



Negligence Law Section

The Road to Insurance Reform

The centerpiece of Governor Whitmer's campaign last year was the catchphrase "Fix the Damn Roads." After her victory in November, Lansing pundits eagerly awaited her plan for accomplishing that task. Speculation about her proposal included things like the use of long-term bonds, small increases in various taxes and fees, or shifts in spending away from other state programs. There was a general consensus among policy wonks that it would be impossible to lay out a plan that would actually generate sufficient revenue to meet the need – a figure that according to transportation engineering experts is north of \$2 billion per year.

Then, on March 5, she did exactly that.

Governor Whitmer's budget proposal calls for a phased-in increase to the Motor Fuel Tax that will eventually total 45 cents per gallon. Moreover, her proposal skillfully juxtaposed needed funds for road construction with a large bump in public education funding totaling over \$500 million. She was able to accomplish this by undoing the shell game that has gone on for decades in the Michigan appropriation process, whereby funds raised ostensibly for one purpose end up being used for other purposes. By using the Motor Fuel Tax as the source of new revenue, Whitmer guarantees that the tax increase will be used almost exclusively for road and bridge repair, with a small percentage going for other transportation purposes like aviation, rail, and public transit.

By funding roads with taxes restricted for transportation use, she frees up General Fund dollars currently going to plug potholes that used to be used for colleges and universities. Those dollars in turn allow for her to end the practice started about ten years ago of skimming money off the top of the School Aid Fund to pay for higher education. The Governor's budget proposal, if adopted, would move us back to a time when funds raised for a specific purpose were, for the most part, actually used for that purpose.

The fly in the ointment of Governor Whitmer's budget proposal is fairly obvious. No one expected her to be able to put together a plan to fully fund road maintenance and repair for the simple fact that it would take an eye-popping tax increase to accomplish such a feat. The likelihood of a Republican-controlled Michigan Legislature passing a 45 cent per gallon gas tax increase when they refused to even consider a 10 cent per gallon increase a few years ago is miniscule. Public reaction to the proposal has ranged from lukewarm to ice-cold – and even among those who support a tax increase, there is unhappiness about using a consumption tax like the gas tax which disproportionately impacts lower-income residents. The fact that the Whitmer plan also includes increases in the Earned Income Tax Credit and a repeal of the "Pension Tax" to help poorer Michiganders have largely gone unnoticed because those are harder for most people to wrap their heads around.

But here is where the plot thickens.

During Governor Whitmer's budget proposal to the House and Senate Appropriations Committees, Representative Aaron Miller (R-Sturgis), one of the most outspoken proponents of No-Fault Auto Insurance Reform, asked a question about the gas tax increase. Representative Miller asked how the state could ask drivers to pay so much more at the pump without providing rate relief for their auto insurance. Similarly, Senate Majority Leader Mike Shirkey (R-Clark Lake) stated that any discussions on tax increases should be held off until No-Fault Auto Insurance reform was signed into law. Since then, both Senator Shirkey and Speaker of the House Lee Chatfield (R-Levering) have stated that any discussions about tax increases and road construction should be made independent of each other. However, it is impossible in Lansing for issues not to become intertwined, especially when one is arguably the top priority of the Governor, and the other is arguably the top priority of legislative Republicans.

So far, legislative work on the two issues has been completely separate. House and Senate Appropriations Subcommittees are ramping up their hearing process on the proposed 2020 budget, but there has been zero official discussions about the Governor's gas tax proposal. Senate Majority Leader Shirkey has even indicated that the Legislative leadership's plan is to present the Governor a budget with no revenue increases and then begin work on possible road revenue sources after the budget work is complete. Speaker of the House Chatfield stopped short of saying there would be no revenue discussions in the budget process, and Governor Whitmer has maintained that the budget must include significant new revenue for roads.

Meanwhile, the House Select Committee on Reducing Car Insurance Rates, chaired by Representative Jason Wentworth (R-Clare), has been hearing testimony from interested parties and organizations. The Michigan Department of Insurance and Financial Services, the Citizens Research Council of Michigan, the Coalition to Protect Auto No-Fault, and the Michigan Catastrophic Claims Association are some of the groups that have provided testimony to the House Committee. The Senate Insurance Committee, chaired by Senator Lana Theis (R-Brighton), has also been taking testimony from interested groups.

The overall theme from legislative leadership is that No-Fault reform will definitely pass this year, and that every interested organization must be prepared to present real proposals that will lower rates and protect accident victims. However, the only proposals that seem to be getting any traction in the House and Senate are pretty similar to the proposals we have seen for the last 30 years: capping medical benefits, PIP choice, medical care fee schedules, limits on attendant care, etc.

Even though there is a renewed energy in Lansing to tackle high auto insurance rates, so far, there have not been many new ideas that haven't been rejected repeatedly over the past three decades. Moreover, testimony about how reforms would impact Medicaid costs or health insurance rates; or about how reducing benefits will not necessarily reduce rates in any significant way; or how the real driver for high rates in some parts of the state stems more from use of credit scores and geographic rating than from claims data...these arguments do not seem to be resonating among the elected officials who are driving this train. It is very possible that once again, efforts to reduce costs for drivers could end in stalemate.

And this is where the road funding plan comes back into play. Compromise and horse-trading used to be the name of the game in partisan politics. That is no longer the case, as hyper-partisanship has made "compromise" a dirty word in Lansing. However, in this instance, we could possibly see a scenario in

which trade-offs are made between a gas tax increase and no-fault reform. The danger then becomes that the final “reforms” of No-Fault insurance are focused more on good politics than good policy. The Negligence Section Council is working with members of the Legislature and the Governor’s office to remind our elected officials that a truly good compromise is one where both sides receive something of benefit.