

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

July/August 2009



### Federal Stimulus Funding Update in Michigan Gary S. Olson, Director

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President Obama on February 17, 2009, signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). The Act provides for \$787.0 billion of stimulus to the national economy; this sum includes \$500.0 billion of increases in Federal spending and \$287.0 billion of Federal tax reductions.

To date, the State of Michigan has been authorized to appropriate approximately \$6.7 billion of direct Federal funding under provisions of ARRA. These additional Federal funds are split between \$3.7 billion of funding that has a high level of flexibility and \$3.0 billion of funding that is subject to restrictions on its use. Michigan will be using the additional Federal funds that can be characterized as flexible in nature to help eliminate actual and projected deficits in the General Fund/General Purpose (GF/GP) and School Aid Fund (SAF) budgets. The restricted Federal funding received by Michigan must be used pursuant to rigid guidelines developed by the Federal government.

#### Flexible Federal ARRA Funding

Table 1 provides a summary of the \$3.7 billion of Federal ARRA funding that can be characterized as flexible. There are three major categories of these flexible Federal funds. The first is a temporary increase in the Federal Medicaid matching rate. The Medicaid program is a jointly funded State and Federal program that provides health care for low-income citizens. The provisions of ARRA contain a temporary enhancement in the total cost of the Medicaid program paid by Federal funding. This temporary increase in the amount of Federal funds financing the Medicaid program allows Michigan to reduce the amount of State GF/GP appropriations needed to support the program. During fiscal year (FY) 2008-09, the Federal Medicaid match rate will increase from 60.27% to 70.41%, resulting in GF/GP appropriation savings of \$893.6 million. During FY 2009-10, the Federal Medicaid match rate will increase from 63.19% to 73.27%, resulting in GF/GP appropriation savings of \$973.0 million. A similar increase in the Federal Medicaid match rate in the first quarter of FY 2010-11 will result in GF/GP appropriation savings of \$209.6 million. The enhanced Federal Medicaid match rate funding is eliminated effective December 31, 2010. Michigan will be using these temporary increases in the Federal Medicaid match rate and the associated GF/GP appropriation savings to help eliminate overall projected GF/GP budget deficits.

Table 1

| American Recovery and Reinvestment Act<br>Summary of Flexible Funding<br>(millions of dollars) |                  |
|--|------------------|
| Enhanced Medicaid Match Rate (FY 2008-09).....   | \$893.6          |
| Enhanced Medicaid Match Rate (FY 2009-10).....   | 973.0            |
| Enhanced Medicaid Match Rate (FY 2010-11).....   | 209.6            |
| Unrestricted State Fiscal Stabilization Fund (FY 2008-09).....                                 | 289.8            |
| State Fiscal Stabilization Fund, K-12 (FY 2008-09).....  | 600.0            |
| State Fiscal Stabilization Fund, K-12 (FY 2009-10).....  | 634.1            |
| State Fiscal Stabilization Fund, Higher Ed. (FY 2009-10).....                                  | 68.3             |
| <b>Total Flexible Funding</b> .....  | <b>\$3,668.4</b> |

Source: Senate Fiscal Agency



The second category of flexible Federal ARRA funding is \$289.6 million of unrestricted funding that Michigan will receive under a provision of ARRA referred to as the State Fiscal Stabilization Fund. This temporary Federal funding can be used for any purpose and Michigan will be appropriating these flexible Federal funds during FY 2008-09 to help close the projected GF/GP budget deficit.

The third category of flexible Federal ARRA funding involves a total of \$1.3 billion of funding also under the State Fiscal Stabilization Fund. These funds must be used for K-12 education, community colleges, or higher education. The State of Michigan has appropriated \$600.0 million of these funds to the K-12 School Aid Fund budget in FY 2008-09. These funds were appropriated to eliminate a projected deficit in the FY 2008-09 SAF budget. The State of Michigan will appropriate an additional \$634.1 million of these funds in the FY 2009-10 SAF budget and an additional \$68.3 million will be appropriated in the FY 2009-10 Higher Education appropriation bill.

**Restricted Federal ARRA Funding**

Table 2 provides a summary of the \$3.0 billion of Federal ARRA funding that can be characterized as restricted. These restricted Federal funds must be appropriated based on the conditions contained in ARRA. They are not available to the State to help eliminate any projected deficits in either the GF/GP or the SAF budget.

**Table 2**  
**American Recovery and Reinvestment Act**  
**Summary of Restricted Funding**  
**(millions of dollars)**

|   |                  |
|---|------------------|
| Transportation Projects .....                 | \$903.4          |
| K-12 Special Education Programs .....         | 426.3            |
| K-12 At-Risk Programs .....                   | 465.1            |
| Workforce Training Programs .....             | 235.3            |
| Environmental Cleanup Projects.....           | 248.6            |
| Low-Income Home Weatherization Programs ..... | 244.0            |
| Food Assistance Programs .....                | 150.0            |
| Energy Programs .....                         | 108.8            |
| Unemployment Assistance.....                  | 85.3             |
| Community Services Block Grants .....         | 36.0             |
| K-12 Education Technology Grants .....        | 24.5             |
| Byrne Justice Assistance Grants .....         | 41.2             |
| All Other Restricted Programs .....           | 73.3             |
| <b>Subtotal Restricted Programs .....</b>     | <b>\$3,041.8</b> |

**Source:** Senate Fiscal Agency

The restricted ARRA funding falls into the broad categories of transportation, education, environmental, energy, workforce training, and low-income assistance programs. Transportation funding is split between highway construction projects, assistance to transit projects, and airport funding. Education funding is split between special education programs, at-risk student funding, and technology grants for school districts. The environmental funding is provided for the cleanup of contaminated sites. Energy funding includes funding of energy

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improvement projects in public buildings and energy technology projects. Workforce training funding includes increases in job training plus increases in unemployment benefits. Low-income assistance funding includes such programs as weatherization programs in low-income homes, increases in the level of food assistance for low-income families, and increases in community services block grant programs designed to assist low-income families.

While the State of Michigan has currently identified approximately \$3.0 billion of this restricted ARRA funding, the total amount of this type of ARRA funding is likely to increase. State departments and agencies are currently applying for a variety of competitive ARRA grants that are not distributed pursuant to formulas contained in ARRA. As Michigan receives Federal approval the total amount of Federal ARRA restricted funding will increase.

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### **A History of Michigan's Wetland Protection Program and Comparison with the Federal Program** **By Josh Sefton, Fiscal Analyst**

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In her fiscal year (FY) 2009-10 budget recommendation, Governor Granholm proposed elimination of the existing State program that manages wetlands in Michigan. The State's wetland program is administered by the Michigan Department of Environmental Quality (MDEQ). Under current law, the MDEQ provides regulatory oversight of the State's wetlands and issues permits to residents who wish to develop wetlands in certain ways. Although many other states also have wetland regulations, Michigan is one of only two states (New Jersey being the other) that have been authorized by the Environmental Protection Agency (EPA) to issue permits that also include Federal permit authorization for wetland alteration. In the rest of the nation, a permit is required from the United States Army Corps of Engineers (USACE) for work in wetlands, lakes and streams. The Governor estimates that \$2.1 million will be saved under her plan.

In 1972, Congress enacted the Federal Water Pollution Control Act, more succinctly known as the Clean Water Act (CWA). Though the Act had many regulatory effects, Section 404 of the CWA provided regulatory authority over physical alteration of the nation's waters - including wetlands - to the EPA and the USACE jointly. In 1977, Congress amended the CWA to allow states to manage the Section 404 Program in wetlands and waters other than "traditionally navigable waters" (such as the Great Lakes) in order to streamline the regulatory process and to help alleviate some of the regulatory and funding burden from the USACE. Additionally, Section 401 of the CWA allows states to veto federally issued permits in certain cases through a water quality certification.

The State of Michigan was the first state to be authorized to administer the Section 404 program. The legal basis for Michigan's program stems from a combination of several statutory authorizations designed to protect the State's lakes, streams, wetlands, Great Lakes, and shorelines. The first of these laws was the 1955 Great Lakes Submerged Lands Act (Public Act 247). The Great Lakes Submerged Lands Act was initially meant to establish ownership of the Great Lakes lake bottoms as property that belongs to the State and is available for public enjoyment, and to establish a permitting process for alteration of the bottomland. With the passage of the 1972 Inland Lakes and Streams Act (Public Act 346), regulatory authority was expanded to protect inland lakes, rivers, and streams as well as wetlands below the ordinary high water mark of these water bodies. In 1979, the Goemaere-Anderson Wetlands Protection Act (Public Act 203) expanded wetland protection and defined how wetlands should be managed and under which conditions a permit is necessary to take certain actions. Finally, in 1984, the State and the EPA reached an agreement that gave full authority to administer Section 404 of the CWA to the MDEQ. In the mid-1990s, all of Michigan's environmental regulations were codified into the Natural Resources and Environmental Protection Act; Public Act 451 of 1994; Public Acts 247, 346, and 203 became Parts 325, 301, and 303, respectively.

Every year, the MDEQ processes between 4,000 and 6,000 permit applications for work at the land and water interface; 1,500 of them relate directly to wetlands.<sup>1</sup> Because Section 404.2.g.1 of the CWA does not allow states partial enforcement, giving control of wetlands regulation back to the USACE also would give back the regulation of the release of dredge or fill material into lakes and rivers.<sup>1</sup>

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<sup>1</sup> Michigan Poised to Surrender Wetlands Control to Feds. *Environmental News Service*. 4/6/09. Accessed 7/21/09. URL: <http://www.ens-newswire.com/ens/apr2009/2009-04-06-091.asp>



Table 1 and the following discussion give a detailed comparison of key points of difference between the current regulation provided by the MDEQ and what likely would be provided by the USACE.

**Table 1**

| <b>Comparison of Michigan's Current Program,<br/>New Jersey's Current Program, and Army Corps of Engineers Jurisdiction*</b> |  |   |   |
|--|--|---|---|
|  | <b>Michigan Department of<br/>Environmental Quality<br/>(MDEQ)</b>   | <b>New Jersey Department of<br/>Environmental Protection<br/>(NJDEP)</b>  | <b>United States Army Corps of<br/>Engineers (USACE)</b>  |
| <b>Scope of Lands Regulated</b>  | <p>Wetlands are regulated by MDEQ if they are:</p> <ul style="list-style-type: none"> <li>• Connected to the Great Lakes, Lake St. Clair, an inland lake, pond, or a river or stream.</li> <li>• Located within 1,000 feet of one of the Great Lakes or Lake St. Clair, or 500 feet from an inland lake, pond, river, or stream.</li> <li>• Not contiguous to the Great Lakes, an inland lake, pond, river, or stream, but more than five acres in size.</li> <li>• Not contiguous to the Great Lakes, an inland lake, pond, river or stream, but less than five acres in size if the Department determines protection of the wetland area is essential, and the MDEQ has notified the property owner.</li> </ul> <p>These criteria lead to the protection of approximately 95.0% of the wetlands in Michigan.</p> | <p>Wetlands regulated under New Jersey's Freshwater Wetlands Protection Act (FWPA) are very similar to the types specified in the original 1977 Clean Water Act. In addition, depending on the type of wetland and its importance to the local ecosystem, a transitional "border" of 25-150 feet surrounding the wetland is also regulated.</p> <p>Activities within this transition area are regulated as though they were part of the wetland.</p> <p>Additionally, NJDEP has a system for ranking wetlands by their relative importance to the local ecosystem. The ranking a given wetland earns helps determine what activities may be done and how large the transition area must be.</p> | <p>The USACE will regulate:</p> <ul style="list-style-type: none"> <li>• Traditional navigable waters.</li> <li>• Wetlands adjacent to traditional navigable waters.</li> <li>• Nonnavigable tributaries of traditional navigable waters where the tributaries typically flow continuously year-round or at least flow seasonally.</li> </ul> <p>The USACE must determine jurisdiction based on a fact-specific analysis to determine a significant nexus for:</p> <ul style="list-style-type: none"> <li>• Nonnavigable tributaries that are not permanent;</li> <li>• Wetlands adjacent to streams that are not relatively permanent (approximately 36.0% of Michigan's streams);</li> <li>• Wetlands adjacent to but not directly abutting nonnavigable tributaries;</li> <li>• Isolated wetlands not physically connected to inland lakes or streams (approximately 17.0% of all Michigan wetlands);</li> <li>• Wetlands adjacent to isolated lakes and ponds.</li> </ul> <p>Because of the US Supreme Court case that established jurisdiction based on a significant nexus finding, it is not clear what percentage of Michigan's wetlands would be protected by USACE.</p> |
| <b>Activities Regulated</b>  | <ul style="list-style-type: none"> <li>• Deposit of fill material.</li> <li>• Removal of soil or minerals.</li> <li>• Construction, operation, or maintenance for any use or development.</li> <li>• Drainage of surface water.</li> </ul>   | <ul style="list-style-type: none"> <li>• Deposit of fill material</li> <li>• Driving of pilings.</li> <li>• Removal of soil or minerals.</li> <li>• Disturbance of the water table.</li> <li>• Placement of obstructions.</li> <li>• Destruction of plant life characteristic of a wetland area.</li> </ul>   | <ul style="list-style-type: none"> <li>• Discharge of dredge or fill material.</li> </ul>   |

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|--|--|---|---|
|  | <b>Michigan Department of<br/>Environmental Quality<br/>(MDEQ)</b>   | <b>New Jersey Department of<br/>Environmental Protection<br/>(NJDEP)</b>  | <b>United States Army Corps of<br/>Engineers (USACE)</b>  |
| <b>Institutional<br/>Capabilities</b>  | Total staff: 78<br>10 Field offices: <ul style="list-style-type: none"> <li>• Cadillac</li> <li>• Gaylord</li> <li>• Grand Rapids</li> <li>• Jackson</li> <li>• Kalamazoo</li> <li>• Lansing</li> <li>• Bay City</li> <li>• Warren</li> <li>• Gwinn</li> <li>• Crystal Falls</li> </ul>  | Total staff: Approximately 80   | Total staff: 38<br>Six Field offices: <ul style="list-style-type: none"> <li>• Detroit</li> <li>• Grand Haven</li> <li>• Bay City</li> <li>• Marquette</li> <li>• Sault Ste Marie</li> <li>• South Bend, Indiana</li> </ul>   |
| <b>Jurisdictional<br/>Determination<br/>(JD)</b>   | Wetlands are regulated unless noncontiguous to the Great Lakes, an inland lake, pond, river, or stream, and are less than five acres in size. No formal JD is required.  | NJDEP does a jurisdictional determination of whether an area is a wetland or transitional border to a wetland. The process is similar to how the USACE does it. Like USACE JDs, JDs from NJDEP are good for five years. Part of the JD is the determination of the type of wetland a piece of property is classified as, as mentioned above.  | A JD is necessary to determine if jurisdictional waters are present or absent at a site. A JD is good for five years, and may be appealed through the Corps' administrative appeals process. Currently, JDs are taking approximately 12 weeks to be approved.<br><br>Alternatively, applicants can elect to use a preliminary JD to voluntarily waive questions regarding CWA jurisdiction over a particular site. This allows the process to move more quickly; however, preliminary JDs may not be appealed. The Corps has the goal of processing preliminary JDs in 60 days. |
| <b>Permit<br/>Authorizations</b>   | One permit process provides authorization under all statutes administered by Land and Water Management Division. In addition, it authorizes the following: <ul style="list-style-type: none"> <li>• Sections 401 and 404 of the CWA;</li> <li>• Coastal Zone Consistency Certification;</li> <li>• Coordination with endangered species programs;</li> <li>• Screening with the Federal historic preservation program.</li> </ul> These authorizations are at no additional cost to the applicant. | General Permits are valid for five years, and similar to the Federal permit, cover section 404 of the CWA.<br><br>Two areas within New Jersey, the Hackensack Meadowlands and Pinelands, are exempt from FWPA except in cases where the discharge of fill material or dredging is concerned. The commissions that regulate these two areas have the authority to regulate activities more strictly than the FWPA. | The USACE permit covers Section 404 of the CWA only; other authorizations are up to the applicant to apply for separately.<br><br>These separate authorizations may involve additional costs to the applicant.  |

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| <b>Permit Review Time</b>  | <p>Michigan law requires that permits be issued within 90 days of receipt of the completed application; 150 days if a hearing is to be held.</p> <p>Average time for permit reviews is 60 days.</p>   | <p>New Jersey law requires that permits be issued or denied within 180 days of receipt of the completed application.</p> <p>If an application is submitted but not complete, or more information is required, the applicant must be notified of this within 30 days.</p> <p>Average time for general permit reviews is 75 days.</p>  | <p>Federal law has no established time frame for permit decisions.</p> <p>Average time for permit reviews is 120 days. This does not include time required for a JD or preliminary JD, which adds an additional 60-90 days.</p>   |
| <b>Permit Costs</b>  | <ul style="list-style-type: none"> <li>• Minor Project Categories - \$50.</li> <li>• General Permit Categories for minor activities - \$100.</li> <li>• Transfer of existing permit responsibility coverage and liability - \$250.</li> <li>• Minor revision to an existing permit - \$250.</li> <li>• Major Project Categories listed under Part 303 - \$2,000.</li> </ul> <p>All projects not listed above - \$500.</p> | <ul style="list-style-type: none"> <li>• Most General Permit authorizations - \$600</li> <li>• General permits 16 (wildlife management), 25 (septic repair), and 17 on public land – No charge.</li> <li>• Multiple General Permit authorizations for one site - \$600 + \$240 per additional site.</li> <li>• General Permit authorization extension - \$240.</li> <li>• General Permit authorization modification - \$240.</li> <li>• Other major projects may incur higher fees.</li> </ul> <p>In addition, property developers may be required to participate in New Jersey's mitigation program. In New Jersey, for every acre of wetlands disturbed, two acres of normal land must be converted into or protected as wetlands. Large "mitigation banks" exist to help developers comply.</p> | <ul style="list-style-type: none"> <li>• Noncommercial activity - \$10.</li> <li>• Commercial or industrial activity - \$100.</li> </ul> <p>The district engineer will make the final decision as to the amount of the fee and notify the applicant of the fee when the Corps issues the permit.</p> <p>No fees are charged for: transferring a permit from one property owner to another, Letters of Permission, activities authorized by a general permit, or permits to government agencies.</p> |
| <b>Enforcement</b>   | <p>If a violation is confirmed, a violation notice is sent and the violator is offered the opportunity to correct the violation in a timely manner.</p> <p>If the recipient fails to comply, the MDEQ may escalate the enforcement action. This generally happens in cases where preceding administrative</p>   | <p>Two regional enforcement offices handle reported violations. If a violation is confirmed, fines of up to \$10,000 per day per violation may be given in addition to civil and criminal penalties.</p> <p>If it is determined that restoring the area to its original state would cause even more harm to</p>  | <p>If a violation is confirmed, a warning letter is usually sent to the violator if the work is already complete. If the work is ongoing, a cease and desist order is sent to the violator.</p> <p>To comply, the violator may choose to immediately remove fill material and restore the site. The case then may be closed,</p>  |

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|  | <p>actions have been unsuccessful. However, serious violations, previous compliance history, or the applicable Federal enforcement response policy for a delegated program also may result in escalation.</p> <p>Violations are typically resolved through after-the-fact permits, voluntary restoration, consent agreements, civil litigation, and criminal prosecution. From 2004-2006, in cases where enforcement action was pursued, approximately 30.0% of the cases were resolved with after-the-fact permits (many involving some level of restoration), and 54.0% by voluntary restoration.</p> | <p>the area, an after-the-fact permit may be issued, but only after the appropriate fines and penalties have been assessed against the violator.</p> <p>Otherwise, the violator may be required to restore the area to its original condition.</p>  | <p>provided the violator did not commit a willful violation of the CWA.</p> <p>If immediate restoration cannot be obtained, the Corps determines whether the unauthorized activity may be authorized by an after-the-fact permit, or if the site must be restored. In approximately 10.0% of cases an after-the-fact permit is issued; more than 66.0% of cases are resolved by some form of restoration.</p> |
| <b>Appeals Process</b>   | <p>If an application is denied, the applicant may appeal to the MDEQ Director requesting a contested case hearing pursuant to the State Administrative Procedures Act.</p> <p>Any person or organization with proper standing can appeal a permit action.</p>   | <p>An applicant can appeal to the Commissioner of the New Jersey Department of Environmental Protection on an application decision. The case will be referred to the Office of Administrative law which will hold a hearing on the matter in the form of a contested case. After the hearing the judge may affirm, reject, or modify the original decision.</p> | <p>Only Letters of Permission, Individual Permits, and Jurisdictional Determinations can be appealed, and they must be appealed by the applicant. The division engineer must receive the appeal within 60 days.</p>   |
| <p>* Michigan and USACE information is summarized from a side-by-side comparison by Tip of the Mitt Watershed Council. A full comparison of MDEQ and USACE is available at:<br/> <a href="http://www.watershedcouncil.org/protect/policy%20and%20advocacy/state-issues/state-issues/saving-michigans-wetlands-protection-program/files/State_Federal_Wetland_Program_Comparison.pdf">http://www.watershedcouncil.org/protect/policy%20and%20advocacy/state-issues/state-issues/saving-michigans-wetlands-protection-program/files/State_Federal_Wetland_Program_Comparison.pdf</a></p> |   |   |   |

An inspection of the table above shows how unique Michigan's program is relative to the other two wetlands programs in the country. The permits are more expensive for businesses and individuals than they are under USACE jurisdiction. Shorter turnaround times and the convenience of applying for multiple permits at once, as the MDEQ program provides, are what Michigan's residents get for this extra cost. Additionally, 95.0% of Michigan's wetlands are protected by the 78 people directly and indirectly involved in the wetlands program. It is almost a certainty that this 95.0% figure would be reduced if the program passed back to the USACE to realize the \$2.1 million savings. Exactly how many acres of Michigan's wetlands would no longer be protected will be unknown until the transition was complete.

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### **State Park Motor Vehicle Permit Fees** **By Bill Bowerman, Chief Analyst**

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#### **Introduction**

State parks and recreation areas have become dependent on user fees and other State restricted fund support. The statutory authority to collect a portion of that revenue, State park motor vehicle permit fees, expires on January 1, 2010. Currently, there are two proposals regarding State park motor vehicle permit (MVP) fees. The Governor's proposal would result in a \$1.9 million increase in revenue. Senate Bills 388 and 389 would provide for a substantial increase in the investment in the State park system through an additional fee that a resident could pay when registering a motor vehicle. This article provides an overview of existing and pending funding proposals for the State park system.

#### **Background**

In fiscal year (FY) 1969-70, the State General Fund accounted for 68.0% of the support for the operations of State parks and recreation areas.<sup>1</sup> By 2004, General Fund support was completely eliminated. The FY 2009-10 appropriation for the operation of State parks and recreation areas will consist mainly of \$33.6 million from the State Park Improvement Account and \$13.3 million from the State Parks Endowment Fund.

#### State Parks Endowment Fund

Article IX, Section 35 of the Michigan Constitution of 1963 provides that \$10.0 million<sup>2</sup> of the revenue that would be otherwise dedicated to the Michigan Natural Resources Trust Fund must be deposited into the Michigan State Parks Endowment Fund. Article IX, Section 35a provides that money available for expenditure from the Endowment Fund must be spent for operations, maintenance, and capital improvements at Michigan State parks and for the acquisition of land or rights in land for Michigan State parks. Until the Endowment Fund reaches an accumulated principal of \$800.0 million, the Legislature may annually appropriate not more than 50.0% of the money received under Article IX, Section 35, plus interest and earnings, unspent appropriations from previous years, and any private contributions or other revenue to the Endowment Fund. In recent years, the State Parks Endowment Fund has been used more for operations than for capital outlay costs.

#### State Park Improvement Account

Article IX, Section 40 of the Michigan Constitution establishes the Michigan Conservation and Recreation Legacy Fund and establishes various accounts within the Legacy Fund including the State Park Improvement Account. This account consists of revenue from concessions, leases, contracts, fees, and permits from activities in State parks and recreation areas,

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<sup>1</sup> Public Act 131 of 1969. Amounts do not include funding for capital outlay projects.

<sup>2</sup> Until the Natural Resources Trust Fund reaches \$500.0 million, not more than 50.0% of the revenue annually deposited in the Trust Fund must be deposited in the Endowment Fund.



damages paid to the State for illegal activities in State parks and recreation areas, and other revenue as authorized by law. Funds in the account may be spent only on:

- The development, improvement, operation, promotion, and maintenance of State parks and recreation areas.
- Grants to State colleges and universities to implement programs funded by the account.
- Administration of the State Park Improvement Account.

Table 1 provides details of FY 2007-08 revenue in the State Park Improvement Account.

**Table 1**  
**State Park Improvement Account**

| Revenue Source                    | FY 2007-08          | Percent of Total |
|-----------------------------------|---------------------|------------------|
| Camping Fees .....                | \$24,752,000        | 64.0%            |
| Concessions.....                  | 905,000             | 2.3              |
| Other License/Permits.....        | 138,000             | 0.4              |
| Motor Vehicle Permits .....       | 12,541,000          | 32.5             |
| Common Cash Earnings .....        | 217,000             | 0.6              |
| Other Miscellaneous Revenue ..... | 94,000              | 0.2              |
| <b>Total.....</b>                 | <b>\$38,647,000</b> | <b>100.0%</b>    |

**Source:** Department of Natural Resources

State Park Motor Vehicle Permit Fee

In FY 2007-08, motor vehicle permits accounted for 32.5% of the revenue in the State Park Improvement Account. The State park motor vehicle permit fee originated in 1961 (under Public Act 149 of 1960), with a \$2.00 annual fee and a \$0.50 daily fee. Table 2 provides a history of the fee.

**Table 2**  
**Michigan State Parks and Recreational Areas**  
**Motor Vehicle Permit Fee History**

| Year | Nonresident |         | Nonresident |       | Senior |
|------|-------------|---------|-------------|-------|--------|
|      | Annual      | Annual  | Daily       | Daily |        |
| 1961 | \$2.00      | N/A     | \$0.50      | N/A   | N/A    |
| 1967 | 3.00        | \$5.00  | 1.00        | 2.00  | N/A    |
| 1972 | 5.00        | 5.00    | 1.00        | 2.00  | \$1.00 |
| 1974 | 5.00        | N/A     | 1.00        | 2.00  | 1.00   |
| 1979 | 7.00        | N/A     | 2.00        | 3.00  | 1.00   |
| 1981 | 10.00       | N/A     | 2.00        | 3.00  | 1.00   |
| 1990 | 15.00       | N/A     | 3.00        | 4.00  | 3.75   |
| 1992 | 15.00       | N/A     | 3.50        | 4.00  | 3.75   |
| 1993 | 18.00       | N/A     | 3.50        | 4.00  | 4.50   |
| 1995 | 20.00       | N/A     | 4.00        | 5.00  | 5.00   |
| 2004 | 24.00       | \$29.00 | 6.00        | 8.00  | 6.00   |

**Source:** Department of Natural Resources



**Fee Proposals**

Governor's Recommendation

The Governor's FY 2009-10 budget recommendation included a proposal to increase State park motor vehicle permit fees in order to generate an additional \$1.9 million for the State Park Improvement Account. The \$1.9 million increase would basically bring revenue in line with appropriations. In FY 2007-08, motor vehicle permit fees generated \$12.5 million in revenue. Table 3 delineates the Governor's proposal.

**Table 3**

| <b>Motor Vehicle Park Permit Fee Proposal</b> |                |                 |                 |                   |
|---|----------------|-----------------|-----------------|-------------------|
|   | <b>Current</b> | <b>Proposed</b> | <b>Increase</b> | <b>% Increase</b> |
| Michigan Resident Annual                      | \$24           | \$28            | \$4             | 16.7%             |
| Michigan Resident Daily                       | 6              | 7               | 1               | 16.7              |
| Nonresident Annual                            | 29             | 34              | 5               | 17.2              |
| Nonresident Daily                             | 8              | 10              | 2               | 25.0              |
| Senior  | 6              | 7               | 1               | 16.7              |
| Bridge Card                                   | 18             | 18              | 0               | 0.0               |
| Towed Vehicles                                | 6              | 7               | 1               | 16.7              |
| Commercial Vehicles                           | 15             | 20              | 5               | 33.3              |

While the Governor's recommendation for the Department of Natural Resources is based on the above fee structure, as of this writing no bill has been introduced to implement this proposal.

Senate Bills 388 and 389

Senate Bills 388 and 389 would eliminate current resident MVP fees and resident boating access site permit fees and replace them with a State park and public boating access site passport fee that a Michigan resident could obtain by paying an additional fee when registering a motor vehicle or motorcycle. The fee would be \$5 for motorcycles and \$10 for all other vehicles.

According to a three-year average of registrations compiled by the Department of Natural Resources (FY 2004-05 through FY 2006-07), projected fee collections are based on approximately 7.1 million passenger vehicle registration transactions and 248,000 motorcycle registration transactions. If 100% of the registrants paid the proposed new fee, approximately \$72.2 million would be generated annually. However, Senate Bill 389 (S-6) would allow registration applicants to opt out of paying the new recreation passport fee. Actual revenue generated by the fee would be contingent upon how many registration applicants opted out.

In order to generate the same level of revenue that the current resident permit fees generate, over 17.0% of registration applicants would have to participate in the new fee. Montana currently uses the method proposed in this legislation to support its park system. Montana's participation rate was 88.0% in 2008. Whether Michigan would have a similar participation rate is not determinable.



Using participation rates ranging from 25.0% to 75.0%, the bills would result in the distributions shown in Table 4.

**Table 4**  
**Senate Bills 388 and 389: Fiscal Impact**

| Participation Rate   | Estimated Net New Revenue |                     |                     |
|--|---------------------------|---------------------|---------------------|
|  | 25%                       | 50%                 | 75%                 |
| Passenger Vehicles   | \$17,750,000              | \$35,500,000        | \$53,250,000        |
| Motorcycles  | 310,000                   | 620,000             | 930,000             |
| Secretary of State Administration Costs<br>(0.05 of 100 less refund) | (90,300)                  | (180,600)           | (270,900)           |
| State Park Improvement Account <sup>1)</sup>                         | (10,700,000)              | (10,700,000)        | (10,700,000)        |
| Waterways Account <sup>1)</sup>                                      | (1,030,000)               | (1,030,000)         | (1,030,000)         |
| <b>Net New Revenue</b>   | <b>\$6,239,700</b>        | <b>\$24,209,400</b> | <b>\$42,179,100</b> |
| State Park Infrastructure 50%  | 3,119,850                 | 12,104,700          | 21,089,550          |
| State Park Operation & Maintenance 30%                               | 1,871,910                 | 7,262,820           | 12,653,730          |
| Local Public Recreation Facilities 10%                               | 623,970                   | 2,420,940           | 4,217,910           |
| State Forest Campground Pathways 7%                                  | 436,779                   | 1,694,658           | 2,952,537           |
| State Park Cultural & Historic Resources 2.75%                       | 171,592                   | 665,759             | 1,159,925           |
| Recreational/Internet Promotion 0.25%                                | 15,599                    | 60,524              | 105,448             |

<sup>1)</sup> These two items reflect replacement of revenue loss due to elimination of current permits for resident motor vehicle park permit and the resident boating access site permit fees.

Another provision of Senate Bill 388 (S-4) that would have a fiscal impact is the elimination of the January 1, 2010, sunset for nonresident motor vehicle fees, which annually generate approximately \$2.1 million.

### Bond Issues

In the past, bond issues have been used to expand State parks and to support State park capital outlay needs. From 1961 through 1996, revenue bonds were issued to expand the State parks through land acquisition and development of facilities within the parks. The bonds were retired in 1996. Revenue bonds were again issued in 2002 for development of Sterling State Park. The debt service on the bonds will continue until 2022.

In November 1988, Michigan voters approved the Quality of Life Recreation Bond Program, which included \$60.0 million for improving the infrastructure of Michigan State parks. The bonds funded more than 190 projects at 64 of the 98 State parks. These projects included sewage system improvements, road and parking lot resurfacing, electrical system replacements, and facility renovation and construction.

In 1998, the voters approved the Clean Michigan Initiative. This bond program included \$100.0 million for public recreation projects (\$50.0 million in grants to local units of government for the development and renovation of public recreation facilities and \$50.0 million for extensive State park renovations). A total of 43 State parks and 136 projects were completed with funding from the Clean Michigan Initiative. Projects included replacing toilet/shower buildings, improving and upgrading drinking water systems, improving and



upgrading sewage systems, upgrading electrical systems, and completing necessary road repairs and upgrades.

### **Conclusion**

Over time, State parks have become dependent on user fees and State restricted funding. A substantial share of the revenue that supports the operations of State parks and recreation areas (motor vehicle permit fees) sunsets on January 1, 2010. Current revenue sources for State park and recreation areas do not provide the level of support necessary to fund ongoing operations and capital outlay needs. The bond programs have provided one-time funding to address delayed projects, but do not address ongoing funding issues.

Based on Michigan's current budget issues, resumed General Fund support of State parks is unlikely. Other dedicated revenue sources (as proposed by Senate Bills 388 and 389), and/or a determination of whether it is financially feasible to maintain the 98 State parks and recreation areas, should be explored. Also, a constitutional amendment to allocate a higher percentage of the Natural Resources Trust Fund to recreation projects, instead of land acquisition, could be part of the solution to adequately funding the State park system.

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

July/August 2009



### Explaining School Choice

By Andrew Saultz, Intern, and Kathryn Summers, Chief Analyst

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The school choice movement throughout the United States has grown significantly in the last 20 years. Although the models vary greatly, the focus relies on a belief that schools will improve if families have increased options in where to send their children. Schools of choice models include the option to send students to other public schools in the same district, other public schools out of the home district, charter schools, private schools, or magnet schools. Schools of choice is the broad term that refers to any of these systems that allow for this flexibility.

### Recent Trends

According to the National Center for Educational Statistics (NCES), and as shown in Table 1, the percentage of students enrolled in their home public school decreased nationally from nearly 80.0% in 1993 to approximately 74.0% in 2003. At the same time, this decrease in enrollment was accompanied by a shift in chosen public school enrollment from 11.0% to 15.4%. During this 11-year period, church and nonchurch-related private school enrollment each increased by approximately 1.0%. These data clearly show that families are attracted to the idea of schools of choice.

Table 1

| Percentage Distribution of Students in Grades 1–12, by Type of School<br>1993 and 2003 |       |       |
|--|-------|-------|
| Type of School   | 1993  | 2003  |
| Public, assigned.....  | 79.9% | 73.9% |
| Public, chosen.....  | 11.0% | 15.4% |
| Private, church-related.....   | 7.5%  | 8.4%  |
| Private, not church-related.....   | 1.6%  | 2.4%  |

**Source:** U.S. Department of Education, National Center for Education Statistics. (2006). *The Condition of Education 2006* (NCES 2006–071), Indicator 36.

### Types of Schools of Choice

According to the National Center on School of Choice at Vanderbilt University, options for school of choice fall into two main categories. The first are schools of choice that are not traditional public schools. This group includes magnet, private, charter, and home schools. These schools account for approximately 40,000 of the 133,000 schools in the United States, or about one third.

The National Center on School of Choice describes the second group of schools of choice programs as those that allow students to attend a traditional school in a district in which they do not live. This group includes open enrollment, school transfers, vouchers, and tax credits. Forty-seven states have some kind of open enrollment policy; all 50 have the school transfer option under the No Child Left Behind (NCLB) Act when a school fails to make adequate yearly progress in educational standards for two or more consecutive years. Nine states offer publicly or privately funded vouchers and seven states offer tax credits.



### **Specific Schools of Choice Options**

Magnet schools are public schools that are designed to focus on one or more particular subjects. Examples include math and science magnet schools and magnet schools focused on the arts. Based on their specialization, these schools typically draw from a larger geographic base than other schools do. Some advocates of magnet schools point out that these schools are typically economically and racially diverse. According to the United States Department of Education, magnet schools are more racially diverse than their traditional counterparts, but have fewer students who are eligible for free or reduced-price lunch programs. Students who attend magnet schools are usually from multiple neighborhoods and districts. By the end of the 2001-2002 school year, more than 3,100 magnet schools operated throughout the country according to NCES. In the 2006-2007 academic year, Michigan had 420 magnet schools, which was the highest number for any state.

Charter schools are publicly funded schools that have an agreement with the local or state government on how the school will function. These schools typically have more flexibility with the curriculum, school day, and labor contracts. A formal charter that outlines the specifics of each charter school is required before it gains approval to operate. These schools are usually organized by parents, educators, private organizations, or community groups that look to this model as a way of providing more autonomy and innovation than may be afforded by a traditional public school. According to the Center for Educational Reform, as of April 2005, about 3,400 charter schools operated nationwide and 40 states and the District of Columbia had passed charter school laws. In Michigan, 229 charter schools operated during the 2008-2009 school year.

Open enrollment allows families to send students to another school inside or outside of the district in which they live. Under the No Child Left Behind Act, states must provide alternatives to students who are attending schools that continue to fail to make adequate yearly progress (AYP). Currently, 47 states have some form of both intradistrict and out-of-district open enrollment. All 50 states have some transfer option for students as required by the NCLB Act. Michigan's open enrollment is described below.

Vouchers are public or private payments, or a combination, to parents to cover the cost of educational expenses. Most voucher programs provide reimbursement payments to cover the cost of private school. According to the Center for Educational Reform, by the 2008-2009 academic year, nearly 80,000 students across the country in more than 75 programs used some type of private K-12 scholarship. Tax credits are offered in a number of states as a way of offsetting private school tuition cost through tax deductions or credits. Currently, nine states offer some type of tax credit for private school tuition and another seven states are reviewing it as a possibility. Michigan does not offer these types of tax credits or voucher programs.

### **Michigan's Schools of Choice Program (Open Enrollment)**

In Michigan, the State School Aid Act (SAA) allows school districts, following a number of guidelines, to accept students from within the same intermediate school district (ISD) or from other ISDs, without having to obtain the permission of the home district of the student. If a



district chooses to take part in the Michigan School of Choice program as prescribed under Sections 105 and 105c of the SAA (MCL 388.1705 and 388.1705c), then it must follow these guidelines: First, it must publish the grades, schools, and special programs for which it will accept nonresident students. Next, the district must provide notice to the general public that it is accepting applications under Section 105 and/or Section 105c and the dates of the application period. The district also must specify the number of seats that are available through this program. Finally, the district must follow a timeline that is outlined in the SAA. There are different timelines for the limited and unlimited numbers of seats available. Districts are not legally required to provide transportation services to out-of-district students.

In Michigan, school districts that choose to enroll nonresident students receive, for each school of choice student, the lesser of their own foundation allowance or the foundation allowance of the district of residence. Districts may not charge tuition for nonresident students enrolled under Section 105 or 105c of the SAA.

Table 2 shows that the percentage of students who choose to participate in the schools of choice program outside of their resident ISD increased by 123.7% from the fall of 2002 to the fall of 2008. In the fall of 2008, nearly 16,000 students statewide (or 1.0%) were in schools of choice outside their home ISD. The percentage of students participating in schools of choice within their resident ISD rose 85.6% over the same time period, and accounted for nearly 4.0% of the statewide student population by the fall of 2008. The percentage of students attending charter schools increased by 55.5% over the six-year period, accounting for 6.5% of the number of students statewide. In total, more than 11.3% of Michigan's students (more than 183,000) attended school not in their resident district, but used schools of choice in another district within the home ISD, in another district outside the home ISD, or at a charter school. This is a 69.4% increase over six years.

To put these percentages in perspective, Table 2 also shows an estimated dollar value for the schools of choice program. Using an average per-pupil foundation allowance of \$7,500, nearly \$1.4 billion went to supporting educational choice. More than half of that amount went to charter schools, about one-third supported students enrolling in schools within their resident ISD, and the balance supported students enrolling in school districts outside their resident ISD. As a side note, the State's school population declined by more than 100,000 pupils, or almost 6.0%, between the fall of 2002 and the fall of 2008, resulting in reduced State spending of more than \$755.0 million.

The trend both within the State of Michigan and nationally is for people to want schools of choice. The data support the notion that this is an increasingly popular educational choice with families. However, as shown above, there is a cost to school choice programs, as districts whose resident students choose other educational options experience reduced funding, in addition to any losses due to declining enrollment.

**State Notes**  
TOPICS OF LEGISLATIVE INTEREST  
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**Table 2**

| <b>Michigan Students Enrolled in Schools of Choice Programs and in Charter Schools<br/>from Fall 2002 to Fall 2008</b> |                  |                  |   |  |
|--|------------------|------------------|---|--|
| <b>Sec. 105, 105c, and<br/>Charter School Students</b>   | <b>Fall 2002</b> | <b>Fall 2008</b> | <b>Change:<br/>Fall '02 to<br/>Fall '08</b> | <b>Fall '08<br/>Estimated<br/>Dollar Value</b> |
| Number of Students Enrolled<br>Outside the Resident ISD  | <b>7,080</b>     | <b>15,838</b>    | <b>8,758</b>                                | <b>\$118,785,000</b>                           |
| Percent of Students Enrolled Outside<br>Resident ISD   | 0.4%             | 1.0%             | 123.7%                                      |  |
| Number of Students Enrolled Within<br>the Resident ISD   | <b>34,158</b>    | <b>63,393</b>    | <b>29,235</b>                               | <b>\$475,447,500</b>                           |
| Percent of Students Enrolled Within<br>the Resident ISD  | 2.0%             | 3.9%             | 85.6%                                       |  |
| Number of Charter School Students  | <b>66,986</b>    | <b>104,127</b>   | <b>37,141</b>                               | <b>\$780,952,500</b>                           |
| Percent of Students in Charter<br>Schools  | 3.9%             | 6.5%             | 55.4%                                       |  |
| Total Number of Choice Students  | <b>108,224</b>   | <b>183,358</b>   | <b>75,134</b>                               | <b>\$1,375,185,000</b>                         |
| Percent Using Choice (Charters and<br>School Districts)  | 6.3%             | 11.4%            | 69.4%                                       |  |
| <b>Total Students Statewide</b>  | <b>1,713,165</b> | <b>1,612,425</b> | <b>-100,740</b>                             | <b>(\$755,550,000)</b>                         |

**Source:** Center for Educational Performance and Information and Senate Fiscal Agency estimates