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TOPICS OF LEGISLATIVE INTEREST

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A Summary of the Michigan Promise Grant Program
By Ellen Jeffries, Deputy Director

The Michigan Promise Grant Program was created by Public Act 479 of 2006 to replace the Michigan Merit Award Program. Promise Grants were first awarded to high school graduates from the class of 2007. The class of 2007 was not eligible for Merit Awards and the phase-out of Merit Awards will be essentially complete in fiscal year (FY) 2009-10. The expenditure for Merit Awards was $5.3 million in FY 2008-09 and is expected to be about $1.9 million in FY 2009-10. For FY 2009-10, the Governor recommended $140.0 million for Promise Grants. The House concurred with the Governor's recommendation but the Senate, acknowledging serious State revenue constraints, eliminated the program. The FY 2009-10 Higher Education Conference Report, House Bill 4441 (S-1) CR-1, does not include any funding for the Michigan Promise Grant Program.

Michigan Promise Grant Eligibility

In order to receive a Michigan Promise Grant, a student must take the Michigan Merit Exam (MME) in high school. Under current law, the maximum Promise Grant amount is $4,000 and grants are awarded to two different groups of students: (1) Students who do well on the MME (which includes the American College Test or ACT) can receive $2,000 at the "front-end" and $2,000 at the "back-end" when they have completed 60 semester or 90 term credit hours at a public or private degree or certificate-granting college or university or an approved accredited institution; and (2) students who do not score well on the MME can receive a $4,000 "back-end" payment when they have completed 60 semester or 90 term credit hours at an approved institution. In order to receive either the $2,000 or $4,000 "back-end" payment, a student must have a cumulative postsecondary grade point average of 2.5 or higher. All students must enroll in a postsecondary institution within two years after graduating from high school and must complete 60 semester or 90 term credits within four years after enrolling in a postsecondary institution, to retain Promise Grant eligibility.

Michigan Promise Grant Disbursement

Students who are eligible for the front-end grant receive a $1,000 installment during their first year of college and a similar $1,000 installment in their second year of college. (Some colleges split the $1,000 installment into two payments of $500 per semester.) If students complete 60 semester or 90 term credits, they are eligible for their final $2,000 back-end installment, for a total Promise Grant of $4,000. Students who are only eligible for the back-end payment receive $4,000 upon completion of 60 semester or 90 term credit hours. The front-end payments are made directly to the postsecondary institutions and are credited to each student's account. If funded, the back-end payments would be paid to the institutions and either credited to a student's account or remitted by the institution to the student, if the student were no longer enrolled.

Implications of Promise Grant Elimination

Fiscal Year 2009-10 would have been the first year that any student was eligible for a back-end payment because it is two years after students from the high school class of 2007 may

have enrolled at a postsecondary institution and likely could have completed 60 semester or 90 term credit hours. Table 1 outlines the history of Promise Grant payments, including the Governor's FY 2009-10 appropriation recommendation.

Table 1

History of Promise Grant Payments			
High School Graduating Class	**FY 2007-08**	**FY 2008-09**	**FY 2009-10 Gov's Rec.**
Class of 2007	1st front-end payment: $1,000	2nd front-end payment: $1,000	Back-end payment: $2,000 or $4,000
Class of 2008	No payments	1st front-end payment: $1,000	2nd front-end payment: $1,000
Class of 2009	No payments	No payments	1st front-end payment: $1,000

Source: Michigan Department of Treasury and Senate Fiscal Agency

Class of 2009 Promise Grant Front-End Recipients

According to data from the Michigan Center for Educational Performance and Information (CEPI), there were a total of 98,774 12th grade students at Michigan's public high schools during academic year 2008-2009. Of those 12th grade students, 35,132 qualified for a front-end Promise Grant, which means that 35.6% of all 12th graders received qualifying scores on the MME. Tables 2 and 3 display, respectively, the 12 public high schools with the highest percentage of 12th graders earning a front-end Promise Grant, and the 12 public high schools with the lowest percentage of 12th graders earning a front-end Promise Grant, for the class of 2009. The tables also include the percentage of students eligible for free or reduced-price lunches under the National School Lunch Program at each institution.

Table 2

12 High Schools with Highest Percentage of 12th Graders Earning a Front-End Promise Grant High School Graduating Class of 2009				
High School	**Number of 12th Graders**	**Number of Front-End Promise Grants**	**% Earning Front-End Grants**	**% Eligible for Free or Reduced Lunch**
Grand Rapids City	95	81	85.3%	22.1%
East Grand Rapids	243	176	72.4	7.4
Northville	567	387	68.3	3.0
Grand Rapids Forest Hills Central	346	230	66.5	5.8
Saline	407	270	66.3	3.9
Troy	526	344	65.4	3.2
Rochester Adams	390	251	64.4	2.3
Birmingham Seaholm	317	204	64.4	3.8
Houghton Central	109	70	64.2	17.4
Ann Arbor Huron	518	329	63.5	12.6
Okemos	349	221	63.3	8.6
Spring Lake	176	109	61.9	13.1

Source: CEPI

Table 3

12 High Schools with Lowest Percentage of 12th Graders Earning a Front-End Promise Grant High School Graduating Class of 2009				
High School	**Number of 12th Graders**	**No. of Front-End Promise Grants**	**% Earning Front-End Grants**	**% Eligible for Free or Reduced Lunch**
Detroit Mumford	474	13	2.7%	44.1%
Inkster	309	10	3.2	55.7
Saginaw Arthur Hill	255	14	5.5	68.6
Hamtramck	161	10	6.2	82.6
Southfield	289	19	6.6	40.5
Detroit Western Internat'l	260	18	6.9	66.5
Muskegon	277	21	7.6	76.5
Ypsilanti Willow Run	140	13	9.3	58.6
Detroit Comm. Arts	102	10	9.8	55.9
Detroit King	309	31	10.0	45.6
Muskegon Oakridge	135	14	10.4	40.0
Taylor Truman	440	51	11.6	48.9

Source: CEPI

There appears to be a correlation between the percentage of students at a high school eligible for a free or reduced-price lunch and the number of front-end Promise Grants earned. Any student at a participating school may purchase a meal through the National School Lunch Program. Children from families with incomes at or below 130% of the poverty level are eligible for free meals; those from families with incomes between 130% and 185% of the poverty level are eligible for reduced-price meals. The Federal Food and Nutrition Service administers the School Lunch Program and has stated that for the period July 1, 2009, through June 30, 2010, 130% of the poverty level is $28,665 for a family of four, and 185% is $40,793.

The data for front-end Promise Grant earners displayed in Tables 2 and 3 indicate that at the high schools earning the highest percentage of Promise Grants (61.9% to 85.3% of students), the percentage eligible for a free or reduced-price lunch was low (2.3% to 22.1%), while the schools earning the lowest percentage of Promise Grants (2.7% to 11.6%) had much higher percentages of students eligible for a free or reduced-price lunch (40.0% to 82.6%). These data suggest that more front-end Promise Grant earners come from high schools with families that have higher incomes. The most recent data from the Michigan Department of Treasury indicate that of the 10,432 back-end applications received to date, only 925 are from noninstallment students who did not receive a front-end grant but have applied to receive a $4,000 back-end payment.

Conclusion

Under current law, the projected FY 2009-10 costs for the Michigan Promise Grant Program would be less than the $140.0 million originally estimated, perhaps as low as $100.0 million. However, these costs would continue to rise over time as more students completed the credit hours required to receive the back-end grants. It also appears that the bulk of the funding for the Michigan Promise Grant Program would go to students who have comparatively less need for financial aid as an incentive to attend college. Although the Michigan Promise

Grant Program is not included in the FY 2009-10 Higher Education Conference Report, funding is included for three other need-based financial aid programs: State Competitive Scholarships (need- and merit-based grants primarily for students at public colleges and universities), Tuition Grants (need-based grants for students at independent colleges and universities), and the Tuition Incentive Program (grants for Medicaid-eligible students).

State Notes

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September/October 2009

Ballast Water Management in Michigan
By Julie Cassidy, Legislative Analyst

Introduction

Aquatic nuisance species (ANS) are waterborne, nonnative organisms that can threaten the diversity or abundance of native species; damage the ecological stability of affected waters; and jeopardize commercial, agricultural, aquacultural, and recreational activity. These species have the potential to cause significant environmental, economic, and public health problems when they are introduced to a habitat that lacks natural controls, such as predators, parasites, pathogens, and competitors. They can crowd out native species, alter habitats, change predator/prey relationships, and transmit foreign disease or parasites. They also can cause such problems as food chain disruption, reduced biodiversity, clogging of water intakes, and increased weed growth. Furthermore, measures to eliminate ANS from an ecosystem are costly and sometimes result in more harm.

Ballast water discharge by ships is the most significant source of unintentional introduction of ANS to the Great Lakes. Ships take on ballast water for stability when they are not filled with cargo. When drawing in ballast water in one port, ships may pick up live organisms. As the ships are loaded with cargo in the Great Lakes ports, ballast water is discharged, releasing the live organisms into the lakes. In light of the adverse effects of nonnative invasive species in the Great Lakes Basin, the State enacted legislation to regulate ballast water discharges by oceangoing vessels; extend penalties to a person responsible for an illegal or unauthorized discharge of ballast water; and create an interstate coalition to control ANS.

This article provides an overview of Michigan's ballast water law and recent litigation challenging it, as well as new and proposed Federal regulations to address the problems caused by ANS.

State Legislation

Public Act 33 of 2005 amended the Natural Resources and Environmental Protection Act (NREPA) to require all oceangoing vessels engaging in port operations in Michigan to obtain a permit from the Department of Environmental Quality (DEQ), beginning January 1, 2007. The DEQ may issue a permit only if the applicant can demonstrate that the vessel will not discharge ANS or, if the vessel discharges ballast water or other waste or waste effluent, that the vessel's operator will use environmentally sound technology and methods to prevent the discharge of ANS. The application fee is $75, and the annual fee for a permit is $150.

Public Act 33 also authorized the DEQ to promulgate rules regarding the permits and required the DEQ to facilitate the formation of an interstate Great Lakes Aquatic Nuisance Species Coalition.

Public Act 32 of 2005 amended NREPA to establish penalties for a permit violation. The Natural Resources and Environmental Protection Act prohibits a person from directly or indirectly discharging into the State's waters a substance that is or may become injurious to any of the following:

- The public health, safety, or welfare.
- Domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of the waters.

- The value or utility of riparian land.
- Livestock, wild animals, birds, fish, aquatic life, or plants, or their growth or propagation.
- The value of fish and game.

Under Public Act 32, an unauthorized discharge into Michigan waters from an oceangoing vessel of any ballast water is prima facie evidence of a violation. (Prima facie evidence is evidence sufficient to establish a given fact unless it is rebutted or contradicted.) The DEQ may request the Attorney General to commence a civil action for appropriate relief for a violation. In addition to any other relief, the court must impose a civil fine of at least $2,500 and may award reasonable attorney fees and costs to the prevailing party. The maximum fine the court may impose is $25,000 per day of violation.

Additionally, a person who at the time of the violation knew or should have known that a discharge was unauthorized is guilty of a felony and must be fined between $2,500 and $25,000 for each violation. The court may impose an additional fine of up to $25,000 for each day that the unlawful discharge occurred. For a subsequent conviction, the court must impose a fine of between $25,000 and $50,000 per day of violation. The court also may sentence the defendant to imprisonment for up to two years or impose probation.

The court must impose an additional penalty if it finds that a defendant's actions pose or posed a substantial endangerment to the public health, safety, or welfare. In a civil action, the court must impose an additional fine of between $500,000 and $5.0 million. In a criminal case, the court must impose an additional fine of at least $1.0 million and a sentence of five years' imprisonment.

Litigation

In 2007, several shipping companies and shipping associations, a port terminal, and a port association sued the DEQ and the Attorney General in the U.S. District Court for the Eastern District of Michigan, seeking an injunction against enforcement of the ballast water legislation on the grounds that it was preempted by Federal law, violated the Commerce Clause of the United State Constitution, and violated their due process rights under the Fourteenth Amendment. The State moved to dismiss the complaint. Later that year, the Court denied the plaintiffs' motion for summary judgment and dismissed the complaint. The plaintiffs appealed to the U.S. Court of Appeals for the Sixth Circuit.

The Court of Appeals first addressed whether the plaintiffs had standing to challenge the statute. The Court determined that each of the shipping companies had standing to challenge the permit requirement for all oceangoing vessels, as did the shipping associations; the port terminal and the port association, however, did not because they were not required to obtain the permits and, thus, suffered no injury.

The Court determined that none of the plaintiffs had standing to challenge the requirement that all oceangoing vessels that discharge ballast water in Michigan use a DEQ-approved treatment system to prevent the discharge of ANS. This led the court to conclude that it had jurisdiction over only the claims of the shipping companies and shipping associations regarding the permit requirement. The Court addressed the plaintiffs' claims as described below.

Federal Preemption

The plaintiffs asserted that the permit requirement was preempted by Federal law. As Congress did not expressly state in several Federal statutes pertaining to ANS that it intended to preempt state law, the Court turned its attention to the question of implied preemption, i.e., whether Congress occupied the field in which the permit requirement fell, or whether the requirement actually conflicted with Federal law.

The plaintiffs claimed that the permit requirement was subject to field preemption because two Federal statutes, the National Invasive Species Act (NISA) and the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA), left no room for enforcement of Michigan's ballast water law. After determining that the field in question was the prevention of ANS introduction, the Court examined congressional intent. Noting that NISA states, "…resolving the problems associated with aquatic nuisance species will require the participation and cooperation of the Federal Government and State governments", the Court concluded, "Thus we know that states can--and indeed must--have a role with respect to ANS 'problems'; the question, then, is whether that role is limited to ANS 'control,' or extends also to 'prevention.'" Citing references in NISA and NANCPA to ANS prevention measures involving state governments, the Court determined that Federal law does not preempt that field.

The Court also referred to comments from the U.S. Coast Guard supporting its interpretation, particularly an express statement that, "[E]ach State is authorized under NISA to develop their own regulations if they feel that Federal regulations are not stringent enough." In light of all of this information, the Court determined that the plaintiffs had identified no Federal interest that supported the claim that Congress intended to preempt the field of ANS prevention.

The Court also found that the ballast water statute furthered, rather than conflicted with, the objective of Congress specified in NISA; namely, "to prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements."

Commerce Clause

The plaintiffs claimed that Michigan's ballast water statute burdened interstate commerce in violation of the Commerce Clause of the U.S. Constitution.[1] The Court noted that the statute clearly did not favor in-state economic interests over out-of-state interests, and thus had to be upheld "…unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." As the plaintiffs had conceded in district court, invasive species constitute a serious threat to the ecosystem and must be addressed. Observing the billions of dollars in economic damage done by zebra mussels, the Court of Appeals stated that "[T]o the extent the permit requirement even marginally reduces the problem of ANS introduction, its local benefits would be very large. In

[1] Found in Article I, Section 8 of the U.S. Constitution, the Commerce Clause authorizes Congress to regulate commerce with foreign nations and between the states. The U.S. Supreme Court has long interpreted the language to contain a "dormant" Commerce Clause, as well, which means that states may not unduly burden interstate or foreign commerce even where Congress has not enacted legislation. In the case challenging Michigan's ballast water statute, the plaintiffs claimed that the law violated the dormant Commerce Clause.

contrast, the burdens imposed by the permit requirement--an application fee of $75, a yearly fee of $150, and the completion of a few forms--are *de minimis*."

In addition, the Court noted that Congress had expressly contemplated state participation in ANS prevention measures through the enactment of NISA. The Court held, "We would lose our constitutional bearings if we were to hold that the Commerce Clause, in its dormancy, strikes down state regulation that Congress, in *actively exercising* its power under the Clause, expressly contemplated. We therefore affirm dismissal of the claim."

Due Process

Finally, the Court addressed the plaintiffs' claim that the permit requirement for oceangoing vessels, even those that do not discharge ballast water containing ANS, deprived them of their property without due process of law in contravention of the Fourteenth Amendment. Citing case law, the Court found, "[T]he permit requirement 'need only be rationally related to a legitimate government purpose' to be upheld…This test is 'highly deferential; courts hold statutes unconstitutional under this standard of review only in rare or exceptional circumstances.'" According to the Court, the permit requirement was rationally related to advancing the State's legitimate interest in preventing the introduction of ANS from ballast water discharges by oceangoing vessels, and therefore did not violate the plaintiffs' due process rights.

The Court reaffirmed the District Court's order, stating, "Michigan for undisputedly legitimate reasons, has enacted legislation of a type expressly contemplated by Congress. We have no basis to disrupt the result of those democratic processes."

EPA Lawsuit

A case in the U.S. District Court for the Northern District of California challenged a regulation of the U.S. Environmental Protection Agency (EPA) that excluded discharges incidental to the normal operation of a vessel from National Pollutant Discharge Elimination System permitting. In 2005, the District Court held that the EPA exceeded its authority under the Clean Water Act, and issued an order revoking this regulation. After the Court's order was upheld by the U.S. Court of Appeals for the Ninth Circuit, the EPA issued a draft general permit to regulate 26 categories of incidental discharges, including ballast water discharges. The final Vessel General Permit (VGP) requires vessels (subject to certain exceptions) to comply with specific reporting requirements and best management practices, and establishes effluent limits for various waste streams. In addition, the VGP incorporates U.S. Coast Guard requirements for ballast water management and exchange (described below) and requires vessels declaring "no ballast on board" (NOBOB) to flush their tanks with saltwater to kill any residual freshwater organisms. The permit requirement took effect on February 6, 2009.[2]

In January 2009, several environmental groups filed a petition for review in opposition to the VGP in the Ninth U.S. Circuit Court of Appeals. Opponents of the new permit believe that its requirements are too weak to meet the standards of the Clean Water Act. They note that ballast water exchange and tank flushing are already required by Coast Guard rules, but claim that these measures are not

[2] Details about the VGP can be found at http://edocket.access.gpo.gov/2008/pdf/E8-30816.pdf.

sufficient to protect the Great Lakes and U.S. coastal waters. According to the environmental groups, the EPA should have required vessel operators to install on-board ballast water treatment systems and prescribed limits on the number of live organisms that may be discharged in ballast water, as some states have done. The maritime industry and the EPA counter that effective sterilization technology is not yet available (although some states, including Michigan, prohibit ships from discharging ballast water without treating it first).

Proposed Coast Guard Rules

In August 2009, the Coast Guard proposed to amend its ballast water management regulations by establishing a limit on the concentration of living organisms allowed in ships' ballast water discharges in U.S. waters and establishing an approval process for ballast water management systems (BWMSs). The proposed rule contains two phases of ballast water discharge standards (BSDSs), which vary according to each vessel's ballast capacity and build date. Both phases would have a phase-in period for compliance.

Current Coast Guard rules require all vessels equipped with ballast tanks and bound for ports or places of the U.S. to conduct a mid-ocean ballast water exchange (BWE), retain their ballast water onboard, or use an alternative environmentally sound management method. The effectiveness of BWE varies depending on vessel type, exchange method, ballasting system configuration, and exchange location. The Coast Guard has stated that BWE has been useful as an interim management practice, but should not serve as a basis for a protective programmatic regimen; and that establishing numeric discharge standards would be more effective.

Under the proposed rule, all vessels that operate in U.S. waters, that are bound for ports in the U.S., and that are equipped with ballast tanks would have to install and operate a Coast Guard-approved BWMS before discharging ballast water into U.S. waters, subject to certain exceptions.

During the phase one phase-in period, certain vessels would have to meet the BWDS, while others still could use BWE. At the end of the phase one schedule, the BWE option would be eliminated and all ships would have to meet either the phase one or phase two standard, as applicable, or retain their ballast water onboard. Following full implementation of the phase two standard, the Coast Guard would review the BWDS every three years.[3]

Existing Coast Guard rules contain two separate subparts regarding ballast water management--one pertaining to U.S. ballast water management, and one specific to ballast water management in the Great Lakes. The separate Great Lakes regulations were established to accommodate unique vessel traffic patterns in the Great Lakes and in acknowledgment of the need for special protections from ANS in the region. The Coast Guard proposes to retain these regulations.

The proposal would establish a BWMS approval program, including requirements for the design, installation, operation, and testing of systems to ensure that they meet required safety and performance standards.

The period for public comments on the proposed rules has been extended to December 4, 2009.

[3] The rules can be found at http://edocket.access.gpo.gov/2009/pdf/E9-20312.pdf.

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September/October 2009

Federal TANF Maintenance of Effort for Michigan in FY 2009-10
By David Fosdick, Fiscal Analyst

It is likely that the enacted fiscal year (FY) 2009-10 appropriation will include a large reduction in General Fund/General Purpose (GF/GP) funding. Implementing budget bills with significant reductions in available GF/GP funding creates a number of complications that will need to be resolved in the months ahead. One of the more significant complications facing the State will be structuring the appropriation to ensure compliance with the Federal Temporary Assistance for Needy Families (TANF) Maintenance of Effort (MOE) requirements. Preliminary estimates of Michigan's FY 2009-10 MOE claim suggest that the State will struggle to meet the Federal MOE standard this fiscal year. This article provides a brief outline of the Federal TANF MOE requirement, reviews Michigan's MOE claim since the creation of the TANF block grant in the mid 1990s, and provides some discussion related to the likely problems associated with the FY 2009-10 Michigan TANF MOE claim.

Background of the MOE Requirement

The TANF Federal block grant, a major element of Federal welfare reform legislation passed in 1996, replaced several Federal programs that provided funds to match state efforts for cash welfare, emergency assistance, and job training. To ensure that the block grant funding did not end up replacing state financial effort for these functions, the legislation requires states to demonstrate spending for benefits to needy families at 75.0% of the level allocated in FY 1993-94. This requirement, termed Maintenance of Effort, would increase to 80.0% of the FY 1993-94 standard if a state failed to meet the work participation levels for TANF recipients mandated in Federal law governing the provision of cash assistance.

Since the enactment of Federal welfare reform legislation, Michigan has been required to demonstrate eligible spending of $468.5 million each year to meet the Federal 75.0% MOE standard. If Michigan were to fail to meet the Federal work participation requirement (increasing the MOE requirement to the 80.0% standard), the State would be required to demonstrate eligible spending of $499.8 million.

The Federal penalty to states that fail to meet the MOE standard is a dollar-for-dollar reduction in the subsequent TANF block grant equal to the amount of noncompliance with the MOE standard and a requirement that the state spend additional GF/GP funding in its TANF program equal to the amount of the noncompliance. Unlike other Federal requirements imposed upon states, the TANF program provides no process for states to avoid the penalty by demonstrating reasonable cause or by implementing a compliance plan.

MOE-Eligible Expenditures

Most activities that are eligible for Federal TANF spending are also eligible to meet the MOE requirement. Federal law gives states a great deal of flexibility in using their TANF grant. States must demonstrate that an expenditure of TANF funds will assist the state in achieving one of four goals established in Federal statute. The TANF statutory goals are:

- to provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives;
- to end dependence of needy parents on government benefits through work, job training and marriage;
- to reduce the incidence of out-of-wedlock pregnancy; and
- to promote the formation and maintenance of two-parent families.

While defining MOE-eligible expenditures as any expenditure eligible for Federal TANF financial support is a good rule of thumb, there are two circumstances in which Federal law permits expenditure of Federal TANF funding on a function but restricts a state from claiming MOE:

- While Federal law permits states to use TANF dollars for state efforts that were not part of the state pre-TANF welfare program, states may claim MOE only for expenditures on state programs above those provided in 1995.
- Federal law permits states to use TANF funds to support pre-welfare reform programs that do not meet one of the four statutory goals; however, states are not permitted to claim MOE on GF/GP spending in these programs.

Michigan's MOE Claims Since FY 1996-97

Table 1 provides a summary of the structure of the Michigan MOE claim since FY 1996-97. This table is based upon the official MOE claim submitted by the State to the Federal government for each fiscal year, and, for the given year, does not necessarily represent all the MOE available to the State (payments the State could use to meet the MOE target). As noted previously, the 75.0% MOE target mandated for Michigan is $468.5 million.

While Table 1 can help provide an understanding of the structure of the MOE claim, there are some things to keep in mind when reading this table. The MOE claim for activities within the Department of Human Services appropriation shows large changes from year to year. This is likely not the result of changes in program size or policy. Because TANF and GF/GP funding that is used to claim MOE can be largely used interchangeably, Department decisions of whether to use TANF block grant funding or GF/GP will have an impact on the MOE claim. For example, the State could spend $400.0 million Gross in the Family Independence Program (FIP) line item in two consecutive years. In year one, the Department could allocate $200.0 million in TANF to this effort and $200.0 million in GF/GP funding; in year two, the Department could allocate $100.0 million in TANF support and $300.0 million in GF/GP funding. This would not result in any observable change in the structure of the FIP program but would affect the spread of Michigan's MOE claim within the Department of Human Services in a significant way.

Table 1

Michigan MOE Claim by Expenditure Type
FY 1996-97 to FY 2008-09
(in millions)

Fiscal Year	DHS Admin.	DHS Child Services	DHS Assist.	Emply. Training	Comm. Health	K-12 Edu	Public Service Comm.	Higher Ed. Swaps	Non-Govt. Claims	Tax Policy	Total
1996-97	$89.1	$26.6	$332.9	$35.6	$4.0	$12.1	$0	$0	$0	$0	$500.4
1997-98	$43.2	$50.4	$370.9	$22.8	$3.7	$11.2	$0	$0	$0	$0	$502.2
1998-99	$43.3	$16.5	$381.3	$5.0	$0	$14.0	$0	$0	$0	$11.3	$471.3
1999-2000	$19.5	$7.6	$406.0	$7.1	$1.4	$27.0	$0	$0	$0	$0	$468.5
2000-01	$10.8	$1.2	$398.6	$3.8	$2.4	$70.1	$0	$0	$0	$0	$486.8
2001-02	$8.7	$1.4	$372.6	$.7	$2.2	$78.1	$13.9	$0	$0	$0	$477.6
2002-03	$12.0	$0	$360.5	$1.2	$2.0	$93.4	$0	$0	$0	$0	$469.1
2003-04	$23.0	$0	$353.7	$1.2	$2.2	$131.7	$8.6	$0	$0	$0	$520.6
2004-05	$23.8	$.1	$375.9	$.7	$0	$78.5	$25.0	$0	$0	$0	$504.0
2005-06	$50.3	$0	$406.2	$.8	$2.2	$70.0	$38.3	$0	$0	$0	$567.8
2006-07	$44.1	$0	$375.5	$5.8	$2.8	$73.2	$39.6	$0	$0	$0	$541.0
2007-08	$139.0	$9.4	$333.1	$29.2	$3.7	$97.9	$33.2	$94.9	$49.5	$0	$789.9
2008-09 Estimated	$106.6		$195.6	$18.4	$3.7	$100.0	$51.3	$170.0	$0	$70.3	$715.8

Source: Department of Human Services

A trend that is worth exploring is differences in the spread of the MOE claim across State agencies. Table 2 shows that in FY 1996-97, 96.0% of Michigan's MOE claim was based upon spending in the Department of Human Services (formerly the Family Independence Agency) appropriation. In recent years, the MOE claim has become more reliant upon expenditures in other departments. The Department of Human Services (DHS) portion of the MOE claim will likely be about 65.0% of the $468.5 million 75.0% MOE standard in FY 2008-09.

Reliance upon spending in multiple departments to meet the MOE standard has permitted the State to reduce GF/GP spending in the DHS appropriation. This does make it more difficult to track Michigan's MOE progress during budget development, however, and may make it more likely that appropriations across all agencies will not meet the Federal standard.

A major factor in Michigan's shift in the MOE claim away from the DHS appropriation is increased ability to count K-12 education spending as MOE-eligible. Expenditures for programs targeted to at-risk students and for early childhood educational activities have been built into Michigan's MOE claim since welfare reform was implemented in FY 1996-97. Table 3 shows how the K-12 component of Michigan's MOE has grown in the past decade from about 2.5% of the MOE 75.0% standard to over 20.0% of the standard in recent years.

Table 2

Spread of MOE Claim Across State Departments
FY 1996-97 to FY 2008-09

	DHS		DELEG		DCH		K-12		Public Serv. Comm		Higher Ed Swap		Tax Policy	
Fiscal Year	% of MI Claim	% of 75% MOE	% of MI Claim	% of 75% MOE	% of MI Claim	% of 75% MOE	% of MI Claim	% of 75% MOE	% of MI Claim	% of 75% MOE	% of MI Claim	% of 75% MOE	% of MI Claim	% of 75% MOE
1996-97	90%	96%	7%	7%	1%	1%	2%	3%	0%	0%	0%	0%	0%	0%
1997-98	93%	100%	4%	4%	1%	1%	2%	2%	0%	0%	0%	0%	0%	0%
1998-99	94%	95%	0%	0%	0%	0%	3%	3%	0%	0%	0%	0%	2%	2%
1999-2000	94%	94%	0%	0%	0%	0%	6%	6%	0%	0%	0%	0%	0%	0%
2000-01	85%	88%	0%	0%	0%	1%	14%	15%	0%	0%	0%	0%	0%	0%
2001-02	80%	82%	0%	0%	0%	0%	16%	17%	3%	3%	0%	0%	0%	0%
2002-03	80%	80%	0%	0%	0%	0%	20%	20%	0%	0%	0%	0%	0%	0%
2003-04	73%	81%	0%	0%	0%	0%	25%	28%	2%	2%	0%	0%	0%	0%
2004-05	79%	85%	0%	0%	0%	0%	16%	17%	5%	5%	0%	0%	0%	0%
2005-06	81%	98%	0%	0%	0%	0%	12%	15%	7%	8%	0%	0%	0%	0%
2006-07	79%	91%	0%	0%	1%	1%	14%	16%	7%	8%	0%	0%	0%	0%
2007-08	62%	105%	0%	0%	0%	1%	12%	21%	4%	7%	12%	20%	0%	0%
2008-09 (Est)	42%	65%	3%	4%	1%	1%	14%	21%	7%	11%	24%	36%	10%	15%

Note: This table uses the current structure and names of State departments to describe the spread of MOE.

Source: Department of Human Services

Table 3

K-12 MOE Expenditures
FY 1996-97 to FY 2007-08

Fiscal Year	MOE Dollar Claim	Percent of 75% MOE Standard
1996-97	$12,125,500	2.6%
1997-98	11,197,300	2.4
1998-99	14,000,000	3.0
1999-2000	26,946,900	5.8
2000-01	70,109,000	15.0
2001-02	78,123,700	16.7
2002-03	93,437,000	19.9
2003-04	131,744,600	28.1
2004-05	78,451,000	16.7
2005-06	70,046,500	15.0
2006-07	73,185,200	15.6
2007-08	97,883,300	20.9

Source: Department of Human Services

TANF Contingency Funds and MOE Claims

The Federal law that created the TANF block grant program also created a separate pool of funding that is available to states that demonstrate severe economic distress, as measured by changes in food assistance caseload or the unemployment rate. States can receive an increase in Federal TANF funding (up to 20.0% above the standard TANF grant) by meeting an enhanced Federal MOE standard (100% of the FY 1993-94 spending less day care expenditure) and providing GF/GP funding at the Federal Medicaid matching rate for each dollar of increased Federal support.

Michigan successfully obtained the full amount of TANF contingency revenue available to the State in FY 2007-08 ($155.0 million). Michigan also anticipates access to these funds for FY 2008-09. Efforts to obtain TANF contingency revenue explain the increases in the size of Michigan's MOE claim, from around $500.0 million each year to nearly $800.0 million, in these fiscal years.

Michigan's FY 2009-10 MOE Claim

During the FY 2009-10 budget process, legislative staff, the Office of State Budget, and the DHS have attempted to determine the likely MOE claim available to the State of Michigan in the current fiscal year. Significant reductions in expenditure in the enrolled DHS, Higher Education, and K-12 appropriation bills as well as the recognition of available carry-forward TANF funding linked to contingency awards will make it difficult for Michigan to meet MOE in FY 2009-10. Table 4 represents "a best case" estimate of possible MOE available to the State.

Table 4

Estimated FY 2009-10 Michigan MOE Claim (best case)

MOE Claim	Amount
DHS Administration	$13,314,700
DHS Child Services	9,225,400
DHS Assistance	19,562,900
Employment/Training	25,234,600
Community Health	3,682,700
K-12 Education	86,319,200
Public Service Commission	51,300,000
Higher Ed. Swaps	77,564,700
Tax Policy	202,131,000
Total	**$488,335,200**
75% MOE Standard	**$468,518,400**
Estimated Position Over/Under MOE	**$19,816,800**
80% MOE Standard	**$499,752,900**
Estimated Position Over/Under MOE	**($11,417,700)**

Source: Senate and House Fiscal Agency estimates

The MOE estimate provided in Table 4 suggests that Michigan could possibly meet the 75.0% MOE requirement but not the 80.0% requirement that will apply if the State does not meet the Federal work participation standard. This is significant because Michigan recently was notified by the Federal government that the State did not meet the work participation requirement in 2007.

The estimate provided in Table 4 is based upon a number of assumptions related to the structure of Michigan's final FY 2009-10 appropriation. As noted above, each number in this estimate is based upon an estimate of the best possible outcome for each element of the claim. There are a number of possible complications that would damage Michigan's ability to meet the MOE requirement; the major outstanding issues related to Michigan's MOE claim are outlined below.

Changes in State Earned Income Tax Credit

The Senate recently passed House Bill (H.B.) 4514 to freeze the State's Earned Income Tax Credit (EITC) at the level provided in FY 2008-09 (10.0% of the Federal EITC). The MOE amount in Table 4 assumes that the State EITC is at the level mandated in the statute authorizing the creation of the EITC (20.0% of the Federal credit). The assumed MOE claim for State EITC at 10.0% of the Federal benefit is about $82.3 million; enactment of H.B. 4514 would move Michigan about $119.8 million further away from the MOE target.

DHS/Department of Treasury Scholarship Swap

In the past year, the Governor proposed and the Legislature approved Senate Bill (S.B.) 1111, an FY 2007-08 supplemental appropriation that replaced $107.8 million in GF/GP funding with Federal TANF revenue in State-operated need-based scholarship programs. General Fund/General Purpose support shifted from the scholarship programs was moved to the DHS appropriation to assist the State in meeting the Federal MOE standard.

In September of this year, the Office of Auditor General (OAG) released its single audit of the DHS for FY 2006-07 and FY 2007-08. In the audit the OAG questioned whether the basis for Michigan's MOE claim associated with shifting TANF support to scholarship programs, the reduction of out-of-wedlock births, was consistent with Federal law.

The DHS response to the OAG finding aggressively defended the appropriateness of the fund shifts. The Department cited communications from the U.S. Department of Health and Human Services to support the use of TANF funding for higher education and noted that other states (Georgia, New York, and Massachusetts) have claimed expenditure in scholarship programs as a strategy to reduce out-of-wedlock births in their TANF plan.

If the Federal government views the use of TANF funds for scholarship programs as inappropriate, Michigan will be liable through a possible reduction in the TANF block grant provided in future years. Table 4 assumes $77.6 million in TANF MOE claims associated with shifting TANF support to scholarship programs.

The Structure of the School Aid Act

Public Act 121 of 2009, the recently enacted School Aid appropriation, assumes a decrease in State funding for FY 2009-10 of $165 per pupil. Additionally, on October 22, 2009, the State Budget Director issued a letter of intent to prorate K-12 schools an additional $127 per pupil absent legislative action on School Aid revenue. Without legislative action, the reduction will be in effect November 21, 2009. The Act also largely maintains funding for categorical grants used in Michigan's MOE claim at the levels provided in FY 2008-09. Table 4 assumes MOE associated with the School Readiness Program, Great Start Communities Grants, and At Risk funding at the same level claimed in FY 2008-09 ($99.1 million).

The Act and proration letter do not specify where the reduction in per-pupil funding is to be achieved. It is reasonable to assume that some of the school districts receiving funding for MOE-claimable programs will choose to reduce these programs. This will lead to an indeterminate decrease in the State's MOE claim.

Child Care Development Block Grant Match Funds

The Federal Child Care Development Block Grant (CCDBG) provides funding for early education programs operated by states. Much like the TANF program, the statute governing the distribution of Federal CCDBG funds requires states to demonstrate maintenance of effort through the expenditure of state funds on child care programs. Additionally, states are required to provide matching funds to realize their full CCDBG grant.

Currently, it appears that the FY 2009-10 appropriation act does not fully meet Michigan's match requirement. A shortfall of $6.1 million, largely associated with funding reductions in the child day care program, would reduce the Federal grant for CCDBG by about $10.5 million. Determining this shortfall is complicated by Michigan's reliance upon School Aid categorical spending to meet the CCDGB MOE and match requirements, meaning that the decisions of individual districts to reduce per-pupil costs to meet appropriated support for K-12 could lead to a greater reduction in Federal CCDBG revenue.

Michigan could adjust the DHS appropriation to overcome the $6.1 million shortfall. The fund shifts necessary to meet CCDBG MOE (GF/GP swapped with TANF) likely would lead to a dollar-for-dollar loss of TANF MOE.

Possible Sources of MOE

There are two additional sources of funding for Michigan's MOE claim. These MOE claims would not be an optimal use of State resources but would technically meet the Federal requirement. Fully exploiting these sources for MOE would provide an estimated $90.1 million in MOE.

Michigan could provide TANF Federal block grant funding to a State university in exchange for an equal amount of private revenue. This revenue then would be allocated to DHS MOE-claimable activities. Universities provide need-based financial aid and this expenditure is TANF-eligible. This would require complete cooperation with the university since these funds are used by the university outside of the State Higher Education appropriation.

Michigan currently withholds about $50.0 million in eligible MOE spending within the FIP cash assistance program. These funds are allocated to two-parent families and to disabled FIP recipients. Excluding the $50.0 million from MOE, and not using TANF funds to support these individuals, makes them ineligible for inclusion in the work participation requirement. If Michigan were to determine that it would be better to meet MOE and not meet the work requirement or that Michigan will not meet the work requirement in FY 2009-10, the State could use these dollars in its MOE claim. If Michigan did not meet its work participation requirement, it could see a reduction in the subsequent block grant.

Conclusion

Uncertainty linked to the FY 2009-10 appropriation process has made predicting Michigan's MOE claim difficult. There is evidence suggesting that Michigan will struggle to meet the Federal requirement this fiscal year. To avoid possible Federal financial penalties, the Legislature will have to be aware of the Federal TANF MOE requirement and the implications of budget decisions upon the State's ability to meet this standard.