State Notes

TOPICS OF LEGISLATIVE INTEREST

November/December 2009

State Court Administrative Office 2009 Judicial Resources Recommendations
By Bill Bowerman, Chief Analyst

Introduction

The State Court Administrative Office (SCAO) biennially reviews the judicial needs of the State. The 2009 Judicial Resources Recommendations (JRR) propose the elimination of four Court of Appeals judgeships, the elimination of 15 trial court judgeships, the conversion of one probate judgeship in Macomb County to a circuit court judgeship, and the addition of one circuit court judgeship in Macomb County. This article provides an overview of the 2009 JRR and associated fiscal implications.

Background

Over the last 25 years, judgeships statewide have increased by 7.8%. Table 1 provides a history of changes over that time period.

Table 1

History of Judgeships						
	1983	**1988**	**1993**	**1998**	**2003**	**2008**
Supreme Court Justices	7	7	7	7	7	7
Court of Appeals Judges	18	18	24	28	28	28
Circuit Court Judges	165	167	179	210	216	221
Recorder's Court Judges[1)]	29	29	29	N/A	N/A	N/A
District Court Judges	244	247	259	259	258	258
Probate Court Judges[2)]	107	107	107	107	106	103
Municipal	6	6	6	6	6	4
Total	**576**	**581**	**611**	**617**	**621**	**621**

[1)] The Recorder's Court of the City of Detroit was abolished and merged with the Third Judicial Circuit Court on October 1, 1997.
[2)] In 1983 there were 17 part-time probate judgeships. Today there is one remaining part-time judgeship.

Source: State Court Administrative Office and appropriation bills

While the JRR has included reductions in judgeships in the past, declining revenue for the State and local units of government has increased the interest in recommended reductions. At the State level, justices' and judges' compensation accounts for 57.8% ($88.4 million) of the fiscal year (FY) 2009-10 Judiciary State General Fund appropriations. Judicial salaries are constitutionally protected; therefore, reductions in appropriations for the Judiciary are absorbed by administration and grant programs. Table 2 provides a summary of the FY 2009-10 Judiciary appropriation by program.

Table 2

FY 2009-10 Judiciary Appropriation		
	Gross	**GF/GP**
Supreme Court Administration	$10,548,400	$9,981,200
Judicial Institute	2,554,500	1,986,800
State Court Administrative Office	11,009,200	5,477,500
Judicial Information Systems	3,092,100	2,342,100
Direct Trial Court Automation Support	6,149,300	0
Foster Care Review Board	1,235,000	694,600
Community Dispute Resolution	2,300,400	0
Other Federal Grants	275,100	0
Drug Treatment Courts	5,132,900	612,400
Court of Appeals Operations	18,414,300	16,378,000
Branchwide Appropriations	8,039,400	8,039,400
Justices' and Judges' Compensation	95,535,800	88,445,600
Judicial Tenure Commission	969,700	969,700
Appellate Public Defender/Assigned Counsel	5,809,300	5,202,700
Indigent Civil Legal Assistance	7,937,000	0
Court Equity Fund Reimbursements	64,794,900	13,002,800
Judicial Technology Improvement Fund	4,815,000	0
Other Grants and Reimbursements to Locals	10,150,000	0
Total	**$258,762,300**	**$153,132,800**

SCAO Recommendations

The 2009 JRR includes the following proposed eliminations of judgeships:

- Two circuit judgeships from the 3rd Circuit Court of Wayne County.
- One circuit judgeship from the 41st Circuit Court of Dickinson, Iron, and Menominee Counties.
- One district judgeship from the 95B District Court of Dickinson and Iron Counties.
- One district judgeship from the 81st District Court of Alcona, Arenac, Iosco, and Oscoda Counties.
- One probate judgeship upon the creation of a probate court district of Alcona and Oscoda Counties.
- One district judgeship from the 98th District Court of Gogebic and Ontonagon Counties.
- One district judgeship from the 97th District Court of Baraga, Houghton, and Keweenaw Counties.
- One circuit judgeship from the 25th Circuit Court of Marquette County or one district judgeship from the 96th District Court of Marquette County.
- One district judgeship from the 8th District Court of Kalamazoo County.
- One circuit judgeship from the 46th Circuit Court of Crawford, Kalkaska, and Otsego Counties.
- One district judgeship from the 50th District Court of the City of Pontiac.
- One district judgeship from the 85th District Court of Benzie and Manistee Counties.

- One district judgeship from the 88th District Court of Alpena and Montmorency Counties.
- One district judgeship from the 79th District Court of Lake and Mason Counties.

The SCAO also recommends adding one circuit court judgeship to the 16th Circuit Court of Macomb County and converting one Macomb County probate judgeship to a circuit judgeship.

All of the eliminations are recommended to be achieved through attrition; therefore, the timing of the eliminations would vary based on when a judge decided to leave office. The 2009 JRR can be obtained at the following website:

http://courts.michigan.gov/scao/resources/publications/reports/JRRSummary2009.pdf

Trial Courts

The State Court Administrative Office begins its review of trial court judicial needs with a statistical weighted caseload analysis. This analysis assigns a weight to different case types to recognize the varying amounts of time required to process individual cases. Based on the weighted caseload analysis, trial courts with a combined judicial excess/shortage of 1.25 or higher are subject to an extended analysis. The extended analysis includes a review of caseload filings, demographic trends, prosecutor and law enforcement practices, staffing levels, facilities, technological resources, the need for assignments to or from other jurisdictions, and other factors. While the initial review of trial courts determined a need for additional judges, an extended analysis was not conducted for some courts due to Michigan's economic situation. The 2009 JRR initial review determined a need for additional judges in the 6th Circuit (Oakland), the 16th Circuit (Macomb), the 17th Circuit (Kent), and the 36th District (Detroit). However, the 2009 JRR recommended a net increase in judgeships only for the 16th Circuit. While the 2009 JRR determined a need for 4.0 additional judges in the 16th Circuit, one new judgeship was recommended along with the conversion of one probate court judgeship to a circuit court judgeship.

Court of Appeals

The Court of Appeals originally consisted of nine judges. The following adjustments were subsequently made to the Court's composition:

Year	Additional Judgeships	Total
1969	3	12
1975	6	18
1989	6	24
1995	4	28

In its 2007 JRR, the SCAO recommended reducing the number of Court of Appeals judges by four, from 28 to 24 judges. No legislative action was taken on the recommendation to reduce the number of Court of Appeals judges. The recommendation was based on a

decline in case filings and reductions to the Court's budget. Since 2007, budget reductions have continued, and filings and dispositions by the Court have continued to decline. The 2009 JRR is again proposing the elimination of four Court of Appeals judgeships.

Budget reductions over recent years have resulted in a substantial reduction in central research attorneys. There are currently 47 central research attorneys compared with 85 in 1985. The JRR maintains that the reduction in central research attorneys has been the main reason for the decrease in dispositions of cases by opinion (rather than by order). The JRR is proposing that half of the savings that would be achieved through the elimination of four judgeships be appropriated back to the Court of Appeals to hire 10 central research attorneys. According to the JRR, this would result in an additional 400 to 450 more cases with research reports being available for assignment to opinion panels.

Fiscal Implications

The current salaries of judges are as follows:

Court of Appeals Judge	$151,441
Circuit Court Judge	$139,919
Probate Court Judge	$139,919
District Court Judge	$138,272

The State pays the entire salary of the above judgeships, along with the employer's share of FICA (social security), defined contribution retirement, and travel reimbursement. The local funding unit pays for fringe benefits for judges, court personnel/support staff, facilities, and equipment. The JRR recommends that reductions in judgeships be accomplished by attrition (death, resignation, or removal from office of the incumbent judge, or the incumbent judge's decision not to seek reelection). Therefore, savings will depend on when attrition occurs for each judgeship. Table 3 provides an estimate of annual savings for the State that will eventually be achieved if the judgeships are eliminated.

Table 3
State Court Administrative Office Judicial Resources Recommendations
September 2009
Summary Of State Fiscal Impact

	Judgeships	State Costs/(Savings)
Eliminated Judgeships		
Trial Court	(15.0)	($2,362,386)
Court of Appeals	(4.0)	(1,455,704)
Total Reductions	**(19.0)**	**($3,818,090)**
Increases		
Macomb County Circuit Court Judgeship	1.0	158,564
Court of Appeals New Staff - 10 Prehearing Attorneys	N/A	$700,000
Total Increases	**1.0**	**$858,564**
Net Fiscal Impact on the State	**(18.0)**	**($2,959,526)**

Savings to local units will vary. Macomb County states that it allocates over $570,000 for each circuit court judgeship. Oakland County annually spends approximately $450,000 on each circuit court judgeship. Local units in rural areas that share the local costs of judgeships will realize less of a savings.

Conclusion

Statutory changes are required to implement the 2009 JRR. Budgetary considerations are having an increasing impact on proposals to reduce judgeships. Public Act 228 of 2009, for example, temporarily reduces the number of circuit court judgeships in Oakland and Macomb Counties. These temporary reductions were requested by the local court funding units.

Decreased case filings, population changes, a weighted caseload analysis, concurrent jurisdiction, the conversion of all but one part-time probate judgeship to full-time status, and filings have affected reduction proposals. In addition, case management and innovative programs to reduce litigation in courts will have an impact on judicial needs. Increasing demands for limited judicial resources and the recognition that additional budget reductions will be implemented in the near future also have prompted other interested parties to assess the allocation of funding for judicial needs. The State Bar of Michigan has created a special task force "to identify how Michigan's justice system can meet the needs of the public in the face of transformational changes underway in the state's economy", due to past and impending budget reductions. Limited State and local financial resources will require continuing structural changes to enable Michigan's justice system to maintain essential services.

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Doesn't the State Lottery Fund the Schools?
By David Zin, Economist

For the last three months of 2009, State support of K-12 education dominated much of the discussion related to the fiscal year (FY) 2009-10 budget, and school finance is likely to remain a major issue as the FY 2010-11 budget is discussed. The Legislature enacted an FY 2009-10 budget that reduced per-pupil funding from the prior-year level by $165 per student, while the Governor's vetoes eliminated $51.5 million in funding for certain districts that qualified for separate payments under Section 20j of the Revised School Code. As currently enacted, the FY 2009-10 school aid budget is $436.2 million less than the FY 2008-09 budget despite using approximately $450.0 million in one-time Federal stimulus funds under the American Recovery and Reinvestment of 2009. Some individuals unfamiliar with the School Aid budget often ask how the schools could be struggling for money given that, nearly 40 years ago, the State of Michigan adopted a lottery system with profits designated to help fund public K-12 education. This paper will discuss a brief history of the lottery and its relationship with State funding of public K-12 education.

History

The Michigan Lottery was authorized by a constitutional amendment adopted on May 16, 1972, with 72.8% of voters approving the proposal. The lottery ballot proposal (House Joint Resolution V, placed on the ballot as Proposal A of 1972) was to allow the Legislature to authorize lotteries and permit the sale of lottery tickets. The changes were necessary due to prohibitions on the authorization of lotteries or the sale of lottery tickets that had existed in Michigan Constitutions since 1835. The lottery was advocated as a way to increase State revenue without raising taxes and was expected to generate as much as $60.0 million per year. Proposals to implement the lottery generally directed lottery profits to the General Fund, with one proposal requiring 45.0% of lottery revenue to be deposited in the General Fund. The only education-related proposal for lottery profits was one to earmark a portion of the revenue to fund a recently enacted special education mandate for which no funding had been provided.

In the years before the creation of the lottery, the General Fund/General Purpose (GF/GP) grant to the School Aid Fund (SAF) totaled $502.15 million in FY 1970-71 and $542.33 million in FY 1971-72. The lottery began operation August 1, 1972 -- which was then part of FY 1972-73. (The State operated on a July-June fiscal year at that time, rather than the current October-September fiscal year.) Public Act (P.A.) 239 of 1972 established the State Lottery Fund and directed that the net earnings from the lottery be deposited in the General Fund. In FY 1972-73, the lottery transferred $36.7 million in revenue to the General Fund. The GF/GP grant to the SAF totaled $588.68 million that year, an increase of $46.3 million -- more than the additional revenue generated by the lottery but only nominally more than the $40.2 million increase that occurred in the prior year. Public Act 68 of 1973 amended the law governing the lottery, reaffirming the transfer of lottery profits to the General Fund and adding a statement that the section that included the transfer was "declaratory of the legislative intent of this act as it was initially enacted".

Even though the lottery revenue was explicitly directed to the General Fund, it did appear to allow the GF/GP grant to the SAF to grow over the years. By FY 1979-80, the SAF received $945.3 million from the General Fund and the transfer from the Lottery Fund to the General Fund totaled $203.1 million in FY 1979-80.

Public Act 259 of 1980 amended the Lottery Act to direct the earnings to the School Aid Fund and deleted the "intent" clause the 1973 Act had inserted. The legislation did not take effect, however, because the changes were tied to Senate Joint Resolution X (Ballot Proposal C, a proposal intended to provide property tax relief and create a State "rainy day fund"), which was not adopted by the electorate. As a result, P.A. 40 in 1981 was enacted to direct the earnings to the SAF. Due to the timing of the legislation, transfers from the lottery directly to the SAF did not commence until May 13, 1981, and totaled $79.4 million for FY 1980-81.

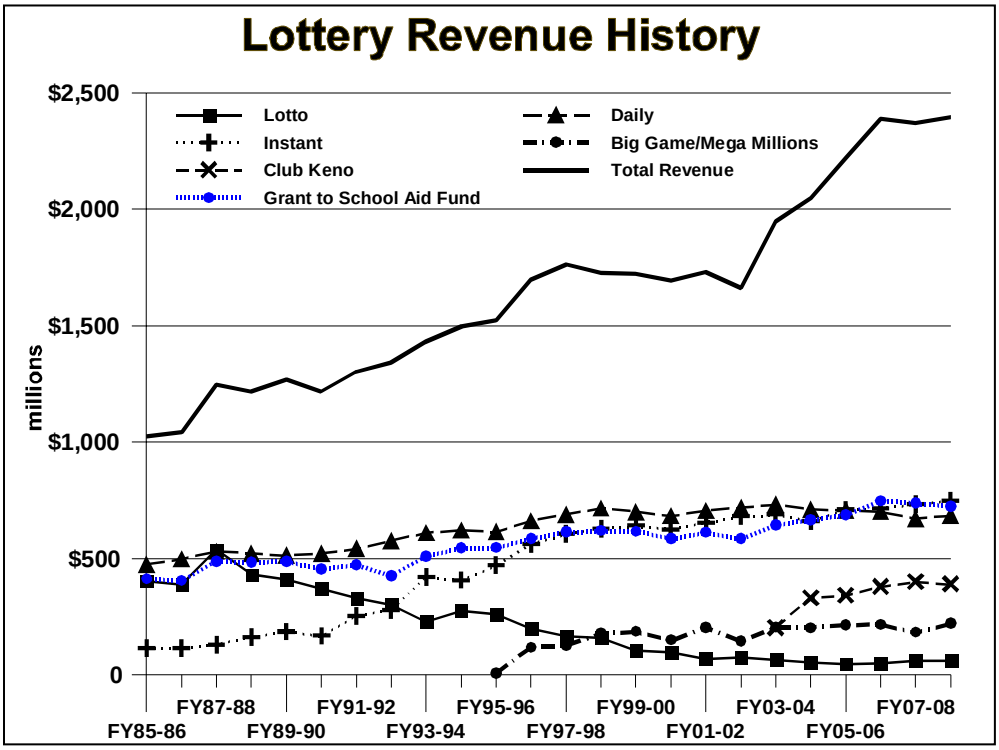
Since May 13, 1981, lottery earnings have been directed exclusively to the School Aid Fund. The first full fiscal year in which lottery revenue was exclusively directed to the SAF was FY 1981-82, and the transfer totaled $205.5 million. In FY 1981-82, the GF/GP grant to the SAF totaled $410.5 million, down $534.8 million from the FY 1979-80 level, while the lottery's contribution to State revenue was essentially unchanged, rising from $203.1 million to $205.5 million. While total SAF funding declined by $278.8 million between FY 1979-80 and FY 1981-82, attributing the decline in either the GF/GP grant or total funding to the change in the lottery would essentially require ignoring both the economic and revenue factors facing the budget, as well as the fact that before the change, the lottery was boosting GF/GP revenue. Essentially, earmarking the lottery revenue to the SAF ensured that when GF/GP grant reductions occurred, it could not be argued that lottery revenue was being redirected from the schools to other purposes and that, given likely GF/GP reductions, the reduction in total SAF revenue would be mitigated to some degree. Absent P.A. 40 of 1981, the GF/GP grant likely would have been $205.5 more. However, given the circumstances of the time, it is unlikely the GF/GP grant to the SAF could have been maintained at the FY 1979-80 level even without the earmark on lottery revenue imposed by P.A. 40 of 1981.

Between FY 1981-82 and FY 2008-09, revenue from the lottery to the SAF increased 252.6%, compared with an 111.8% increase in the Detroit consumer price index (as a measure of inflation) and an SAF budget increase of 705.5%. State-funded school funding has grown far more rapidly than the lottery, which has averaged growth of only about 2.0 percentage points per year faster than inflation over the last 27 years. While inflation increased an average of 2.82% per year between FY 1981-82 and FY 2008-09, and lottery revenue has grown 4.78% per year, SAF expenditures have increased by an average of 8.0% per year over that period, although the funding changes under Proposal A of 1994 (which substantially altered Michigan system of funding public K-12 education) artificially increase that average. Since FY 1994-95, the first full year Proposal A of 1994 was effective, SAF funding has risen by an average of 4.0% per year, and lottery revenue has averaged 2.0% annual growth.

Figure 1 shows the history of lottery revenue, including revenue from major games, from FY 1985-86 through FY 2008-09. For comparison purposes, Figure 1 also shows the lottery transfer to the School Aid Fund. Over this 23-year period, total lottery revenue rose 133.8%, from slightly more than $1.0 billion in FY 1985-86 to slightly less than $2.4 billion in FY 2008-09, while the transfer of net lottery revenue to the School Aid Fund increased 74.5%, from $415.1

million to $724.5 million. As illustrated in Figure 1, the revenue from individual lottery games tends to be somewhat stable, growing only about 1.5% to 2.0% per year, with the major exception being that sales of lotto tickets have largely shifted to instant ticket games. As a result, most of the major increases in total sales have reflected the introduction of major new games, such as the Mega Millions game and Club Keno.

Figure 1



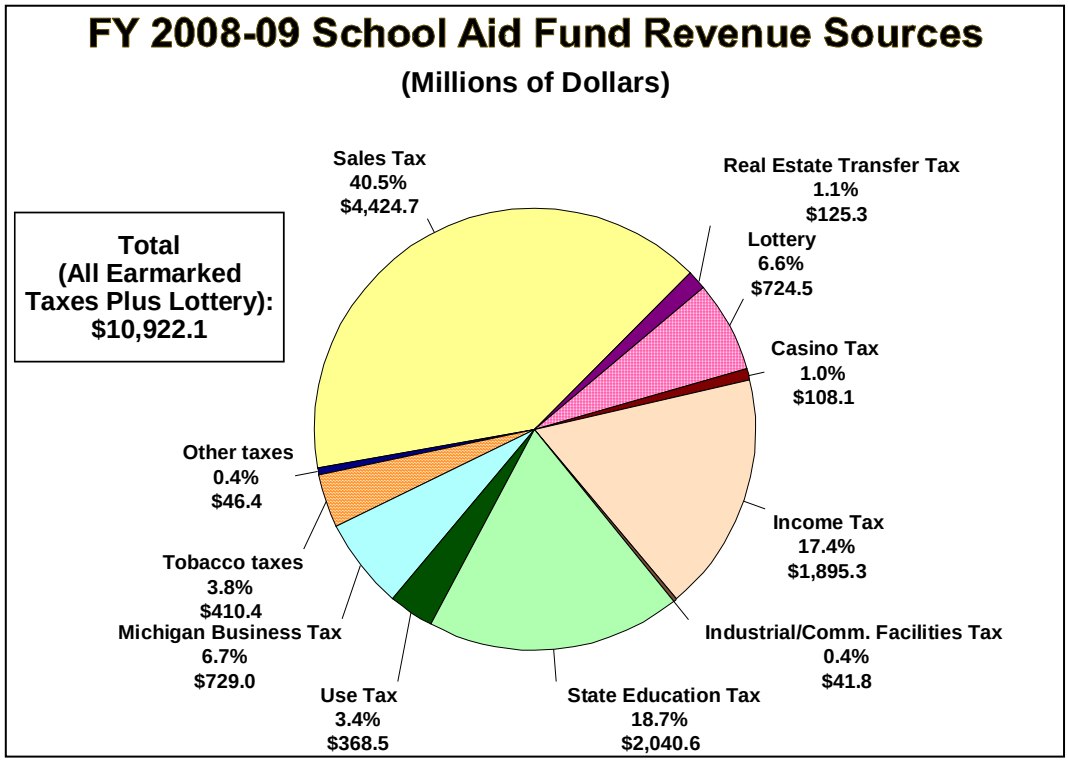
Transfers to the School Aid Fund have not grown as rapidly as the increase in total sales, falling from 40.5% of total revenue in FY 1985-86 to 30.2% in FY 2008-09. The primary reason for the lower growth in the lottery fund transfer is that the portion of total sales paid as prizes has increased. Particularly as the lottery has faced increased competition from other gaming options, most notably tribal casinos and the three Detroit casinos, many lottery games have increased the portion of sales paid as prizes and/or the new games pay a larger share of sales as prizes than existing or previous games. Lottery ticket sales generally are responsive to the share of revenue paid as prizes, so while increasing the prize share reduces the revenue available to pay expenses or to transfer to the School Aid Fund for each affected ticket, total ticket sales tend to increase more rapidly so total net revenue increases. As a result, although the share of sales paid as prizes has increased from an average of 46.9% in FY 1985-86 to 58.7% in FY 2008-09, the amount of money the lottery contributed to the School Aid Fund increased 74.5%.

Funding Sources for School Aid

The majority of funding for the School Aid Fund comes from earmarked Michigan taxes and the lottery. Between FY 1981-82 and FY 1992-93, the lottery contributed approximately 15.1% of

total SAF revenue and about 20.3% of combined earmarked taxes and lottery revenue, while the GF/GP grant constituted approximately 23.9% of SAF revenue, and Federal and other sources accounted for 1.8%. Proposal A of 1994 earmarked large amounts of new State revenue to support the new school funding approach, essentially reducing the relative contribution from the lottery. Although lottery revenue to the SAF increased from $427.6 million in FY 1992-93 to $547.8 million in FY 1994-95, an increase of $120.2 million (28.1%), the share of total SAF revenue it represented fell from 12.5% to 7.1%. Because during the 1990s lottery revenue grew at a slower pace than other revenue sources such as the income tax and State education property tax, the share of total SAF revenue attributable to the lottery fell. In FY 2000-01, lottery revenue represented only 5.5% of SAF revenue. Even though lottery revenue to the SAF increased 23.4% between FY 2000-01 and FY 2008-09, the share of total SAF revenue remained very stable and comprised 5.4% in FY 2008-09. If discretionary revenue sources, such as Federal funding and the GF/GP grant, are excluded, lottery revenue represented only 6.6% of restricted SAF revenue in FY 2008-09, as shown in Figure 2.

Figure 2



As indicated in Table 1 and Figure 2, the majority of School Aid Fund revenue is derived from the sales tax, the State education property tax, and the income tax. Combined, these taxes accounted for 76.5% of restricted revenue received by the SAF. In FY 2008-09, revenue from the lottery would have funded approximately 59.3 hours of the 1,098 hours of instruction the State requires students to receive. Assuming a seven-hour school day, FY 2008-09 lottery revenue funded a little less than 8.5 days of the State's portion of school funding.

Table 1

School Aid Revenue Estimates
Actual FY 2007-08 Though Estimated FY 2010-11
(Millions of Dollars)

Revenue Sources:	FY 2007-08 Final	FY 2008-09 Prelim.	FY 2008-09 % of Total	FY 2009-10 CREC Est.	FY 2009-10 % of Total	FY 2010-11 CREC Est.	FY 2010-11 % of Total
Beginning Balance	$82.4	$247.1	NA	$229.1	NA	$53.7	NA
Earmarked Taxes & Lottery[1]:							
Sales Tax	$4,928.1	$4,424.7	40.5%	$4,281.8	40.9%	$4,320.9	41.2%
Use Tax	459.3	368.5	3.4%	381.0	3.6	386.7	3.7
Income Tax	2,117.7	1,895.4	17.4%	1,777.4	17.0	1,802.8	17.2
State Education Property Tax	2,079.7	2,040.6	18.7%	1,875.0	17.9	1,800.0	17.2
Real Estate Transfer Tax	169.8	125.3	1.1%	127.0	1.2	135.0	1.3
Tobacco Taxes	424.7	410.4	3.8%	384.2	3.7	367.0	3.5
Casino Tax	112.1	108.1	1.0%	109.6	1.0	112.0	1.1
Industrial Facilities Tax	86.1	41.8	0.4%	32.8	0.3	32.8	0.3
Liquor Tax	36.9	37.6	0.3%	38.2	0.4	38.5	0.4
Lottery	740.7	724.5	6.6%	708.1	6.8	722.2	6.9
Michigan Business Tax	341.0	729.0	6.7%	726.7	6.9	746.3	7.1
Other Earmarked Revenue	22.8	16.3	0.1%	16.2	0.2	16.3	0.2
Subtotal SAF Earmarked Revenue	$11,518.8	$10,922.2	100.0%	$10,458.1	100.0%	$10,480.5	100.0%
Other Revenue[2]:							
Grant from General Fund	29.1	76.5	NA	30.2	NA	30.2	NA
Miscellaneous Revenue	0.0	21.9	NA	0.0	NA	0.0	NA
Federal Aid	1,377.7	1,503.6	NA	1,601.8	NA	1,602.0	NA
ARRA (Federal Stimulus Revenue)	0.0	597.5	NA	450.0	NA	185.5	NA
Total School Aid Revenue	**$13,008.0**	**$13,368.8**	**NA**	**$12,769.2**	**NA**	**$12,351.9**	**NA**

1) CREC estimates reflect consensus revenue estimates from January 11, 2010.
2) FY 2010-11 "other revenue" items reflect SFA estimates.

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Distribution of Revenue from Lottery Ticket Sales

While much of School Aid Fund revenue depends upon broad economic conditions, such as wages, retail sales, and property values, revenue from the lottery also depends on a number of additional factors that have little effect on revenue sources such as the income tax, sales tax, and property tax. The share of ticket sales paid out as prizes has a significant effect on lottery sales, and lottery-sponsored games devote between 50.0% and 65.0% of gross ticket revenue to prizes. By comparison, casinos often advertise prize payouts of 90.0% or more. While lottery tickets are far more widely available than is casino gaming, both the lottery and casinos struggle to maintain consumer interest in their products. Just as casinos replace table games, minimum wagers and slot machines in an effort to maintain interest, the lottery develops new games and changes the structure and marketing of the games. The lottery also must develop and maintain a network of distribution locations where lottery tickets can be sold. As a result, much of the gross revenue received by the lottery is not directed to the School Aid Fund.

Figure 3

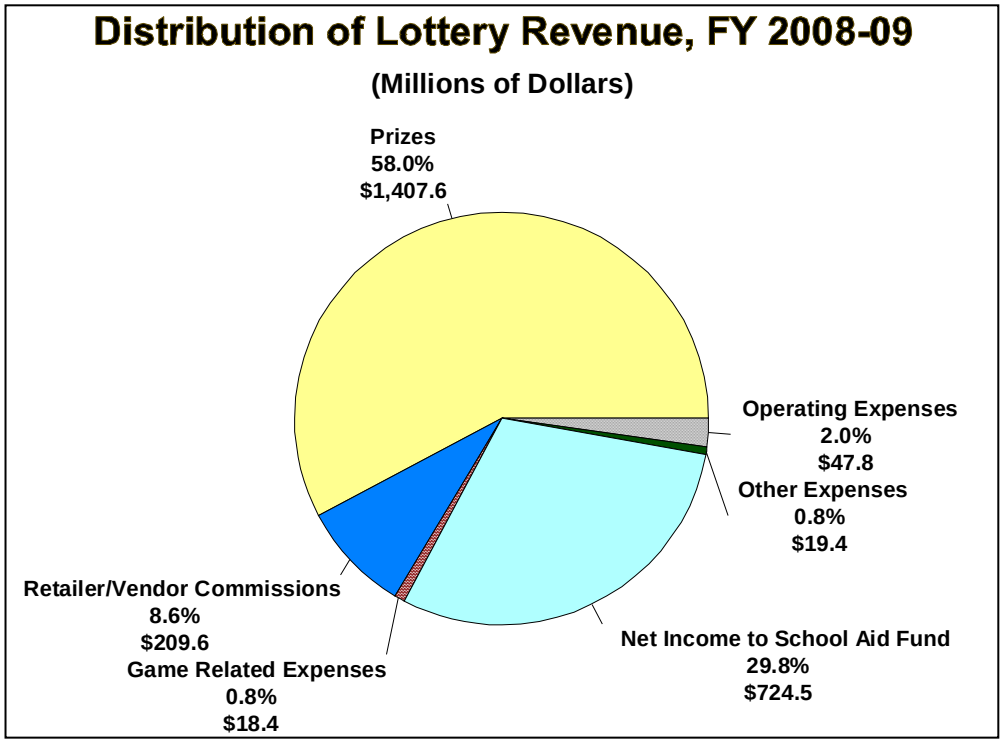

Figure 3 illustrates the distribution of lottery revenue for FY 2008-09. The overwhelming majority of lottery revenue comes from ticket sales, although additional revenue is generated from unclaimed prizes and the return on the Bureau of the State Lottery's investments (which are primarily used to finance prize payments that are made over time). Prizes account for the majority (58.0%) of lottery expenses and totaled slightly more than $1.4 billion in FY 2008-09. Commissions to retailers and vendors represented $209.6 million (8.6%) of expenditures while various expenses associated with operating the games or the Bureau

accounted for $85.5 million (3.5%). The remaining $724.5 million in lottery revenue, representing 30.5% of net ticket sales, was transferred to the School Aid Fund.

Conclusion

The lottery has represented a growing and relatively stable source of revenue for the School Aid Fund and Michigan public schools. Even as Michigan has exhibited declining employment over the last decade, the lottery transfer to the SAF has increased from an average of $595.5 million over the FY 2000-01 through FY 2002-03 period to $738.0 million over the FY 2006-07 through FY 2008-09 period. Growth in lottery revenue has largely reflected the introduction of new games and the payment of an increasing share of ticket sales as prizes. Prizes represent the major expenditure of gross lottery revenue and commissions and operational expenses account for only about 12.0% of lottery expenditures. After prizes, commissions, and operational expenses are paid, 100% of lottery proceeds are transferred to the SAF, as they have been since 1981.

Beginning in 1994, the State of Michigan shouldered a substantial portion of school funding and substantially increased the revenue directed to the SAF, reducing the relative magnitude of lottery's contribution. Swings in revenue under the sales tax, income tax, and State education property tax now dominate the changes in school funding. While the lottery added $724.5 million in FY 2008-09 to help fund schools, when compared with a $13.4 billion School Aid budget, it represented only about 8.5 days worth of the State's share of school operations.