

State Notes

TOPICS OF LEGISLATIVE INTEREST

January/February 2007



Life Without Parole Sentencing For Youth **By Lindsay Hollander, Fiscal Analyst**

Michigan is one of 43 states that allow offenders under the age of 18 to be sentenced to life without parole. In Michigan, all 17-year-olds are tried and sentenced as adults for any crime, and juveniles aged 16 and under can be tried or sentenced as adults. During the past 20 years, the issue of trying juveniles in adult courts has been revisited by the Legislature on several occasions. Additionally, Senate Bills 6, 9, 28, and 40, which would prohibit the courts from sentencing offenders under the age of 18 to a life sentence without parole eligibility, were introduced in January 2007 and referred to the Senate Judiciary Committee. This article provides background on and analysis of the issue of life sentences without parole for offenders under the age of 18.

Statutory Background

Before 1988 revisions to the juvenile code, Code of Criminal Procedure, and Revised Judicature Act, 15- and 16-year-old offenders could be tried as an adult only if the juvenile court judge provided a waiver. Since 1988, prosecutors have been able to try some juveniles 15 and older in adult court through an automatic waiver, bypassing the judge. This automatic waiver applies only to certain crimes, such as first-degree murder. Once the juvenile is tried in adult court, the circuit court judge has the responsibility of deciding whether the offender will receive a juvenile or adult sentence. Amendments to these statutes in 1996 extended automatic waivers to 14-year-old offenders. Additionally, judges are required to sentence juveniles tried in circuit court the same as an adult would be sentenced. Prosecutors also gained the ability to try juveniles of any age in juvenile court, and in these cases, judges have the option to sentence the juvenile as an adult or as a juvenile, or to give the offender a blended sentence.

Sentencing Background

For first-degree murder under the Michigan Penal Code, the sentence is life without parole. As previously noted, the sentencing judge has had more sentencing options for juveniles since 1996. Before 1996, faced with a large discrepancy between a juvenile sentence, which would release the offender on his or her 21st birthday, and an adult sentence of life without parole, several sentencing judges had stated that they felt no choice but to use the adult sentence.¹ In the period between the 1988 amendments and the 1996 amendments to the statutes, when blended sentences were not provided for in any court, 85 youths under age 17 were sentenced to life without parole, over two and a half times the rate than after the 1996 amendments. The decrease may have been the result of prosecutors' trying more juveniles in juvenile court due to the additional sentencing discretion provided to judges in juvenile court. Similarly, before automatic waivers began in 1988, the rate of life without parole sentences for these offenders was half that of the rate during the years between the 1988 and 1996 amendments. However, these data may be due to declining murder offenses in Michigan as shown in [Figures 1 and 2](#).

¹ "Second Chances: Juveniles serving life without parole in Michigan prisons", American Civil Liberties Union of Michigan, 2004, pp. 8, 12.



Figure 1

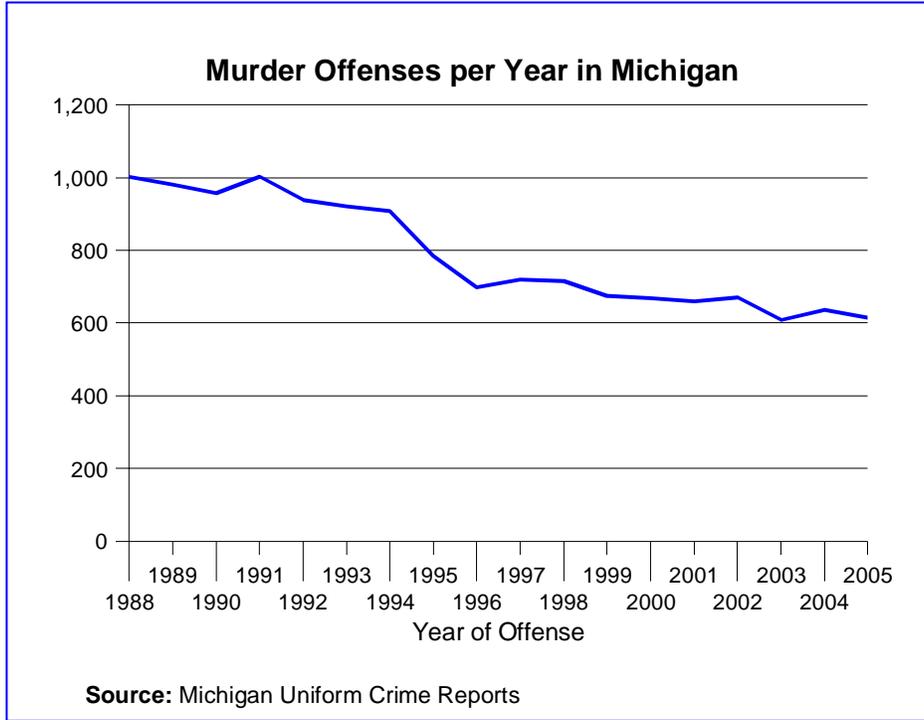


Figure 2

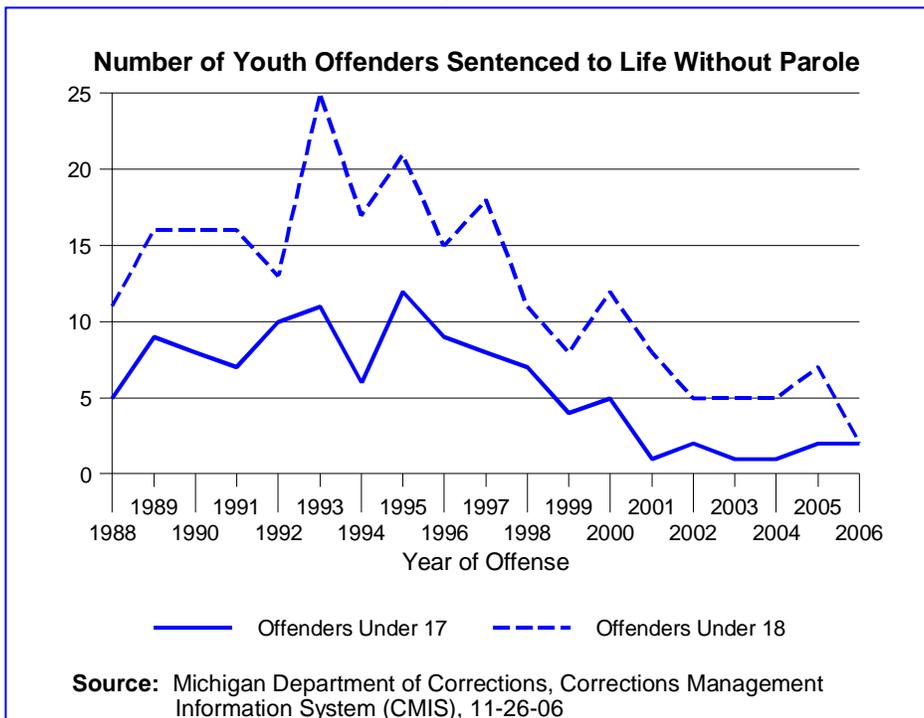




Table 1 shows when the offense was committed, broken down by specific Michigan Compiled Law (MCL) citation. For the purposes of this table, only offenders under 17 are used, as automatic waivers do not affect 17-year-olds since they are always tried in adult court.

Table 1

Time Period of Offense and Crime Committed for Offenders under 17 at Date of Offense Sentenced to Life Without Parole*			
	Offense Date		
	01/01/1980 - 05/31/1988 (101 months)	06/01/1988 - 12/31/1996 (103 months)	01/01/1997 – 05/31/2006 (113 months)
Offense Under MCL 750.316			
1 st degree murder.....	34	46	1**
1 st degree murder – premeditated	0	11	15
1 st degree murder - felony murder	1	15	15**
Open murder.....	0	3	4
Total.....	35	75	32
Number of Offenders Sentenced per Month	0.35	0.73	0.28
* Does not include convictions since reversed or discharged by the court.			
** One 750.316 offender and two 750.316B offenders in this offense date group were counted in both this cell and in the cell for 750.316A, as the offenders were convicted of both offenses. The totals, however, count these three offenders only once.			

Source: Michigan Department of Corrections (MDOC), CMIS, 11-26-06

Fiscal Impact

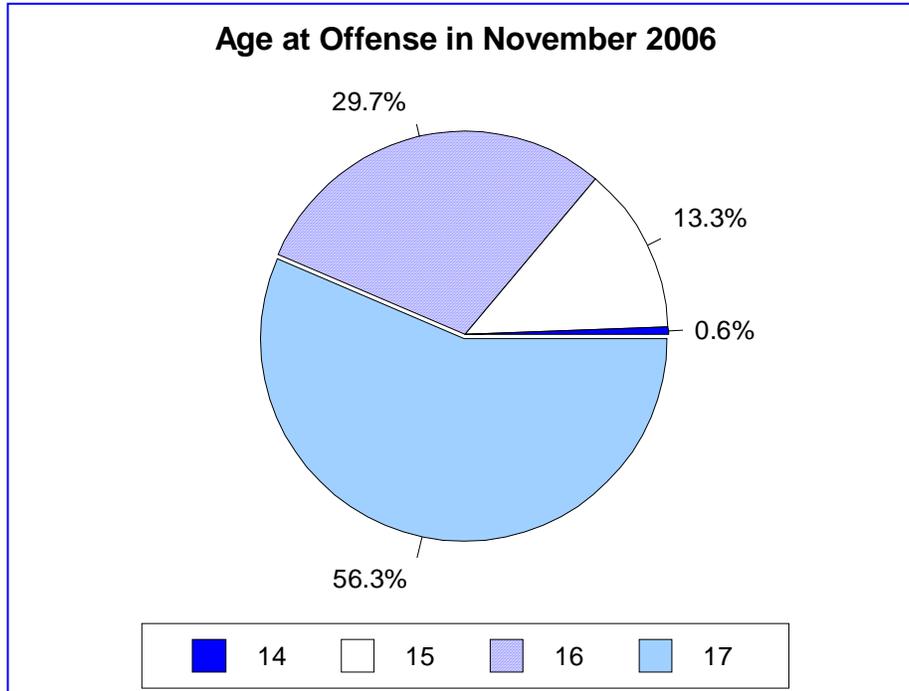
As of November 2006, in Michigan, 328 prisoners who committed an offense before turning 18 were serving a life sentence without the possibility of parole.² Of those 328 prisoners, 146 committed the offense before turning 17, which is the age at which youths are excluded from juvenile court jurisdiction. Figure 3 displays the offenders by their age at the time of the offense. All of the prisoners were sentenced under MCL 750.316 for first-degree murder.

As shown in Figure 3, almost all juvenile offenders in the Michigan prison system serving a life sentence without parole were 15 years of age or older when they committed the offense. As these offenders are serving life sentences, youth offenders are likely to serve longer sentences than adult offenders serve. Figure 4 exhibits the age of these 328 offenders as of November 2006.

² This number includes all offenders currently serving. This number does not include deceased offenders counted in Table 1, and includes available information for offenses from before 1980, which are not counted in Table 1.

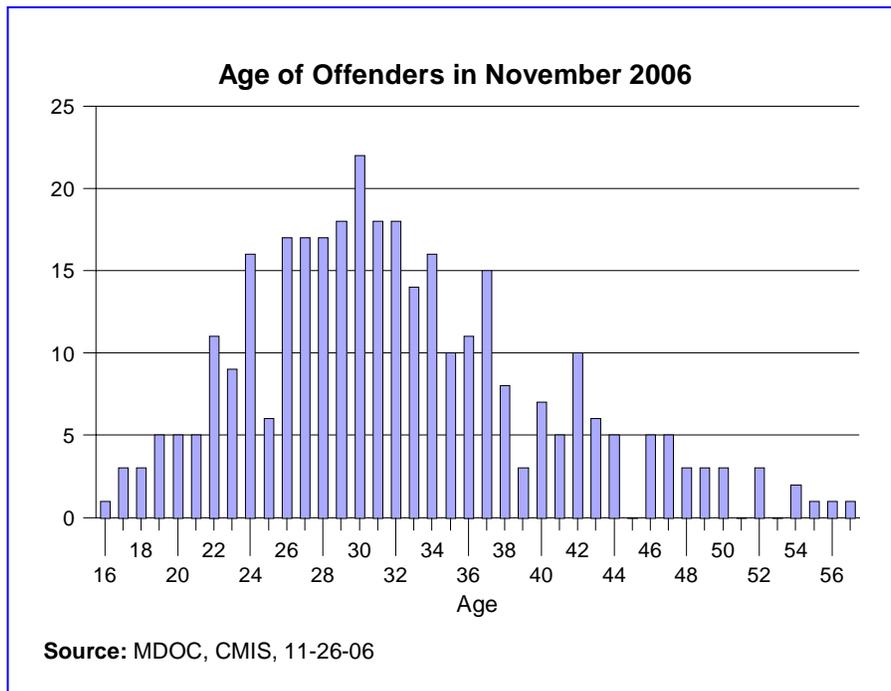


Figure 3



Source: MDOC, CMIS, 11-26-06

Figure 4





As the figure shows, the majority of these offenders are currently 22 to 37 years of age, with an average age of 32. The current life expectancy in the United States is 77.6 years. If each offender lives to be 77.6 years old, and the average annual cost of incarceration in a State facility continues to be \$31,000, the State will spend a total of \$462,110,800 on these 328 prisoners between now and the time of their deaths. The average annual cost of incarceration for these offenders is likely to rise due to health care costs for older prisoners. To the extent that the 1988 and 1996 amendments result in more youth offenders sentenced to life without parole, the average age of these offenders is likely to stay stable.

National Trends

Six states³ plus the District of Columbia do not sentence youth offenders to life without parole, and two of these, Alaska and New Mexico, do not allow the sentence at all.⁴ In Michigan, this sentence is used only for juveniles convicted of first-degree murder and murder caused by a terrorist act. However, nationwide, 7.2% of youth offenders serving the sentence were convicted of crimes other than some type of homicide, such as kidnapping, property crimes, sex crimes, and other violent crimes.⁵ Approximately 2,225 offenders who were convicted as youths are serving life sentences without parole in the United States.⁶ In comparison to other states, Michigan, with 328 currently serving, has a large number of these offenders. Michigan has the third-highest number of offenders who were convicted as youths serving life sentences without parole, with Louisiana coming in second and Pennsylvania coming in first.⁷ However, Michigan has the second-highest rate of incarceration of these offenders, at 52.9 offenders per 100,000 youths.⁸ Louisiana has the highest rate at 109.6 offenders per 100,000 youths.⁹ Michigan's current sentencing scheme, which allows for blended sentences, may result in the rate's decrease. The six of the 12 states with a rate of fewer than five offenders per 100,000 youths have mandatory life sentences without parole.¹⁰ Of the other 22 states for which data are available, 16 make such sentences mandatory.¹¹

³ Alaska, Kansas, Kentucky, Maine, New Mexico, and West Virginia. New York is frequently included in this classification, but sentences 16- and 17-year-olds to life without parole because offenders aged 16 are always considered adults and automatically put under the jurisdiction of the adult criminal justice system.

⁴ The Rest of Their Lives: Life without Parole for Child Offenders in the United States, Human Rights Watch and Amnesty International USA, 2005; DC ST § 22-2104; Kan. Stat. Ann. § 21-4622; KRS § 640.040.

⁵ The Rest of Their Lives: Life without Parole for Child Offenders in the United States, Human Rights Watch and Amnesty International USA, 2005

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid



Conclusion

The sentencing of youth offenders affects not only the youth and his or her victim, but also society at large. Society bears the cost of incarcerating the offender, and whatever resources were put into his or her upbringing that the offender would have repaid to society as a productive adult. Allowing the sentence of life without the possibility of parole for youths means that society is willing to accept those costs because it will potentially benefit if this results in fewer future crimes by the incarcerated offenders or by other individuals.

The number of youth offenders sentenced to life without parole has dropped in recent years. As discussed above, this could be due to statutory changes or a general drop in the murder rate. Judges' and society's willingness to bear the costs of putting youths in prison for life may have dropped. Prosecutors might not be using automatic waivers as often, or perhaps more offenders are negotiating pleas to lesser offenses. In any case, the recent attention to this issue coupled with a decline in such sentences may reflect changes in the way youth offenders are viewed and managed in the criminal and juvenile justice systems.

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FY 2006-07 Capital Outlay Budget Status **By Bill Bowerman, Chief Analyst**

Introduction

On December 21, 2006, the Governor vetoed the fiscal year (FY) 2006-07 Capital Outlay budget bill (Enrolled Senate Bill 1081) in its entirety. The veto message stated:

The State of Michigan continues to face enormous fiscal challenges. The revenues used to support state government operations and provide critical services for our citizens have eroded. The accelerated eliminations of the Single Business Tax by the 93rd Michigan Legislature coupled with its failure to enact replacement revenues have created additional fiscal instability. For these reasons, I do not believe now is an appropriate time to advance capital spending that will place additional pressures and obligations on the state's general fund, even though many of the projects are worthwhile.

While the State Building Authority section of Enrolled Senate Bill (S.B.) 1081 would have committed the State to millions of dollars in General Fund debt service payments in future years, the Capital Outlay budget also contained \$148.1 million in Federal funding for various projects throughout the State, including airport improvement projects (\$137.3 million), Department of Military Affairs projects (\$5.1 million), farmland and open space development acquisition (\$1.2 million), and Department of Natural Resources projects (\$3.5 million). State Restricted funds totaled \$40.6 million and included funding for State parks, the waterways program, and various Department of Transportation facility needs. Consistent with the Governor's S.B. 1081 veto message, the Governor made no recommendation for a FY 2007-08 Capital Outlay budget. The following provides an overview of the Capital Outlay budget and the impact that delaying FY 2006-07 appropriations has on the State of Michigan.

State Building Authority-Financed Projects

Public Act 183 of 1964 created the State Building Authority (SBA) as a means to acquire, construct, furnish, equip, and renovate buildings for the use of the State, including public universities and community colleges. The Capital Outlay budget is the source of planning and construction authorizations for SBA-financed projects. While the line items in the bill reflect \$100 appropriations for planning and construction authorizations, the authorizations begin the process of committing the State to debt service payments (funded primarily from the State General Fund) when bonds are sold to finance the State's share of project costs. For FY 2006-07, the Governor had recommended the issuance of \$364.3 million in new SBA bond obligations for projects including: State agencies, \$50.0 million; State parks, \$20.0 million; five universities, \$103.2 million; and 14 community colleges, \$91.1 million. In addition, the Governor included a new \$100.0 million Regional Economic Development Initiative to provide incentives for State/local partnerships. Enrolled S.B. 1081 included projects that would have resulted in the issuance of \$381.2 million in new SBA bond obligations. Details on projects included by the Governor, House, Senate, and Conference Committee are available on the Michigan Legislature website:

<http://www.legislature.mi.gov/documents/2005-2006/billanalysis/Senate/pdf/2005-SFA-1081-R.pdf>



Department of Transportation – Airport Programs

Supported by the Federal Aviation Administration, State Aeronautics Fund, and local aeronautics match dollars, this appropriation supports a variety of airport improvement and maintenance projects at nearly 100 airports statewide. Enrolled S.B. 1081 contained all of the Governor's \$162.9 million recommendation for the Airport Program. Of the total appropriation, \$137.3 was Federal Aviation Administration funding. The Department of Transportation estimated that approximately \$60.0 million of that amount was discretionary funding and the balance was entitlement funds.

Discretionary funds are usually distributed between April and June. According to the Michigan Department of Transportation, if the Department does not have authorization or eligible projects, the Federal Regional Office could choose to distribute the discretionary funds to other states that have projects ready to go. While entitlement funds are formula driven and eventually will be received by the State, the lack of a State Capital Outlay budget could result in the delay of Federal entitlement funding until the FY 2007-08 Federal budget is adopted. The delay in construction projects results in lost economic opportunity. The Department estimates that approximately 60.0% of Federal funding for airports goes toward salaries and wages. Also, delays result in increased costs due to inflation.

Department of Transportation – State Trunkline Fund

The Governor included \$13,187,000 for the Rosa Parks Transportation Project based on increasing the scope/cost of the project from \$4.3 million to \$17,487,000 and appropriating \$3.1 million for State and contract agency salt storage buildings, \$413,000 for garage washbays, \$2.8 million for a new Transportation Service Center (TSC) in Oakland County, \$650,000 related to cost increases for the Cadillac TSC, \$750,000 related to cost increases for the Taylor TSC, \$750,000 for institutional and agency roads, and \$400,000 for miscellaneous remodeling, additions, and emergency maintenance. Enrolled S.B. 1081 included all of the Governor's recommendation with the exception of the Rosa Parks Project. All of the transportation projects included in Enrolled S.B. 1081 were funded by constitutionally dedicated State Trunkline Fund revenue. According to the Michigan Department of Transportation (MDOT), the delay in appropriating funds for State Trunkline Capital Outlay facility projects will result in further deterioration of buildings, additional energy use, failure to comply with requirements of the American with Disabilities Act, failure to meet Department of Environmental Quality mandates regarding salt storage facilities, impairment of MDOT's ability to maintain equipment and vehicles, and continued use of facilities that are inadequate for MDOT's operational needs.

Department of Natural Resources

The Governor's recommendation and Enrolled S.B. 1081 included:

- \$2.0 million for State parks repair and maintenance. The appropriation supports repairs and maintenance of items including roofs, fences, and infrastructure at the 96 State parks. Money comes from State Park Improvement Fund (camping and entrance fees) and the State Park Endowment Fund (a portion of oil, gas, and mineral leases on State land).



- \$1.4 million for forest roads, bridges, and facilities. This supports the maintenance of roads, bridges, and culverts to provide access for fire protection, law enforcement, logging, and recreation at State forests. Funds come from the Forest Development Fund, which is supported in large part by the sale of timber on State land.
- \$2.0 million for wetland acquisition. This appropriation supports the purchase, exchange, and other acquisition of land deemed to be critically important as deer habitat. This appropriation is supported by the Game and Fish Protection Fund (license fees).
- \$14,870,000 for the Waterways Boating Program, which included \$6,970,000 for State and local infrastructure improvement projects; \$1,170,000 for land acquisition; \$265,000 for Phase III of the Mackinaw City Marina/Dock project; \$510,000 for a new boating access site at Walloon Lake; \$332,500 for a local boating access site project in Tuscarora Township; \$113,500 for a boat launch and parking lot rehabilitation in Frankfort; \$171,000 for a breakwater rubble mound protective structure in Ludington; \$463,000 for a seawall and walkway improvements at Mitchell State Park; \$875,000 for marina rehabilitation and upgrades in Leland; and \$4.0 million for floating dock repairs, replacements, and improvements at DeTour Harbor.

The absence of a Capital Outlay appropriation bill resulted in the loss of the fall construction season for the Department of Natural Resources. Many projects are commenced during the time period when parks are closed. In the case of programs supported with Federal funds or with funds protected from diversion by the Michigan Constitution (Waterways Fund, Game and Fish Protection Fund), the funds may not be used to offset current School Aid Fund and General Fund revenue shortfalls. As with other construction projects, delays postpone economic benefits and result in inflationary increases to the cost of projects.

It is also important to note that the Natural Resources Trust Fund appropriation bill usually comes before the Legislature during the spring in the form of a supplemental appropriation for Capital Outlay. If the Governor's position on capital outlay includes the Trust Fund appropriation, millions of dollars in economic investment for the State and local governments through the Trust Fund will be affected. In December 2006, the Michigan Natural Resources Trust Fund Board recommended funding for 61 recreation projects and land acquisitions totaling over \$36.0 million. The Governor stated: "These recommendations represent a substantial economic investment in the quality of life in Michigan." A listing of approved recreation development grants and land acquisition grants can be found at the Department of Natural Resources website:

http://www.michigan.gov/dnr/0,1607,7-153-10371_10402-157611--,00.html

Department of Management and Budget

The Governor's recommendation and Enrolled S.B. 1081 included \$2.0 million for lump-sum appropriations to finance repairs at 38 buildings managed by the Department of Management and Budget. This expense is funded from user agency building occupancy charges. The funding is used for emergency and health-related repairs and replacements involving structural, mechanical, and electrical systems. Projects that could have received allocations from the \$2.0 million



appropriation include the steam utility distribution repairs at the Secondary Complex, leaking roofs at two State-owned office buildings, elevator replacements, and various other safety projects.

Department of Military Affairs

The Governor's recommendation and Enrolled S.B. 1081 contained \$5.0 million in Federal funding for building remodeling, additions, and construction at Camp Grayling and Fort Custer. According to the Department of Military Affairs, funding is available from previous Federal appropriations to cover the FY 2006-07 projected expenditures for this line item. Also included in the Military Affairs appropriation was \$650,000 (\$150,000 Federal; \$500,000 State Restricted) to reflect a project cost increase for the Shiawassee County Armory (from \$5,700,000 to \$6,350,000). The new armory is 95.0% completed, but, the building cannot be used because funds are not available to construct road access and a parking lot until the \$650,000 is appropriated.

Department of Agriculture

The Farmland and Open Space Development Acquisition appropriation includes funding from the Agriculture Preservation Fund and match money from the United States Department of Agriculture for the purchase of development rights in unique and critical farmland pursuant to guidelines described in State statute (MCL 324.36101 - 324.36117). The Agriculture Preservation Fund receives money from terminated contracts and penalties from farmland development rights agreements (commonly referred to as P.A. 116 agreements). Landowners also receive a tax credit under the program. As of November 2006, there were 40,150 contracts affecting 3.2 million acres of Michigan farmland. The Governor's recommendation and Enrolled S.B. 1081 included \$3,750,000 (\$1,250,000 Federal; \$2,500,000 State Restricted) for this program. In FY 2005-06, the appropriation for this program was \$7.5 million (\$5.0 million Agriculture Preservation Fund; \$2.5 million Federal). Over \$6.1 million of the FY 2005-06 authorization remains. The Management and Budget Act provides that Capital Outlay appropriations are available for multiple fiscal years (MCL 18.1248); therefore, the Department will use FY 2005-06 appropriation authorizations for FY 2006-07 expenditures. Based on actual revenue available for the program, the remaining FY 2005-06 authorization is sufficient to support projected expenditures in FY 2006-07.

Conclusion

In recent years, the Capital Outlay appropriation bill has not been enacted concurrently with other budget bills. The FY 2003-04 Capital Outlay budget was enacted on November 10, 2003; the FY 2004-05 Capital Outlay budget was enacted on April 28, 2005; and the FY 2005-06 Capital Outlay budget was enacted on December 20, 2005. The State is five months into FY 2006-07 without an enacted Capital Outlay budget. The impact of this delay includes the potential loss of Federal funding for airports, delayed repair and maintenance of buildings, and delayed recreation improvement projects for the State and local governments.