Council Comments:

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STATE BALLOT PROPOSALS -- I

Four statewide proposals have been placed on the November 8th ballots three of them by the state Legislature. Proposal A, which would prohibit the use of public assistance to fund abortion, except when necessary to protect the life of the mother, and Proposal B, which would amend the state Constitution to provide for a crime victims "bill of rights" are discussed below. Two proposals which would authorize bond issues of $660 million (environmental) and $140 million (recreational) will be discussed in a subsequent **Council Comments.**

PROPOSAL A: MEDICAID FUNDING OF ABORTIONS

THE ISSUE IN A NUTSHELL

Public Act 59 of 1987 would amend the Social Welfare Act of 1939 by adding a Section 109a to prohibit the use of public assistance to fund abortion, except when necessary to save the life of the mother. The statute was enacted by the process of statutory initiative and approved by the state Legislature. Subsequent to its approval Act 59 was suspended when petitions bearing sufficient signatures to invoke the referendum were submitted.

The text of Proposal A, which is worded such that a "yes" vote will approve the law prohibiting the use of public assistance to fund abortion except when necessary to protect the life of the mother, while a "no" vote will reject the law, is as follows:

RESTRICT USE OF TAX FUNDS FOR ABORTIONS FOR PERSONS RECEIVING PUBLIC ASSISTANCE

Public Act 59 of 1987 is a law that states that tax funds shall not be used to pay for an abortion for a person receiving public assistance unless necessary to save the life of the mother.

Should the Law be approved? YES [ ] NO [ ]

FEDERAL BACKGROUND. In 1973, the United States Supreme Court decided in the case of **Roe v Wade,** (410 US 113; 1973), that the substantive right of privacy (held to be contained in the Fourth Amendment to the United States Constitution) encompassed the right of abortion. States were prohibited from placing restrictions on that right during the first trimester of pregnancy, absent a compelling state interest. The decision did not, however, require that public assistance be provided to fund such a right.

In the case of **Maher** v **Roe,** (432 US 464; 1977), the Court held that the denial of public assistance to fund **elective** (non-therapeutic) abortions did not violate the federal Constitution. Also in 1977, Congress attached an amendment to the Health, Education and Welfare (now Health and Human Services) appropriations bill, restricting the conditions under which the federal government would reimburse states for abortions performed under Medicaid, which is the federal-state medical-insurance program for welfare recipients and others. These restrictions in effect banned federal Medicaid reimbursement even for medically necessary abortions, unless the life of the mother was endangered.

States were left to pursue one of two options: they could pay for abortions consistent with restrictive federal guidelines and receive reimbursement, or continue to fund all abortions with state funds, but receive federal reimbursement only for those abortions which could be documented as necessary to save the life of the mother. Finally, in 1980, in **Harris** v **McRae,** (448 US 297; 1980), it was held that there was no federal constitutional right to public funding of abortion even when an abortion was medically necessary.

THE BACKGROUND IN MICHIGAN. Because of restrictions as to the circumstances under which the federal government would reimburse states for abortion, a number of states enacted restrictions of their own. Thirty-six states now prohibit the use of public assistance to fund elective abortion, while the remaining 14 states -- Michigan included -- continue to publicly fund abortion without regard to necessity. On eighteen occasions since 1978, the state Legislature placed restrictive language in appropriations bills or attempted to amend the Social Welfare Act of 1939 to limit the circumstances under which public monies would be expended to fund abortion. On each occasion the restriction was vetoed and the Legislature subsequently failed to override.

Early in 1987, petitions were circulated, the object of which was to restrict public funding of abortion by statutory initiative. Section 9 of Article 2 of the state Constitution provides that "[t]he people reserve to themselves the power to propose laws and to enact and reject laws, called the [statutory] initiative...."

The state Constitution requires that petitions proposing a statutory initiative must contain signatures equal to at least eight percent of the total votes cast for all candidates for governor in the last preceding general election in which a governor was elected. On June 12, 1987, the Board of State Canvassers certified that 395,751 of the 461,351 signatures submitted were valid, surpassing the eight percent requirement of 191,726 signatures.

The Legislature is required within forty session days of receipt to enact or rejects without amendment, any proposed statutory initiative. If rejected by the Legislature, the proposal would have gone on the ballot at the next general election. However, the Senate approved the proposal on June 17, 1987, by a vote of 30 to 6. The House gave its approval six days later by a vote-of 66 to 41. Neither house voted to give the law immediate effect, since the proposal stated by its own terms that it would take effect immediately when approved. It was doubtful in any event that the House could have mustered the seventy-three votes necessary for immediate effect. A law initiated or adopted by statutory initiative is not subject to the veto power of the governor.

On the same day that the Legislature approved Act 59, June 23, 1987, litigation ensued to determine whether the act took effect immediately, or ninety days after the end of the legislative session in which it was enacted. In November 1987 the state Supreme Court held that the act, having failed to receive the two-thirds vote of each house constitutionally required for immediate effect.. could not take effect until ninety days after the legislative session ended. Therefore, the act would take effect on March 29, 1988.

Section 9 of Article 2 of the state Constitution provides that in addition to the statutory initiative, the people reserve to themselves 11 ... the power to approve and reject laws enacted by the legislature, called the referendum." This powers which does not extend to an appropriation act for state institutions nor one to meet a deficiency in state funds, must be invoked "within 90 days following the final adjournment of the legislative session at which the law was enacted." Signatures equal to at least five percent of the total votes cast for all candidates for governor in the last preceding general election are required. The effect of invoking the referendum is to suspend the law until it can be voted on at the next general election.

On March 1, 1988, 229,098 signatures were filed with the state in an attempt to invoke a referendum. The state Attorney General ruled on March 28, 1988, the day before Act 59 was scheduled to take effect, that the referendum had been invoked on the date when the signatures were filed. Thus Act 59 was in effect suspended twenty-eight days before it took effect.

On April 13, 1988, the Board of State Canvassers certified that approximately 194,000 of the signatures submitted were valid, surpassing the required number of 119,829 signatures, the effect of which was to place the proposal on the November 1988 ballot.

PROPOSAL B: CRIME VICTIMS "BILL OF RIGHTS"

THE ISSUE IN A NUTSHELL

Proposal B would amend Article 1 of the state Constitution by adding a Section 24 to establish a crime victims "bill of rights."

Proposal B would ensure that victims of crime enjoy certain rights with respect to criminal proceedings. It is similar in philosophy to Public Act 87 of 1985, the crime victim's rights act. Victims of crime would be accorded the right to: (1) be treated with fairness and respect for their dignity and privacy; (2) a timely disposition of the case; (3) be reasonably protected from the accused; (4) notification of court proceedings; (5) attend trial and other court proceeding; (6) confer with the prosecution; (7) make a statement at sentencing; (8) restitution; and (9) information about the conviction, sentence, imprisonment and release of the accused. The Legislature would be authorized to implement the new Section by law and to provide for an assessment against convicted defendants to defray costs.

Some of the proposals provisions, such as that a victim of crime be "treated with fairness and respect" seem less a matter of constitutional right than simple courtesy, and might be problematic to implement. For example, if defense counsel aggressively questioned a crime victim who took the stand, would the witness have a cause of ac-

tion on grounds that he or she had not been "treated with fairness and respect for [his or her] dignity?" Likewise, would the release of embarrassing evidence during the course of trial violate one's right to "dignity and privacy?" The answer would depend upon whether the Legislature attempted to statutorily define such highly subjective terms as "respect," "fairness," and "dignity," and upon judicial interpretation thereof.

The necessity for Proposal B is not readily apparent since neither the state Constitution nor statutes prohibit the rights which the proposal would ensure. In facts many of the rights are already protected by statute. It is true that a state legislature is presumed to have any authority not denied it by the national or its own state constitution. Thus, in absence of a constitutional prohibition the Michigan Legislature could statutorily curtail or further assure the rights of victims of crime.

It is likewise true the state Constitution does not presently list the rights which the proposal addresses. However, Section 23 of Article 1 of the state Constitution does provide that "[t]he enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people." The state Constitution does not purport to enumerate all of the rights enjoyed by the people of Michigan. Nevertheless, the absence of such enumeration does not suggest that the rights not listed do not exist, but simply that a comprehensive compilation of them would be impractical, and in any event would serve no purpose.

When confronted with a similar situation concerning the addition of a bill of rights to the federal Constitution, Noah Webster, believing that the only effect of a bill of rights would be to protect rights which no reasonable person considered to be in any doubt, wrote that it should also be guaranteed

> that everybody shall, in good weather, hunt on his own land, and catch fish in rivers that are public property... and that Congress shall never restrain any inhabitant of America from eating and drinking, at seasonable times, or to prevent his lying on his left side, in a long winter's nights or even on his back, when he is fatigued by lying on his right.