

State Notes



TOPICS OF LEGISLATIVE INTEREST

Winter 2014

Summary of the Belle Isle Lease and Associated Fiscal Issues **By Josh Sefton, Fiscal Analyst**

On November 12, 2013, the Local Emergency Financial Assistance Loan Board voted to accept a 30-year lease with up to two 15-year extensions of Belle Isle from the City of Detroit (the City, below) to the State of Michigan. The lease will turn over to the Department of Natural Resources (DNR) responsibility for maintenance of and capital improvements to Belle Isle; the DNR will manage the island as a State park. A source for ongoing funding for the park has not yet been identified; however, the fiscal year (FY) 2013-14 DNR budget contains a \$2.5 million General Fund/General Purpose (GF/GP) appropriation for Belle Isle operational costs. This article will provide a summary of the lease agreement, a discussion of the fiscal impacts of the lease on the State and the City, and some options for ongoing funding for the park.

Transition Period

The lease agreement establishes a 90-day transition period for the DNR to take over management of Belle Isle. The transition period will end on February 10, 2014, at which time the DNR will assume management of Belle Isle. During the transition period, the lease specifies a number of actions that must be taken by both the City and the State. These actions include the following:

- Within 30 business days (after the lease was signed), the City had to provide the State with copies of grant and endowment agreements that pertain to Belle Isle. The City also had to provide documentation of any grants or endowments that may place restrictions or conditions on Belle Isle. The lease requires the State to recognize that some or all portions of Belle Isle may be subject to restrictions from these grants and endowments. Any unspent grants or endowments will be transferred to the State for deposit in Belle Isle's subaccount, which is discussed later in this article.
- Within 30 business days, the City had to provide the State with copies of all third-party agreements relating to the use or occupancy of Belle Isle. Before the end of the transition period, the State must give the City a list of these agreements the State will assume. Any agreements the State chooses not to assume presumably will be terminated.
- Within 30 business days, the City had to provide the State with a list of vendor contracts the City has entered into for the provision of goods, maintenance, and other operational services. The State is required to review all of these contracts before the transition period expires, and must provide the City with a list of the contracts it decides to continue. The lease specifies that the State is not obligated to assume any of these contracts.
- By the end of the transition period, the City must provide the State with an inventory of personal property that will remain at Belle Isle for its operation and maintenance. The City may transfer title to any of this personal property without a vote of the people. The State must review the inventory and provide the City with a list of the personal property the State wishes to keep. Within 90 days of the end of the transition period, the City must remove any personal property the State does not keep. Private property could include such things as tools, landscaping equipment, and vehicles.

State Notes

TOPICS OF LEGISLATIVE INTEREST

Winter 2014



- Within 30 calendar days, the City had to provide the State with records of Belle Isle's environmental condition. Records include, but are not limited to, any of the following: environmental assessments or investigations, locations of off-site fill placements, locations of above- and below-ground storage tanks, due care plan obligations and requirements, and any information on releases of hazardous substances and any response activities taken or planned.
- The City must pay all expenses for its Belle Isle staff during the transition period.
- The State must hire staff for Belle Isle according to the State's hiring guidelines. Additionally, the State must develop and implement an outreach plan to increase the potential of hiring qualified Detroit residents.

Terms of Lease

The lease generally transfers responsibility for operations, maintenance, and capital improvements for Belle Isle from the City to the State. Specifically, the DNR will be responsible for most of the island's grounds and the Michigan Department of Transportation will be responsible for maintenance and improvements of the roads on Belle Isle as well as the bridge connecting it to the rest of the City. The City will retain possession of and responsibility for the greenhouses on Belle Isle.

Under the lease, Belle Isle will be operated by the DNR as a State park called Belle Isle Park. This means that laws, regulations, and orders affecting State parks generally will apply to Belle Isle Park as well. Additionally, after February 10, 2014, visitors to the park arriving by automobile, truck, or motorcycle will be able to access the island without a Recreation Passport until their next vehicle registration renewal date. After that time, an \$11 (\$5 for motorcycles) Recreation Passport will need to be purchased. Individuals traveling on foot, by bicycle, or on public transportation will be allowed to enter the park for free.

The lease requires that any revenue generated by Belle Isle Park be deposited into a subaccount of the Park Improvement Account and be spent exclusively on the management and improvement of the park. This revenue could come from a number of sources: grants, endowments, special events, private leases, concessions, vendor rent, fees, and other sources. Recreation Passport revenue is not park-specific so revenue from Recreation Passports will not be deposited into this new subaccount. The lease also requires the City to remit to the State any payments for events that occur at Belle Isle after the effective date of the lease.

Law enforcement and public safety services at Belle Isle Park will be provided via an agreement between the State and the City, based on a security plan completed jointly by the two parties. In the FY 2013-14 DNR budget, funds were included to hire additional conservation officers. The DNR indicated during budget development that some of these new conservation officers would be assigned to Belle Isle Park. Other law enforcement presence at the park will depend on the terms of the security plan.

The lease requires the Governor, City Mayor, and City Council to appoint a seven-member advisory committee for Belle Isle Park. The advisory committee will provide the State with recommendations for implementing improvements, master planning, and public safety. Three members have been appointed by the Governor, two members were appointed by the Mayor, one

State Notes

TOPICS OF LEGISLATIVE INTEREST

Winter 2014



member by the City Council, and a final member, who serves as chairperson, was jointly selected by the Mayor and Governor. The lease requires at least three members to be residents of the City. Table 1 provides a list of the members of the advisory board.

Table 1

Belle Isle Park Advisory Board Members		
Name	Residency	Appointment
Michele Hodges (Chair)	Grosse Pointe Park	Governor/Mayor
Bryan C. Barnhill, II	Detroit	Governor
Michael Curis	Grosse Pointe Shores	Governor
Rev. Lonnie Peek, Jr.	Detroit	Governor
Bud Denker	Bloomfield Hills	Mayor
Alicia Minter	Detroit	Mayor
Sommer Woods	Detroit	City Council

The lease expresses the intent of the State to make improvements and alterations to Belle Isle Park consistent with the phased management approach developed by the DNR in 2012, as well as the 2005 Belle Isle Master Plan. The lease specifies that all improvements made to Belle Isle by the State will remain on Belle Isle and will become property of the City.

The lease requires the State to pay all charges for use of public utilities at Belle Isle Park. This includes heating, cooling, illumination, electricity, water, sewer, and telecommunications. It does not, however, include fees for storm water runoff. The City will remain responsible for storm water runoff fees.

Termination of the Lease

The lease will last an initial period of 30 years, after which the lease will be extended for two 15-year periods, unless terminated. Either the City or the State may terminate the lease after the initial 30-year period by notifying the other party at least one year before the 30-year period expires. The lease also may be terminated by either party after the first 15-year extension with a one-year notice by either party. At least 18 months before the end of the first 15-year extension, a meeting between the City and the State must occur to determine if a second 15-year extension will be mutually beneficial.

In addition, the lease may be terminated by either the State or the City if either party materially breaches the terms of the lease. In the case of such a breach, the offending party would have 30 business days to remedy the situation before termination of the lease. If a breach were not remedied, the State would surrender possession of Belle Isle including all improvements within 90 business days of notice of termination. If the State decided to terminate the lease due to a breach, the City would be responsible for repayment of any bonds or debt used to finance improvements to Belle Isle. While it is not specifically addressed in the lease, if the City decided to terminate the lease, it appears that any such debt would remain a liability of the State.

Upon expiration of the lease, possession and management of Belle Isle will revert to the City. Any unspent balance of park revenue in the Park subaccount will be transferred to the City as well. Also, the City will be required to adhere to any long-term obligations or encumbrances imposed by the terms of any grants received for Belle Isle by the State. These encumbrances may extend past the lease agreement.

State Notes

TOPICS OF LEGISLATIVE INTEREST

Winter 2014



Fiscal Impacts of the Lease

The lease has a number of fiscal implications for both the City and the State. Overall, the lease will produce cost savings for the City, and will result in new costs for the State. Some of the new costs for the State will be offset with increased revenue from Recreation Passports and other Belle Isle-specific revenue such as venue leases, grants, and concessions. At this time it is not possible to determine whether these streams of revenue will be sufficient to cover the entire cost of operating the Belle Isle Park.

Commonly cited figures indicate savings of approximately \$4.0 million for the City each year. It is not possible to verify that figure at this time, but any savings that materialize for the City will likely come from savings on maintenance and operational contracts, reassignment of City workers presently at Belle Isle, and reassignment of City police officers assigned to Belle Isle, as well as the State's assumption of utility costs pursuant to the lease agreement. The City will retain responsibility for storm water fees incurred by Belle Isle. Storm water fees are incurred by Belle Isle as most of the precipitation on the island is not allowed to run off into the Detroit River, but is instead collected in the sewer system for processing by the Detroit Water and Sewerage Department. The DNR has indicated that with improved storm water management, these fees could be reduced. Any efficiencies achieved with regard to storm water management would produce further savings for the City.

The lease of Belle Isle will introduce new costs to the State. In addition to operational costs, the Governor has indicated support for capital improvements to Belle Isle Park. In the FY 2013-14 DNR budget, \$2.5 million in GF/GP revenue and 16.0 full-time equated positions (FTEs) were appropriated for the park. This appropriation reflects a reduction from the \$3.7 million originally requested by the Governor in his recommendation for the DNR budget. Table 2 shows where this funding was appropriated in the DNR budget. The FY 2013-14 GF/GP appropriation will primarily support staffing and operations of the park; capital improvements likely would require additional appropriations from either GF/GP revenue or other funding sources. Also, it should be noted that a reliable estimate of the actual cost to operate Belle Isle Park is not available at this time. It is likely that the DNR will produce such an estimate in the FY 2014-15 budget discussion, and that estimate could prove to be different from the \$2.5 million appropriated for FY 2013-14.

Table 2

FY 2013-14 Belle Isle Park General Fund/General Purpose Appropriations		
Appropriation Line-Item	FTEs	Appropriation
State parks.....	10.0	\$1,700,000
General law enforcement	0.0	300,000
Marketing and outreach.....	3.0	200,000
Wildlife management.....	1.0	100,000
Fisheries resource management.....	1.0	100,000
Cooperative resource programs.....	1.0	100,000
Total	16.0	\$2,500,000

State Notes

TOPICS OF LEGISLATIVE INTEREST

Winter 2014



The lease agreement requires the DNR to create a special subaccount of the Park Improvement Account. The Park Improvement Account derives revenue primarily from services rendered at State parks. Examples of this revenue are camping fees, concessions, enrichment programs, and rentals. Belle Isle's subaccount will consist of all of this type of revenue generated at the park and, pursuant to the lease, will be used only to offset expenses incurred by Belle Isle Park. The subaccount also could be used for capital improvements to the park or for debt service on Park Improvement Revenue Bonds issued on behalf of Belle Isle.

Options for Future Belle Isle Park Funding

The issue of ongoing funding is one that likely will come before the Legislature during budget discussions this year and in years to come. The following options are not intended to be exhaustive, but merely an example of some of the options available for consideration by the Legislature. Most options for long-term Belle Isle funding would require action from the Legislature. Any revenue generated directly or indirectly by the Belle Isle Park also would require appropriation. This revenue would come from either the Park Improvement Account (revenue generated from increased Recreation Passport sales) or the Belle Isle subaccount of the Park Improvement Account (revenue generated directly from services rendered at Belle Isle). At this time, it is not possible to come up with a reliable estimate of how much of this type of revenue will be generated, but it will almost certainly be nonzero.

Another option for Belle Isle Park funding would be to continue support of the new State park with GF/GP revenue. This type of support would be subject to annual availability and appropriation. Before FY 2003-04, GF/GP revenue was a significant source of financial support for State parks; between FY 1998-99 and FY 2002-03, an average of 22.3% of all revenue supporting State park operations was GF/GP revenue. In FY 2003-04, GF/GP support for State parks was eliminated due to statewide budget cuts. Since then, State parks have been funded primarily by appropriations from the Michigan State Parks Endowment Fund (the Endowment Fund, below) and the Park Improvement Fund.

The Endowment Fund could be used for Belle Isle Park operations, maintenance, or capital improvements. The Endowment Fund receives revenue from mineral leases and royalties on State-owned land, and recently received a long-term boost in its annual revenue because the Michigan Natural Resources Trust Fund reached its \$500.0 million cap in 2011. The Endowment Fund has two components: the available balance and the corpus balance. The available balance is the amount available for the DNR to spend, upon appropriation. Pursuant to the State Constitution, Article IX, Section 35a, the corpus balance cannot be appropriated by the Legislature, nor can it be spent by the DNR. Each year, half of the mineral lease and royalty revenue received by the DNR and all of the interest and earnings from the corpus balance are credited to the available balance. The remainder of the lease and royalty revenue is credited to the corpus balance, where it is invested to provide returns for future use. Due to the nature of the revenue source, the Endowment Fund's revenue, and therefore its available balance, can be volatile. The Endowment Fund has an \$8.1 million balance for year-end FY 2012-13. Any expenditure of Endowment Fund revenue on Belle Isle Park would require an appropriation.

Funding for capital improvements at Belle Isle Park could be derived from the use of Park Improvement Revenue Bonds. Part 741 of the Natural Resources and Environmental Protection Act allows the DNR to issue revenue-dedicated bonds for the improvement of State parks. Up to \$100.0 million in these bonds may be issued. Bonds under Part 741 have been issued once, in

State Notes

TOPICS OF LEGISLATIVE INTEREST

Winter 2014



2002, in the amount of \$15.5 million. Of that original balance, approximately \$8.7 million is still owed, leaving \$91.3 million in bonding authority available. Since these revenue bonds are revenue-dedicated, rather than general obligation, repayment is made with Park Improvement Fund revenue rather than GF/GP revenue. An option for Belle Isle Park would be to issue Park Improvement Revenue Bonds for capital improvements to the park and then service the bonds using Belle Isle Park's subaccount of the Park Improvement Fund. The viability of this approach likely will remain unknown until a reliable estimate of Belle Isle Park revenue is made available. A potential risk associated with this approach would be that if Belle Isle Park revenue is lower than anticipated, Park Improvement Fund revenue otherwise used for operation and maintenance of other State parks would be needed to service these bonds. While Part 741 does not require any specific authorization from the Legislature for the DNR to issue bonds, any bond proceeds would be subject to the appropriations process.

Press releases from the DNR have discussed private donors that have pledged support for Belle Isle Park, but at this time a dollar amount of these gifts is not available. Additionally, the DNR is pursuing various grants for the park. The DNR has indicated that grants and private donations will be a significant portion of support for Belle Isle Park. Expenditure of donations or grants to Belle Isle Park would be subject to the appropriations process.

Finally, if the Legislature were to take no action on Belle Isle Park and simply remove the current \$2.5 million GF/GP support for the park, it would be possible for the DNR to continue operating the park using the appropriations provided for all State parks generally. The DNR budget currently includes a single "State parks" line item totaling \$57.1 million, not including the \$1.7 million added for Belle Isle as detailed in [Table 2](#). Assuming that this line item is continued into future fiscal years at roughly the same funding level, minus the GF/GP added in FY 2013-14, the DNR could internally reallocate State parks funding to provide sufficient revenue to operate Belle Isle Park. As a result, support for other State parks would be reduced, as the \$57.1 million in the State parks line item would be spread over all the parks, including Belle Isle Park, while in previous fiscal years this amount supported only the parks in existence before the Belle Isle lease was signed. Moreover, this line item is used primarily for operations and maintenance, so this approach would not provide support for capital improvements.

Conclusion

The State's lease of Belle Isle from the City of Detroit will present a unique set of opportunities and challenges for both the City and the State over at least the next 30 years. The lease generally makes the DNR responsible for operations, maintenance, and capital improvements to Belle Isle. Many of the challenges associated with the lease will be centered around providing funding for Michigan's newest State park. Most of the options for Belle Isle Park funding would require action by the Legislature; inaction could potentially result in a reduction in funding to other State parks or the State being unable to fully meet its obligations under the lease.

State Notes

TOPICS OF LEGISLATIVE INTEREST

Winter 2014



The State of No-Fault Debate **By Glenn Steffens, Fiscal Analyst**

Recently, there has been debate about reforming Michigan's no-fault insurance law. The purpose of this article is to provide an overview of the history and current status of the no-fault insurance law, including the role of the Michigan Catastrophic Claims Association, and offer discussion on proposed changes to no-fault policy.

A Brief History of Auto Accident Liability in Michigan

Before 1973, Michigan had a tort-based system of recovery: an accident victim had to either settle with the at-fault party or go to trial to prove a case in order to recover damages. Lawsuits resulted in delayed and/or inadequate recovery for victims, leaving some without enough money to pay medical costs, or cover lost wages due to time off of work, at least until cases were decided or settled.

Many believed that reform was necessary to address this problem, and that a tort-based system was bad policy. In 1972, then-Governor Milliken indicated that the State needed to provide a better system of compensation for accident victims, reduce the amount of insurance premium dollars going toward attorney fees, reduce the burdens of taxpayer-funded courts, and consolidate coverage for accident victims under one system.¹ The State enacted significant auto insurance reform in 1973, shifting from tort-based liability to a no-fault system.

No-fault insurance reforms attempted to strike a balance between relieving burdens of constant litigation, guaranteeing victims' full and adequate recovery, and avoiding duplicative and overlapping benefits.² Under no-fault, accident victims generally gave up the right to sue at-fault parties. In exchange, victims received the right to guaranteed benefits such as medical care, rehabilitation, and wage loss, and all drivers received protection from lawsuits that do not involve intentional harm or very serious injuries.³ This had the effect of significantly reducing vehicle accident litigation.⁴ According to a 1978 report from the Insurance Bureau to then-Governor Milliken, no-fault reforms were not aimed at addressing high insurance rates.⁵

By limiting the types of damages that an accident victim can recover in court, no-fault insurance results in fewer court cases. An accident victim cannot recover medical expenses and lost wages by suing the at-fault driver; rather, he or she can file a claim with an insurance company.

¹ "No Fault Insurance After Three Years", p.1. Insurance Bureau Report to the Governor. 10-6-1976. Retrieved from http://www.michigan.gov/documents/dleg/No-Fault_Insurance-After_3_Years_272412_7.pdf on 1-14-2014.

² "No Fault Insurance in Michigan: Consumer Attitudes and Performance", p.iv. Insurance Bureau report to the Governor. 4-4-1978. Retrieved from http://www.michigan.gov/documents/dleg/No-Fault_Insurance-Consumer_Attitudes_272413_7.pdf on 1-14-2014.

³ Drivers may still be sued for property damage and serious injury, but may purchase supplemental insurance to protect against liability in these cases.

⁴ See "No Fault Insurance After Three Years", p.10, and "No Fault Insurance in Michigan: Consumer Attitudes and Performance", p.vi.

⁵ "No Fault Insurance in Michigan: Consumer Attitudes and Performance", p.iv.



Noneconomic damages, such as pain and suffering, generally are not available to victims. A victim may sue an at-fault driver for noneconomic damages only in cases of intentional harm, death, "serious impairment of body function", or "permanent serious disfigurement".⁶

With regard to guaranteed recovery, an accident victim receives coverage for unlimited lifetime medical and rehabilitation expenses, and three years' worth of wage loss and replacement services. This addressed a major concern of reform proponents, since, under a tort-based system, a victim's recovery effectively is limited by the terms of an insurance policy and/or how deep the at-fault party's pockets are. Under a tort system, a victim has the right to prove fault and damages, but collecting on a court judgment is not always realistic. A victim under no-fault insurance can receive "full and adequate recovery", regardless of whether the at-fault party is in dire financial straits and/or uninsured.

The Michigan Catastrophic Claims Association: Limiting Unlimited Liability

After Michigan adopted no-fault insurance, some felt that further reform was necessary to address the unlimited liability imposed on insurance companies. Insurance reserves had to account for unlimited lifetime benefits, which are difficult to calculate. Small insurance companies in particular had a difficult time planning for catastrophic claims. A single catastrophic claim could threaten to put all but the largest of insurers out of business.⁷ The push for change was successful, and the Michigan Catastrophic Claims Association (MCCA) was established by law in 1978.⁸

Basically, the MCCA serves as a pool, funded by all insured drivers, that reimburses insurance companies for claims above a certain high cost, or "catastrophic" threshold. An insurance company is responsible for claims up to the threshold, and the MCCA reimburses an insurance company for any claims that it pays above the threshold. The catastrophic threshold is currently \$530,000.⁹ Under the law, auto insurance companies are responsible for paying to the MCCA an assessment based on each company's share of insured vehicles. The MCCA sets the annual per-vehicle assessment, and insurance companies pass the cost on to consumers. Currently, the annual assessment is \$186 per vehicle.¹⁰

⁶ Whether either of the terms "serious impairment of body function" or "serious permanent disfigurement" applies to a specific case is decided by courts as a matter of law, meaning the question cannot go to a jury. Serious impairment generally means a condition that is observable by someone other than the victim, impairs a body function of value specific to the victim, and affects the victim's ability to lead his or her normal life. *McCormick v Carrier*, 487 Mich 180 (Michigan Supreme Court 2010). Whether a serious disfigurement exists is decided on a case-by-case basis, and typically depends on the location, visibility, and severity of the scar or disfigurement.

⁷ "No Fault Insurance in Michigan: Consumer Attitudes and Performance", p.76.

⁸ See MCL 500.3104.

⁹ The catastrophic threshold is adjusted every two years based on changes in the consumer price index.

¹⁰ The assessment is adjusted yearly and consists of three separate fees: 1) a claims allocation portion of \$156.44, 2) a deficit/surplus adjustment portion of \$29.19, and 3) an administrative expense portion of \$0.37. Since the creation of the MCCA, the amount of the assessment has fluctuated greatly. For example, the assessment was \$115.72 in 1994, \$5.60 in 2000, and \$71.15 in 2002. The average of annual assessments since 1978 is \$68.33.



The MCCA is an unincorporated, nonprofit association. All auto insurers in the State must be members. Its board of directors is made up of five voting insurer members and a nonvoting commissioner who is appointed by the Department of Insurance and Financial Services (DIFS). The statutory provisions establishing the MCCA give it broad discretion in creating a plan of operation and setting the annual assessment.

The MCCA's method of setting rates is one component of the no-fault reform debate. The statute does not expressly make the MCCA board subject to the Freedom of Information Act (FOIA) or the Open Meetings Act (OMA), so the public does not have the right of access to the board's decision-making process. Presently, there is litigation regarding whether the MCCA is subject to FOIA, and the extent to which the statute exempts the MCCA board from FOIA requirements.¹¹ In 2013, several bills were introduced to expressly provide that FOIA and the OMA apply to the MCCA.¹²

A Proposed Shift in Policy

Many believe that reform is necessary to bring down auto insurance rates. Detroit residents have particularly high rates, with quotes in some areas ranging from \$3,059 to \$8,403 a year.¹³ According to insure.com, auto insurance rates in Michigan are the second-highest in the nation, and the average annual premium in Michigan for 2013 was approximately \$2,520. In comparison, base rates for car insurance for Michiganders in 1977 ranged from approximately \$272 to \$907 per year, which equates to \$1,050 to \$3,500 per year when adjusted to present value.¹⁴ Detroit residents' rates in 1977 were the highest in the State, and were up to 175% higher than rates for residents in other areas.¹⁵ When inflation and increases in the consumer price index are considered, these data tend to suggest that insurance rates have been relatively stable.

Some have suggested that providing unlimited lifetime benefits has contributed to high insurance rates, and that capping these benefits could help reign in high premiums. For example, House Bill 4612 (H-1) would cap medical and rehabilitative expenses at \$1.0 million for motor vehicle accident victims who are State residents, \$250,000 for motorcycle operators and passengers, and \$50,000 for nonresidents.

From July 2011 through June 2012, the MCCA saw nearly \$640.0 million in claims that were for more than \$1.0 million from 3,558 claimants.¹⁶ With roughly \$931.0 million in claims paid

¹¹ In March 2013, the Court of Appeals stayed a 30th Circuit Court Order regarding FOIA issues pending appeal. The 30th Circuit Court ruled that the MCCA was subject to FOIA, and that the MCCA "must disclose general rate calculation information", but is not required to disclose certain personal information. *CPAN v MCCA*, Case No. 12-68-CZ, 12-26-2012.

¹² See Senate Bills 102 and 103, and House Bills 4543 and 4551.

¹³ Kaffer, Nancy. "No relief in sight for sky-high car insurance rates." *Detroit Free Press*. 12-13-2013.

¹⁴ "No Fault Insurance in Michigan: Consumer Attitudes and Performance", p.49. These base rate estimates do not include extra costs due to variables such as driver age, miles driven, and the insured's location. The rates include collision and comprehensive coverage. The report includes multipliers to account for these variables, which range from 87% of the base rate (for an adult driving a vehicle for limited farm use) to 380% of the base rate (for a single male under 21). The estimates are based on a late-model car in 1977.

¹⁵ "No Fault Insurance in Michigan: Consumer Attitudes and Performance", p.51.

¹⁶ Data provided to House Fiscal Agency via email from the MCCA in early May, 2013.



between 2011 and 2012, 68.6% of MCCA reimbursements were for claims over \$1.0 million.¹⁷ If benefits were capped at \$1.0 million, it is logical to assume that the claims allocation portion of the MCCA assessment could have been reduced by 68.6%, for a total annual assessment of \$78.68, which would have produced \$107.32 in savings.¹⁸ If passed on to consumers, these savings could reduce the average auto insurance premium by approximately 4.3%.

A similar proposal was offered by opponents of unlimited coverage in the late 1970's, when insurance companies were responsible for the full amount of claims. At the time, a cap of \$100,000 (\$385,000 at present value) was considered. After review, the Insurance Bureau determined the following: 1) the potential savings from a cap would be too small to justify the limit; 2) placing the residual risk on consumers would be inconsistent with the goal of full and adequate catastrophic loss recovery; and 3) limiting benefits would threaten to increase the likelihood of lawsuits, which would undermine the goal of reducing court dockets.¹⁹

The Insurance Bureau's determination about potential savings was based on the Bureau's conclusion that a cap would have reduced rates by \$6 per year, or \$23.10 in 2014 dollars.²⁰ As discussed above, the savings that a cap currently would generate could be \$107.32, more than four times the savings identified by the Insurance Bureau in the late 1970s.

As noted above, one purpose of no-fault reform was to provide full adequate recovery to victims. Some have suggested that Medicaid could fill the gap left by a cap on benefits. However, no-fault benefits generally are broader than Medicaid benefits. For example, Medicaid does not cover wage loss, replacement services, or home or vehicle modifications. Also, to be eligible under Medicaid, an individual must have both income and resources that are below a certain threshold. If a cap on no-fault benefits were in place, a claimant would have to meet those thresholds before obtaining additional coverage.

Unless a claimant had supplemental insurance, or could sue the at-fault driver for these economic damages, a claimant could not recover costs for care that occurred between the time the claimant reached the \$1.0 million cap under no-fault and when he or she became eligible for Medicaid, assuming he or she ever met the threshold. If a victim had enough assets to afford treatment, recovery would be available only through supplemental insurance coverage.

In conclusion, given the historical reasons for the State's initial adoption of no-fault, placing a cap on benefits in order to lower auto insurance rates would represent a policy shift away from guaranteeing victims' full and adequate recovery in favor of controlling high insurance rates, or at least a shift in what is considered to be "full and adequate recovery" for accident victims.

¹⁷ Michigan Catastrophic Claims Association press release dated 3-16-2012.

¹⁸ This does not account for potential changes to the administrative expenses and deficit/surplus adjustment portions of the MCCA assessment, and does not factor in additional savings that would be realized through the lower caps for motorcycles and nonresidents. The current annual assessment total is \$186, with the current claims allocation portion accounting for the majority of the assessment at \$156.44. At a 68.6% reduction, the 2013 claims allocation portion would be \$49.12.

¹⁹ "No-Fault Insurance in Michigan: Consumer Attitudes and Performance", p.76.

²⁰ "No-Fault Insurance in Michigan: Consumer Attitudes and Performance", p.76.