JOBS / SECURITIZATION / TAX
LEGISLATIVE PACKAGE

Questions and Answers on
Tie-Bars, Enactment into Law, and Effective Date
November 21, 2005

Q: Which bills in the jobs /securitization / tax legislative package have been enacted into law and have become effective?

The jobs and securitization bills (SBs 298, 359, 521, 533, 664, 665, and 667; HBs 5047, 5048, 5109, 5215, and 5216) have all been granted immediate effect by the Legislature, signed into law by the Governor, assigned public act numbers by the Secretary of State, and become effective and operative law.

None of these bills are tie-barred to a bill vetoed by the Governor.

Q: If the Governor signed several of the tax bills into law, why are those bills not effective?

The Governor signed many of the tax bills (including SB 633; HBs 4342, 4972, 4973, 4980, 5095, 5097, 5098, 5106, and 5108). Each of the bills also were granted immediate effect by the Legislature and assigned public act numbers by the Secretary of State. However, none of the bills become effective law because each bill is tie-barred to the two bills vetoed by the Governor (HBs 5096 and 5107).

Because every tax bill in the package was tie-barred to the two bills vetoed, none of the tax bills become effective and operative law.

Q: What is a <u>tie-bar</u>?

A tie-bar "refers to the practice of placing a provision in a bill which states that it will not become effective until another specified bill is also enacted into law." OAG, 1979-1978, No 5478, p 128 (April 4, 1979).

"Thus, a statute which contains a 'tie-barred' provision does not become operative until the happening of a contingency, the enactment of another statute." OAG, 1979-1978, No 5478, p 128 (April 4, 1979).

Q: May the Legislature tie-bar any bill to another bill?

<u>No</u>. Tie-barring bills that are "reasonably related to each other" is permitted. OAG, 1979-1978, No 5478, p 128 (April 4, 1979). However, the Legislature's authority to tie-bar bills is limited by Const 1963, art 4, § 24, which provides:

> No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

The primary purpose of this provision "is to prevent log rolling—the practice of combining several proposals each of which might not succeed on its own merit in a single bill. . . Thus, the practice of 'tie-barring' may be a violation of Const 1963, art 4, § 24, only if it results in the enactment of a statute which does not sufficiently express its purpose in its title or if the legislation contains more than one purpose."

Accordingly, to avoid this constitutional issue, the Legislature may choose not to tie-bar together all of the bills in a legislative package.

Q: Are all of the bills in the jobs / securitization / tax legislative package tie-barred to each other?

<u>No</u>.

Tax bills: Each tax bill in the package is tie-barred to each of the other tax bills in two-way tie-bars. None of the tax bills are tie-barred to any of the jobs / securitization bills (Tax bills include: SB 633; HBs 4342, 4972, 4973, 4980, 5095, 5096, 5097, 5098, 5106, 5107, and 5108).

Jobs / Securitization bills: Many of the jobs / securitization bills are tied to other jobs / securitization bills. Some of the jobs / securitization bills are tie-barred to some, but not all. of the tax bills in one-way tie-bars. (Jobs / securitization bills include: SBs 298, 359, 521, 533, 664, 665, and 667; HBs 5047, 5048, 5109, 5215, and 5216).

Q: Can you provide an example of why the jobs / securitization bills are effective?

The enacting section of House Bill 5047, one of the main jobs securitization bill provides:

> This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:
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> (a) Senate Bill No. 298 (2005 PA 212)
> (b) Senate Bill No. 359. (2005 PA 213)
> (c) Senate Bill No. 521. (2005 PA 214)
> (d) Senate Bill No. 533. (2005 PA 215)
> (e) Senate Bill No. 633. (2005 PA 216)
> (f) House Bill No. 4342. (2005 PA 221)
> (g) House Bill No. 4972. (2005 PA 222)
> (h) House Bill No. 4973. (2005 PA 223)
> (i) House Bill No. 5048. (2005 PA 226)
> (j) House Bill No. 5108. (2005 PA 231)
> (k) House Bill No. 5109. (2005 PA 232)

Because each of the 11 bills referenced in Enacting Section 1 of House Bill 5047 have been "enacted into law," House Bill 5047 (2005 PA 225) is now an effective and operative law.

Q: What does "enacted into law" mean?

The process for enacting a bill into law in Michigan is set forth in Const 1963, art 4, § 33, which provides in pertinent part (emphasis added):

> Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time ***sign and file*** it with the secretary of state ***and it <u>shall</u> become law***. . . ." Const 1963, art 4, § 33 (emphasis added).

According to the Attorney General:

> "Giving the words of Const 1963, art 4, § 33, second sentence, their usual and ordinary meaning, <u>Vetter v Fowler</u>, 167 Mich 499; 133 NW 500 (1911), an act signed by the Governor shall become law when it is filed 'with the Secretary of State'. . . . It is my opinion, therefore, that a bill passed by the Legislature, given immediate effect, and signed by the governor, becomes law upon its filing with the Secretary of State." OAG, 1983-1984, No 6201, p 230 (April 30, 1984).

According to the Michigan Supreme Court:

> "The word '***enactment***' is defined by Webster (New International Unabridged) as follows:
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> 1. * * * the giving of legislative sanction and executive approval whereby a bill becomes an act or law.
> 2. That which is enacted; a law; decree; statute; prescribed requirement * * *."
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> <u>Stadle v. Township of Battle Creek</u>, 346 Mich 64, 68-69, 77 NW2d 329, 331 (1956) (emphasis added).

Q: Is the date a bill is "enacted into law" and its "effective date" the same?

<u>No</u>, not necessarily.

According to the Legislative Service Bureau:

> "Do not confuse the ***effective date*** of an act with the ***enactment date*** of an act." State of Michigan, Legislative Service Bureau, Legislative Drafting Manual (Lansing: May 21, 2001), p 40 (emphasis added).
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> "The ***enactment date*** of an act is the date when the last act necessary to make the bill a law is completed, most frequently the date the governor files the signed enrolled bill with the Secretary of State. The ***effective date*** of an act is the date the statutory provisions commence." State of Michigan, Legislative Service Bureau, Legislative Legal Manual, (Lansing: May 21, 2001), p 22 (citations omitted) (emphasis added).

According to the Attorney General:

> "I interpret '***enacted into law***' as merely requiring that the legislative and executive procedures that are part of the ***enactment*** process take place, and do not interpret such language as imposing the additional requirement that a statute has been ***'validly' enacted***." OAG, 1975-1976, No 5019, p 386 (April 14, 1976) (emphasis added).
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> "House Bill 5250 was signed into law by the Governor on August 27, 1975 as 1975 PA 227. The law is clear that the process of '***enactment***' was complete as of that time. Although the act was not given immediate ***effect*** until and would not take ***effect*** until a date later than September 1, 1975, it was nevertheless '***enacted***' as of that date. OAG, 1975-1976, No 5019, p 386 (April 14, 1976) (citations omitted) (emphasis added).

According to the Michigan Court of Appeals:

> "Defendant would read the phrase '***is enacted into law***' to mean '***takes effect***', while the prosecution would read the phrase to mean '***is passed by the Legislature and approved by the governor***'.
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> People v. Belanger, 120 Mich App 752, 762; 327 NW2d 554, 558 (1983) (ruling in favor of prosecution and rejecting argument of defendant that enacted into law means takes effect).

Q: When adopting tie-bars, does the Legislature use the terms "enacted into law" and "effective" interchangeably?

No. "In other instances where so-called 'tie-bar' language has been used, the legislature has been very explicit in expressing its intention that the other bill must not merely be '***enacted***' but must also take ***effect*** (i.e., must be 'valid'); see 1951 PA 51 § 23, MCLA 247.673; MSA 9.1097(23), which provided that the act of which it was part would become law only if another bill was '***enacted into law and becomes effective***'.". OAG, 1975-1976, No 5019, p 386 (April 14, 1976) (emphasis added).

See also:

> "This amendatory act shall not take effect unless House Bill No. 5525 of the 88th Legislature is ***enacted into law*** and becomes ***effective*** under the provisions of enacting section 4 of that amendatory act."
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> 1996 PA 221, § 2 and 1996 PA 222, § 2 (emphasis added).

> "This section shall not apply unless House Bill No. 4426 of the 88th Legislature is ***enacted into law*** and takes ***effect***."
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> 1995 PA 111, §8905a(6) (emphasis added).