franklin Peterson

Franklin Peterson
Springfield City Manager

