State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2008

Driver Responsibility Fees: A Five-Year Checkup
By Elliot Wild, Intern

Background

In August 2003, Michigan passed Public Act 165 to establish "driver responsibility fees", in addition to existing court costs and fees associated with infractions. The Act created two types of financial penalties for driving violations. One type of fee is levied on those who accrue seven or more points on their license within two years, and the other type is given for certain one-time moving violations (e.g., negligent homicide, driving under the influence, or driving without a license).[1] It was thought that the legislation would serve the dual purposes of reducing reckless driving while raising funds to support the State budget. Since enacted, the State has collected over $380.2 million from driver responsibility fees. Critics, however, have described the policy as punishing drivers twice, as well as imposing a heavy burden upon low-income violators.

Initial Expectations

Before the enactment of the fees, budget analysts estimated approximately $124.7 million of revenue per year in assessed penalties. This was based on results of a similar program in New Jersey and previous driving records in Michigan. The New Jersey program reported a 60.0% collection rate. Based on these figures, analysts estimated that Michigan would collect revenue of $74.8 million per year from the program. However, Michigan has experienced a collection rate of only 48.5% of the amount assessed to date.

Despite the lower-than-expected collection rate, the program has created far more revenue than projected due to a surprising increase in traffic violations.

A Rise in Violations, Suspended Licenses

Despite legislators' goal of decreasing violations, Michigan motorists have been committing serious violations at an increasing rate since 2004. (See Appendix A for more details.)

Many violations have seen large increases over the last four years, but one of the most notable is the rise in "driving with a suspended license". In 2005, there were 95,323 offenses of driving with a suspended license, but by 2007 that number had risen to 137,673: an increase of 44.4% in just two years. This rise is likely due in part to the licenses suspended for failure to pay assessed driver responsibility fees. When a violator fails to pay the first installment of the fee within 60 days, his or her license is suspended by the Secretary of State. Renewing a suspended license requires payment of not only the first installment, but also a $125 license reinstatement fee. Evidently, the cost of the driver responsibility fee in addition to the reinstatement fee has increased the number of drivers who take their chances driving without a valid license.

[1] Public Act 165 of 2003 also imposed a $150 fee on drivers cited for having no proof of insurance, even if they were insured but did not have their paperwork with them. In 2004, the State amended the program to allow such drivers to escape the responsibility fee if they provided the Secretary of State with proof of insurance before their court appearance date. This legislation also increased the fee to $200 for drivers who did not provide proof of insurance.

Since the program was installed, overall assessed violations have risen annually (Table 1). Also, while the program has experienced an overall collection rate of just 48.5%, that number is rising and seems headed toward leveling off around 53.5%. While this is an improvement, it is still below the collection rate originally expected. For example, if the State had collected at the expected rate of 60.0% in 2007, the program would have generated $135.6 million in revenue, an additional $14.7 million over the amount collected.

Table 1

Driver Responsibility Fee Collection and Assessment Trends

Calendar Year	Number Assessed	Assessed Amount	Collections	
			Dollars	Percent of Assessment
2004 Total Assessments	263,525	$92,255,850	$21,129,270	22.9%
2005 Total Assessments	484,775	$168,492,600	$64,655,317	38.4%
2006 Total Assessments	546,288	$203,655,550	$108,951,540	53.5%
2007 Total Assessments	578,207	$225,929,500	$120,878,236	53.5%
2008 Assessments To Date	247,587	$92,813,300	$64,578,340	Not Completed
Total Assessments To Date	**2,120,382**	**$783,146,800**	**$380,192,703**	**48.5%**

Source: Michigan Department of State

Revenue

The revenue from driver responsibility fees is almost entirely deposited into the General Fund. Revenue from the fees also goes toward fire prevention programs through a new fund.

Public Act 165 of 2003 created the Fire Protection Fund (FPF), which disburses grants to local fire prevention programs. In each fiscal year, the FPF receives any driver responsibility fee revenue collected in excess of $65.0 million and up to $68.5 million, as well as any revenue from $100.0 million to $105.0 million, for a maximum possible deposit of $8.5 million per year. All other revenue derived from the fees is deposited into the General Fund. Total collected revenue in 2006 reached nearly $109.0 million, followed by approximately $120.9 in 2007. Therefore, if current trends persist, the FPF should continue to receive the maximum $8.5 million annually.

The Fees in Detail

There are two types of fees: point-related fees and fees for specific serious infractions. Both types are imposed twice; thus, a $500 fee will result in $1,000 over two years. The fees are described below.

- If a driver accrues seven or more points, a fee of $100 will be levied, with an additional $50 for each additional point. Points remain on a driver license for two years, and fees are levied based on current points on a driver's record. Therefore, any accumulation of seven or more points will result in at least two fees.
- A fee of $150, $200, $500, or $1,000 for specific infractions is imposed two years in a row.
- A $150 fee is given for driving with an expired license.
- The $200 fee is imposed when an individual is driving while uninsured.

- A $500 fee involves more serious infractions, such as driving while impaired by alcohol or a controlled substance.
- The $1,000 fee is the highest allotted, and is imposed for violations such as operating while intoxicated, hit-and-run violations, fleeing an officer, or seriously wounding or killing someone through negligent or impaired driving.

What Other States Have Done

Michigan is not alone in its driver responsibility program. Several other states have conducted programs similar in structure, with some variation in fee amounts and the number of times fees are assessed.

New York, Texas, and Virginia all have very similar two-pronged programs, based on the New Jersey model. The Texas program is the toughest on crime, with drunk driving (DUI) fees reaching as high as $6,000 spread over three years (Table 2). Michigan and New York have the lowest fees of these programs for both serious infractions and excessive points. New York has relatively low fee amounts, and Michigan has the only program that levies fees twice instead of three times. Likewise, Michigan and New York both have points counted for a shorter time period, resulting in fewer fee assessments (Table 3).

The Virginia program was repealed in February 2008, only one year after enactment. The fact that fees could be administered legally only to in-state residents produced a strong negative reaction, leading to more than 100,000 Virginians signing an online petition. The Virginia General Assembly repealed the law, and fully rebated all fees assessed to violators. In addition, licenses that had been suspended for failure to pay fees were automatically reinstated.

Table 2

Fees Assessed for Serious Driving Violations: Selected States

	DUI Fee	Payment Repeated for	Cumulative Owed
Michigan	$1,000	2 years	$2,000
New Jersey	$1,000	3 years	$3,000
New York	$250	3 years	$750
Texas	$1,000-$2,000	3 years	3,000-$6,000
Virginia (repealed)	$750	3 years	$2,250

Source: Michigan Department of State

Table 3

Fees for Accruing Excessive Points: Selected States

	Reaching a Points Threshold	Each Additional Point	Points Can Count For
Michigan	$100	$50	24 months
New Jersey	$150	$25	36 months
New York	$100	$75	18 months
Texas	$100	$25	36 months
Virginia (repealed)	$100	$75	36 months

Source: Michigan Department of State

Criticisms of the Program

While Michigan's program may be less harsh than that of several other states, there has been criticism of this State's program for several reasons. Opponents claim that the fee for driving without insurance punishes those who can least afford it, and can be a crushing blow to a low-income family. Critics also point to the fines and jail time already imposed on those who commit serious traffic crimes, and feel that the responsibility fees are punishing violators twice for the same crime. A petition to remove the fees circulated on the internet but, unlike in Virginia, the Michigan petition apparently has only 6,200 names.

There have been several bills proposed to reduce the amount of the fees, or to repeal the driver responsibility fee program altogether. For example, bills introduced during the 2007-2008 session include the following:

- House Bill 5884 would phase out the program over a five-year period.
- House Bill 5885 would exclude drivers who are 62 years of age or older.
- House Bill 4665 proposes to reduce fees and have them assessed only once.
- Senate Bill 638 and House Bill 4006 proposed to eliminate the program on October 1, 2007.

Despite strong criticism of the program, none of the legislation to change or eliminate the fees has gained enough traction to pass in either house. Even though many people are unhappy with the way the fees work, the program has brought in a large amount of revenue for the State's General Fund in a time of great budget difficulties. Given Michigan's continuing needs and the challenge of cutting more than $120.0 million out of the annual budget, opponents of the program likely would have to find a replacement source of revenue if they desire to eliminate the driver responsibility fee program.

Appendix A

Driver Responsibility Assessed Offenses by Year							
Offense Code Description	**Fee**	**2004[a)]**	**2005**	**2006**	**2007**	**Total**	**2005-2007 % Change**
Seven or More Points	$250	7,668	40,939	41,755	36,998	127,360	-9.63%
Operating While Intoxicated (1025)	$1,000	20,327	36,865	41,629	44,594	143,415	20.97%
Operating While Intoxicated or While Impaired Causing Death (1030)	$1,000	17	61	111	110	299	80.33%
Operated While Intoxicated or While Impaired By Liquor Causing Serious Injury (1040)	$1,000	69	165	244	271	749	64.24%
Operating With Presence of Drugs (OWPD) (1105)	$500	442	889	1,034	1,134	3,499	27.56%
Operated While Intoxicated or While Impaired By Controlled Substance Causing Death (1120)	$1,000	3	12	17	16	48	33.33%
Operated While Intoxicated or While Impaired By Controlled Substance Causing Serious Injury (1130)	$1,000	8	12	15	14	49	16.67%
CDL Manufacture/Distribute a Control Substance (1140)	$1,000			1	1	2	N/A
Child Endangerment (1150)	$500	379	633	746	815	2,573	28.75%
Operating While Impaired By Liquor (1200)	$500	29,110	51,520	58,071	62,409	201,110	21.14%
Operated While Impaired By Controlled Substance (1210)	$500	307	603	886	1,077	2,873	78.61%
Combined OWI and Controlled Substance (1220)	$500	19	53	59	52	183	-1.89%
Operated Commercial Motor Vehicle with BAC .04 .07 (1230)	$1,000	9	13	15	21	58	61.54%
Person Under 21 With BAC (1240)	$500	1,353	2,395	2,574	2,698	9,020	12.65%
Manslaughter (1400)	$1,000	6	21	33	34	94	61.90%
A fatality through negligent or criminal operation of CMV (1405)	$1,000				1	1	N/A
Negligent Homicide (1410)	$1,000	28	89	148	168	433	88.76%
Murder/Auto Used (1420)	$1,000		5	22	23	50	360.00%
Felony/Auto Used (1430)	$1,000	602	922	894	928	3,346	0.65%
Felony With Auto Used (1440)	$1,000	55	124	152	129	460	4.03%
Felonious Driving (1450)	$1,000	14	37	63	74	188	100.00%
Unlawful Driving Away Auto (1500)	$1,000	771	1,496	1,724	1,745	5,736	16.64%
Failed to Stop or Identify After P.I. Accident Causing Serious Impairment of a Body Function (1600)	$1,000	20	50	73	73	216	46.00%
Failure to Stop or Identify After P.I. Accident Causing Death (1605)	$1,000	3	6	13	11	33	83.33%

Driver Responsibility Assessed Offenses by Year							
Offense Code Description	**Fee**	**2004[a)]**	**2005**	**2006**	**2007**	**Total**	**2005-2007 % Change**
Failed to Stop After P.I. Accident (1610)	$1,000	271	479	505	556	1,811	16.08%
Failed to Stop or Identify After P.D. Accident (1630)	$1,000	2,327	4,080	4,656	4,981	16,044	22.08%
Fleeing and Eluding Officer 1st Degree – Causing Death (1706)	$1,000	6	14	18	13	51	-7.14%
Fleeing and Eluding Officer 2nd Degree – Causing Serious Injury (1707)	$1,000	32	67	98	126	323	88.06%
Fleeing and Eluding Officer 3rd Degree (1708)	$1,000	799	1,474	1,759	1,913	5,945	29.78%
Fleeing and Eluding Officer 4th Degree (1709)	$1,000	611	1,145	1,464	1,532	4,752	33.80%
Reckless Driving (1800)	$500	1,385	2,712	3,558	4,093	11,748	50.92%
Failed to use Due Care and Caution with Construction Worker (1801)	$1,000			4	2	6	N/A
Failure to Yield For an Emergency Responder Causing Injury (1807)	$1,000		1	3	5	9	400.00%
Drove While Unlicensed or License Not Valid (3010)	$150	11,549	20,758	22,941	24,262	79,510	16.88%
Fail to Obtain Group Designator (3020)	$150	1,455	2,727	1,670	546	6,398	-79.98%
No Proof of Insurance (3100)	$200	115,092	182,767	192,390	202,183	692,432	10.62%
No Insurance (3106)	$200	8,020	19,190	25,758	24,301	77,269	26.63%
No Insurance Under The Insurance Code (3108)	$500		2,247	4,745	5,496	12,488	144.59%
Drove While License Suspended/ Revoked/Denied (DWLS) (3200)	$500	52,296	95,323	120,487	137,673	405,779	44.43%
Drove While License Expired (3220)	$150	8,449	14,833	15,882	17,050	56,214	14.95%
Drove Commercial Motor Vehicle While Disqualified (3230)	$500	6	9	8	4	27	-55.56%
DWLS Causing Death (3235)	$500	5	13	22	27	67	107.69%
DWLS Causing Serious Injury (3245)	$500	9	23	41	47	120	104.35%
Snowmobile – Felony/ Snowmobile Used (7300)	$1,000	3	3			6	-100.00%
ORV – Operated Under the Influence of Liquor (8000)	$1,000				1	1	N/A
Grand Totals		**263,525**	**484,775**	**546,288**	**578,207**	**1,872,795**	**19.27%**

[a)] Assessments in 2004 are lower because it was the first year of the program and fees are assessed for two years.

Source: Michigan Department of State

State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2008

Mental Health Courts: A New Tool
By Stephanie Yu, Fiscal Analyst

For fiscal year (FY) 2008-09, appropriations for the Judiciary and the Department of Community Health (DCH) include funding for a mental health court pilot program. Boilerplate language charges the two to work together to establish pilot sites as well as guidelines and practices. For this purpose, $550,000 is appropriated in the Judiciary budget, and $1.1 million in the DCH budget. Although the division is not explicit, it is likely that the funding for the DCH will cover personnel and treatment costs for each pilot site, and the funding for the Judiciary will support court personnel and other costs.

Background

The percentage of mentally ill individuals in jail and prison is greater than that in the general population, and this disparity has increased over the last 20 years. Mental health courts have developed as one way of addressing this imbalance. These courts are similar in concept to drug treatment courts. Essentially, the idea is to divert mentally ill defendants into treatment programs overseen by judges rather than sending those defendants to jail or prison. The programs are intended to facilitate cooperation between the courts and community-based mental health service providers, and effectively reduce jail and prison populations. As in the case of drug treatment courts, these diversion programs are considered a more cost-effective way to handle mentally ill defendants, particularly through the reduction of recidivism rates. Program participants have regular hearings in front of the judges, and their progress through the program and cooperation with treatment are carefully monitored by a caseworker and a team that includes representatives from the court and mental health service providers, as well as the prosecutor's office and defense counsel. Often, there are sanctions and rewards applied to facilitate compliance with treatment programs. Generally, these courts limit participation to nonviolent offenders, and include minimum thresholds for the length of potential sentences to ensure cost-effectiveness.

Proposals and State Funding in Michigan

Beginning in FY 2007-08, proposals for mental health courts have been considered in the Judiciary and Community Health budgets in Michigan. Though the budget for this year does not include any funding for these courts, boilerplate language required that the Judiciary consider strategies for responding to defendants with mental illness. Section 316 of Public Act 125 of 2007 reads as follows:

> Sec. 316. The state court administrative office shall evaluate various strategies for court systems to use to better respond to defendants with mental illnesses. Such strategies may include, but not be limited to, mental health treatment courts, dedicated probation caseloads for people with mental illnesses, specialized pretrial release programs, and court-based diversion programs. The evaluation should consider the full range of problems that occur when people with mental illnesses enter the criminal justice system and factors such as key stakeholders, eligibility criteria, case processing, treatment options, funding sources, and disposition of cases upon program completion.

The Executive Recommendation for FY 2008-09 included funding of $1.1 million in the Judiciary budget and $2.3 million in the Community Health budget for mental health courts. Boilerplate included in the Executive-recommended Judiciary budget proposed a pilot program:

> Sec. 309. (1) From the funds appropriated in part 1 for pilot mental health court programs, with the approval of and at the discretion of the supreme court, the state court administrative office shall work with the department of community health to develop guidelines for the operation and evaluation of pilot mental health courts. Trial courts and local community mental health services programs interested in becoming mental health court pilot sites shall submit a joint application for funding prepared in accordance with guidelines established by the Judiciary and the department of community health. The applications shall include documentation of community needs and a commitment to the program by key stakeholders, including the local courts, law enforcement, prosecutor, defense counsel, and treatment providers.
>
> (2) From the funds appropriated in part for pilot mental health court programs, $100,000.00 shall be used to provide training for mental health court personnel and local law enforcement on mental health issues.

Ultimately, the enacted budgets for the Judiciary and DCH reduced the recommended funding by 50.0%, to $550,000 for the Judiciary and $1.1 million for the DCH. Presumably, this will allow for two or three pilot sites statewide. Treatment costs per individual are expected to be approximately $10,000 per year, though the length of the program has not been determined. Boilerplate language in the enacted Judiciary budget (Public Act 250 of 2008) modified the Governor's proposal to expand the list of stakeholders and provide for consideration of Federal guidelines:

> Sec. 309. (1) From the funds appropriated in part 1 for pilot mental health court programs, with the approval of and at the discretion of the supreme court, the state court administrative office shall work with the department of community health to develop guiding protocols and principles to assist local courts in developing practices for mental health treatment courts. When developing the guiding protocols and principles, consideration should be given to the 10 essential elements as defined by the U.S. bureau of justice assistance.
>
> (2) The legislature encourages the state court administrative office to develop mental health court guidelines in cooperation with all key stakeholders, including, but not limited to, circuit, district, and probate court judges, county prosecuting attorneys, representatives of the criminal defense bar, representatives of community treatment providers, community mental health service providers, any other prosecutor in the circuit or district court district, local law enforcement, the probation departments, the local substance abuse coordinating agencies, domestic violence service provider programs that receive funding from the state domestic violence prevention and treatment board, and community corrections agencies, as well as any other parties considered necessary. The state court administrative office is also encouraged to develop guidelines comparable to those established for drug treatment

courts, found in chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.

(3) Trial courts and local community mental health services programs interested in becoming mental health court pilot sites shall submit a joint application for funding prepared in accordance with guidelines established by the judiciary and the department of community health. The applications shall include documentation of community needs and a commitment to the program by key stakeholders, including the local courts, law enforcement, prosecutor, defense counsel, and treatment providers.

In addition to these statewide initiatives, there have been efforts at the local level to create mental health courts. Genesee County Probate Court has begun to focus on sending mentally ill defendants charged with minor crimes to treatment programs, rather than jail. Additionally, juvenile drug treatment courts in Kalamazoo, Macomb, and Oakland counties work to address co-occurring mental illnesses as part of their treatment programs and are overseen by the Bureau of Juvenile Justice in the Department of Human Services.

Courts throughout the U.S. and Federal Involvement

According to the U.S. Bureau of Justice Assistance (BJA), there are 150 mental health courts currently operating nationwide, with many more programs in development. California and Ohio have the greatest number of courts. These courts vary considerably in funding structures and conditions, as well as the number of participants served. Approximately two-fifths of these courts require guilty pleas, and one-third limit defendants to those charged with misdemeanors. Additionally, many limit the types of mental disorders that are eligible to Axis 1 disorders as defined by the American Psychiatric Association, which include mood disorders such as depression, bipolar disorder, and schizophrenia.

In conjunction with the Council of State Governments, the BJA has established five mental health court learning sites, in Georgia, Idaho, Nevada, New York, and Ohio, four of which received grants from the BJA. The number of participants in these courts ranges from 35 in Idaho to 225 in New York. Each court has slightly different criteria for participation. While New York and Idaho target individuals facing felony charges with lengthy criminal records, the Georgia court is a dual mental health and drug court, and focuses on those individuals with co-occurring disorders who have committed multiple offenses over time. The Ohio and Nevada courts are less specific, but Ohio sets a 60-day potential jail sentence as a minimum for eligibility. Several of the courts limit access to participation based on the type of mental illness, and New York, unlike most programs, allows violent offenders to participate. As learning sites, these programs serve as models for developing mental health courts. As mentioned above, the BJA also has established 10 essential elements for mental health courts, which address such issues as the key stakeholders, the terms of participation, confidentiality, and sustainability. The full list and descriptions can be found in Appendix A.

As mentioned above, four of these five sites received Federal grants for the mental health courts, but all of them are working to obtain community support to sustain these programs. The future of Federal funding for these courts is unclear. Federal funding received in Michigan for drug treatments courts has been drastically reduced over the last several years, and it is

uncertain whether there will be an expansion of funding for mental health courts in the near future. The funding included in FY 2008-09 will allow for a pilot program, but for long-term sustainability, Federal and local resources, including Medicaid eligibility, will need to be explored.

Results

Mental health courts are relatively new, and there is little information available about actual cost savings. Studies that have been done reflect minor improvements in recidivism rates, but they tend to have small sample sizes and may or may not use a control group. Several of these studies compare arrest records prior to treatment with records after treatment to measure improvement. Similar to the evaluation of drug treatment courts, studies of cost savings are complicated by the need to compare actual savings with assumed savings, that is, those costs that would have been incurred had the defendant not been diverted, related to both the current case and potential future charges. Given that many individuals with mental illness deteriorate over time without treatment, future contact with the criminal justice system is difficult to predict accurately. However, a recent RAND study[1] of a Pennsylvania mental health court found that over time, the mental health court did achieve savings in jail and prison costs. The study compared the costs associated with the mental health court, including court costs, treatment costs and cash assistance payments, with the costs that would have been incurred had the defendant not been diverted, including adjudication costs and jail or prison costs in the particular case before the court. The study found that treatment costs increased in the first year, but leveled off in subsequent years, while incarceration savings continued to accrue due to a sustained decline in jail and prison time.

Other Considerations

As Michigan's pilot program begins, and the Judiciary and DCH put together guidelines and practices for these courts, there are a number of issues to be addressed. As mentioned above, some drug treatment courts do address mental illness, and how mental health courts will interact with existing services needs to be determined. Additionally, the role of probate judges is unclear. Probate courts handle issues of competence for trial and petitions for involuntary mental health treatment, and those responsibilities might broaden or change to accommodate mental health courts. In an article endorsed by the Michigan Probate Judges' Association[2], Judge Mack of Wayne County argues for broadening probate judges' authority to order involuntary treatment. Mack suggests that current law requires individuals to be at a "crisis point" before involuntary treatment can be ordered and points out that guardians are not authorized to commit their wards to treatment for mental illness, unlike with other health issues. While he acknowledges that mental health courts may be part of the solution, the article is based on the premise that earlier intervention may prevent many of these individuals from coming into contact with the criminal justice system in the first place. Another broad

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[1] Ridgely, S. et al. (2007). Justice, Treatment, and Cost An Evaluation of the Fiscal Impact of Allegheny County Mental Health Court. Retrieved August 15, 2008 from http://www.rand.org/pubs/technical_reports/2007/RAND_TR439.pdf

[2] Mack, M. L. (2008). Involuntary Treatment for the Twenty-First Century. *The Quinnipiac Probate Law Journal, 21* (3 & 4), 294-320.

concern is training for law enforcement. The Executive Recommendation for the FY 2008-09 budget stipulated that $100,000 of the funding for the pilot program be used to train law enforcement and court personnel in mental health awareness, but this was not included in the enacted bill. The appropriations for the Department of Corrections in FY 2007-08 and FY 2008-09 included $100,000 per year for an interdepartmental grant to the Department of State Police for mental health training for law enforcement. These initiatives suggest that mental health courts are part of a broader effort to address the handling of mentally ill defendants throughout the criminal justice system. These additional costs and measures, as well as other measures that may be necessary or useful, should be taken into consideration as mental health courts are developed.

Conclusion

As the mental health court pilot program begins in Michigan in FY 2008-09, there are many issues to consider. Sustainable funding is necessary, and as has been the case with drug treatment courts, Federal funding can fluctuate from year to year. Determining how these courts interact with drug treatment courts and probate courts also will be important. The State Court Administrative Office and the Department of Community Health will work together to choose sites for this program and determine its structure and conditions. This effort likely will include considering the types of offenses that will be eligible, whether based on potential sentences or other criteria, whether there will be limitations on the types of mental illness suffered by the participants, how to ensure informed consent among participants, as well as the staff and training that are necessary. Over the next fiscal year, the pilot program will attempt to address many of these questions. Mental health courts are a new tool in Michigan, and determining how best to use them will be an ongoing process.

Attachment A

Essential Elements of a Mental Health Court, U.S. Bureau of Justice Assistance

(a) **Planning and administration**: A broad-based group of stakeholders representing the criminal justice, mental health, substance abuse treatment, and related systems and the community guides the planning and administration of the court.

(b) **Target population**: Eligibility criteria address public safety and consider a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses. Eligibility criteria also take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered.

(c) **Timely participant identification and linkage to services**: Participants are identified, referred and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.

(d) **Terms of participation**: Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that the defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.

(e) **Informed choice**: Defendants fully understand the program requirements before agreeing to participate in a mental health court. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant's competency whenever they arise.

(f) **Treatment support and services**: Mental health courts connect participants to comprehensive and individualized treatment supports and services in the community. They strive to use – and increase the availability of – treatment and services that are evidence-based.

(g) **Confidentiality**: Health and legal information should be shared in a way that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.

(h) **Court team**: A team of criminal justice and mental health staff and service and treatment providers receives special, ongoing training and helps mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

(i) **Monitoring adherence to court requirements**: Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.

(j) **Sustainability**: Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded.

State Notes

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July/August 2008

Alternative Teacher Certification Programs
By Debra Hollon, Fiscal Analyst

Most teachers have followed the same path to certification -- completion of an approved teacher preparation program and progression through the various levels of certification. In some instances, however, a school district cannot find an individual with these qualifications to fill a vacant teaching position or an individual with a degree in something other than education is willing to teach, but not willing to return to college to obtain another degree. Situations such as these have led to the development of alternative teaching certification programs in order to bring supply and demand closer together.

Typical Certification Process and Requirements

There are two main types of teaching certificates in Michigan: provisional and professional. The provisional certificate is the initial designation and is intended to be renewed as the individual progresses and completes the requirements for the professional certificate. Some individuals move directly from the initial provisional certificate to the professional certificate. Table 1 below outlines the requirements of each certificate. Other certificates exist for specialty areas, but these two general certificates will be the focus of this discussion.

Table 1

Michigan Teaching Certificates		
Certificate	**Educational/Testing Requirements**	**Validity Period**
Provisional Certificate	• Completion of an approved teacher preparation program • Passage of the Michigan Test for Teacher Certification	Six years
Provisional Certificate - First Renewal	Nine semester hours of classwork or completion of a Master's degree (in addition to continuing education requirements)	Three years
Provisional Certificate - Second Renewal	18 total semester hours of classwork or completion of a Master's degree (in addition to continuing education requirements)	Three years
Professional Certificate	• 18 total semester hours of classwork or completion of a Master's degree (in addition to continuing education requirements) • Three years' teaching experience at the grade level of the provisional certificate • Courses in the teaching of reading or reading methods – six semester hours for elementary or three semester hours for secondary	Five years

Source: Michigan Department of Education

An individual having difficulty meeting the requirements for renewal of the provisional certificate may qualify for a two-year extension if he or she is sponsored by a Michigan school, has one year of satisfactory teaching experience, and is on a planned program to complete the requirements. In addition, an individual at the end of the second renewal certificate who does not meet the teaching qualifications for the professional certificate may apply for a third renewal if he or she is sponsored by a Michigan school and has completed the academic requirements of the professional certificate.

Critical Teaching Disciplines

A shortage of teachers in certain fields or geographic areas is a nationwide problem. Many school districts find it difficult to fill vacancies in math or the sciences. If these districts are in rural areas or inner cities, that difficulty is magnified. In this State, the Michigan Department of Education identifies critical teacher shortage areas on an annual basis. For the 2007-2008 school year, these critical areas include math, the sciences, special education, vocational education, foreign languages, and some specialty areas (such as business services).

Several methods have been implemented in an effort to fill shortages in these areas. Some provide incentives such as scholarships, educational loan repayments, or employment of retired teachers. Alternative teacher certification programs, however, focus on individuals with a degree or background in the specific subject area who wish to become teachers, but who do not wish to return to school to obtain a degree in education.

Alternative Routes to Certification

There are three main alternative route to certification programs in Michigan: Central Michigan University, Wayne State University, and the Ferris State University/Troops to Teachers program. Table 2 compares the major aspects of each. Both Central Michigan University and Wayne State University receive $100,000 in State funding in the Department of Education's budget for their programs.

The main focus of Central Michigan University's Alternative Route to Certification (ARC) Program is on preparing math, science, and industrial education teachers for rural school districts. Individuals entering the program must have a Bachelor's degree in a "teachable" major -- math, science, industrial education, foreign languages, etc. Individuals who commit to an internship in a rural school district are given priority in admission. The ARC Program is designed to be completed in one calendar year and includes both education coursework and the rural teaching internship. The success rate from January 2004 through February 2008 is 56.0% (53 completers of 95 enrolled).

Wayne State University's Pathways Alternative Route to Certification Program focuses upon special education and bilingual education for urban school districts in the Detroit area. This program leads to a Master's degree, not just eligibility for certification. As a result, it takes longer to complete this program compared with the others. In addition, students must maintain a 3.0 grade point average (GPA) to continue in the program. The Pathways program includes a combination of coursework delivery methods: on-line, in a school building, and in a university building. The success rate for the Pathways program for 2005 to 2008 is 40.0% (32 completers of 81 enrolled). Because this is a Master's degree program, its success rate should not be compared directly to that of the other two programs in this discussion.

The newest of the alternative route to certification programs is the Ferris State University/Troops to Teachers collaboration. Troops to Teachers is a Federal program developed to place qualified active duty personnel and reservists into teaching positions. The focus of the program is on finding special education, bilingual education, math, science, and industrial education teachers

for high-need, low-income school districts in rural and urban settings. The coursework for the program is provided on-line and includes a full academic year of interning. The Ferris State University/Troops to Teachers program is in the second year of a three-year evaluation period by the Michigan Department of Education.

Table 2

Comparison of Alternative Certification Programs

Program	Focus	Master's Degree/ Path to Certification	Admission Requirements
Central Michigan University	Rural districts; science, math, industrial education	Path to certification	• Bachelor's degree with major in certain areas with a 2.7 GPA; • Passage of Michigan Basic Skills Test; • Passage of subject area test; • No requirement for acceptance to College of Graduate Studies; • Priority for admission given to those willing to intern in a rural school district.
Wayne State University	Detroit Public Schools, Highland Park School District, Pontiac School District; Special education and bilingual education	Master's degree	• Acceptance into College of Graduate Studies; • Bachelor's degree with a 2.75 GPA (and maintenance of a 3.0 GPA to stay in the program); • Passage of Basic Skills Test prior to student teaching; • Passage of subject area test prior to recommendation for certification.
Ferris State University/Troops to Teachers	High-need, low-income schools in rural and urban districts; special education, bilingual education, science, math, industrial education	Path to certification	• Acceptance into the Department of Education and Human Services Graduate program; • Bachelor's degree with major in certain areas; • Passage of Michigan Basic Skills Test; • Passage of subject area test.

Source: Michigan Department of Education; university websites

Noncertified Teachers

Despite efforts to certify individuals as teachers, there are times when school districts cannot find qualified, certified teachers to fill vacant positions. Under very specific circumstances, school districts may hire noncertified, nonendorsed teachers. These circumstances include situations in which the district is unable to hire a certified teacher or the noncertified person is enrolled in a teacher preparation program.

To be hired, the noncertified individual must have a Bachelor's degree with a major in or a Master's degree in the subject area he or she will teach and have not less than two years of

work experience in the field of specialization. (Foreign language teachers are exempt from the work experience requirement.) If the person will be hired for more than one year, he or she must pass the Basic Skills Test and subject area test.

Conclusion

As school districts see their budgets being squeezed ever tighter and consider not filling vacancies or even laying off teachers, it may seem as though there would be no need for alternative teacher certification programs, and that the typical route to certification of teacher preparation programs would supply the number of teachers needed. However, that is not the case. High-need school districts in rural and urban areas still have difficulty recruiting and retaining teachers and it is those areas that depend on the alternative certification programs to help fill those needs.

State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2008

Gasoline, Cars, and Sales Tax Revenue
By Jay Wortley, Senior Economist

An average Michigander stopped to purchase some gasoline on his way home from work. He complained to himself about the increasing amount of his income he was spending on gasoline despite the fact that he was trying to cut back on his driving. Work had been particularly busy the past few days, so he thought he would stop and purchase a new golf club he had been wanting, but given the large amount he had just spent on gas, he decided he really couldn't afford the golf club, so he headed right home. He couldn't help but notice that his seven-year-old car was making an unusual sound, so he made a mental note that it was time to take it in for a tune up. His typical pattern was to purchase a new car every six years; however, buying a new vehicle was out of the question at the present time given that his salary had not been keeping up with inflation and his company's business was down from last year, which increased the possibility that he could be laid off.

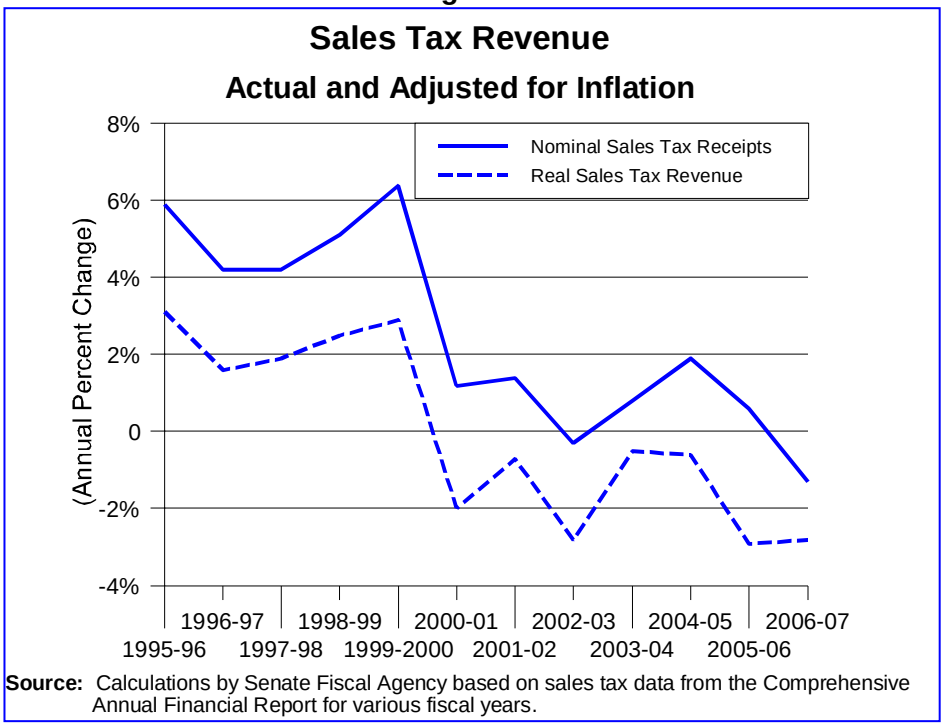
This scenario demonstrates how ongoing structural and cyclical factors are adversely affecting the level of activity in Michigan's economy and forcing consumers and businesses to adjust how they are spending their income, which is having an impact on sales tax collections. In fact, two factors in particular: 1) the increase in gasoline prices, and 2) the decline in motor vehicle sales, have had and continue to have very noticeable, but very contrasting impacts on sales tax collections. This article discusses the impact that rising gas prices and declining motor vehicle sales are having on sales tax revenue.

Michigan's Sales Tax

The sales tax is one of Michigan State government's major sources of revenue. In fiscal year (FY) 2006-07, Michigan's 6.0% sales tax generated $6.55 billion, which accounted for about 15.0% of total State government revenue. Almost three-fourths of the sales tax revenue is earmarked to the School Aid Fund to help finance public K-12 education in Michigan. Sales tax revenue also funds the State's revenue sharing program with local governments. The revenue collected from the sales tax has been very weak in recent years. Figure 1 shows that from FY 1995-96 through FY 1999-2000, when economic activity was relatively robust, sales tax receipts were growing at annual rates of 4.0% to 6.0%. However, with the onset of the economic downturn and the dramatic acceleration in the restructuring and downsizing of the domestic motor vehicle industry beginning in FY 2000-01, the annual growth in sales tax receipts has slowed considerably and even declined in a couple of years. In fact, after adjusting for inflation, sales tax receipts actually have declined for seven consecutive years beginning in FY 2000-01.

This weak growth in nominal sales tax collections and the decline on an inflation-adjusted basis actually represent the net impact not only from the changes consumers and businesses are being forced to make in the overall amount they are spending, but also from adjustments they are making in what they are purchasing. For example, two key factors that are causing consumers to adjust their spending patterns are the increase in gasoline prices and the weak economy, which has reduced consumer confidence and made consumers less likely to purchase motor vehicles.

Figure 1



Source: Calculations by Senate Fiscal Agency based on sales tax data from the Comprehensive Annual Financial Report for various fiscal years.

Sales Tax and Gasoline

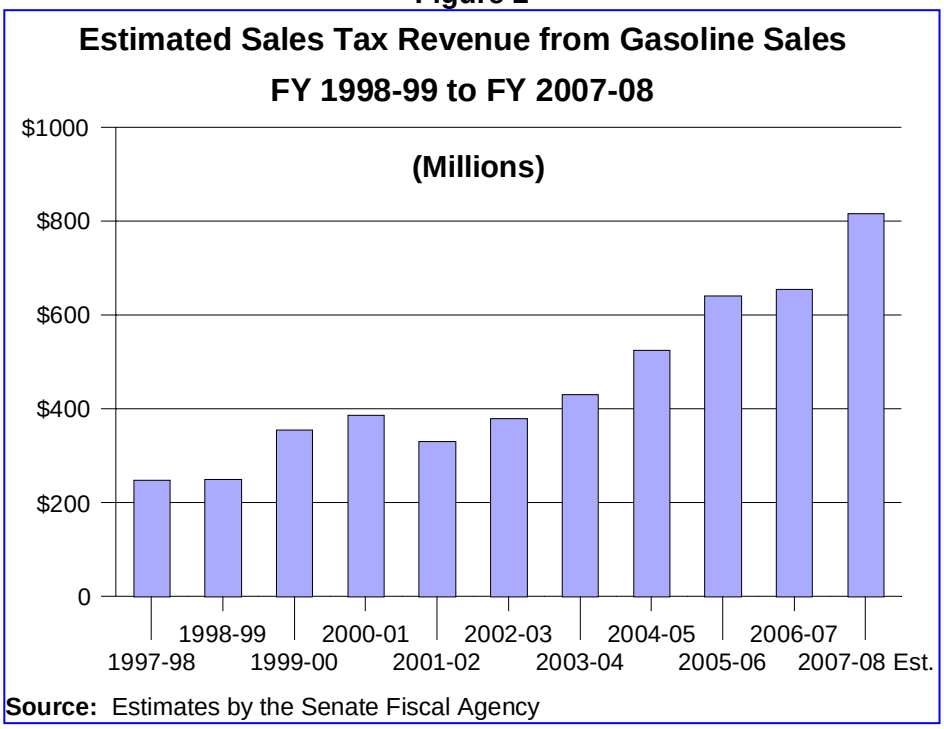
Gasoline prices have increased sharply in recent years and some of the steepest increases have occurred during the past year. In July 2008, the price of a gallon of unleaded regular gasoline averaged $4.08 in Michigan. This was up 25.2% from the price in March 2008, 30.0% from the price in July 2007, and 86.9% from the price in July 2005.

Michigan assesses a sales tax, in addition to a special excise tax, on gasoline. The sales tax is based on the price of gasoline before factoring in the $0.19 per gallon State excise tax. Given the sharp increase in the price of gasoline over the past few years combined with the fact that the sales tax rate is 6.0% of the retail price, the amount of sales tax collected on each gallon of gasoline has increased dramatically. In FY 2004-05, the price of gasoline averaged $2.09 per gallon and the sales tax per gallon totaled 10.7 cents. In sharp contrast, during the first nine months of FY 2007-08, the average price of gasoline was up to $3.40 per gallon and the sales tax per gallon averaged 18.2 cents. At $4.00 per gallon, the sales tax on a gallon of gasoline equals 21.6 cents.

The large increase in the price of gasoline has caused consumers to purchase less gas; however, the percentage decline in consumption has not been as large as the percentage increase in the price, so the amount of sales tax being collected from gasoline sales has increased significantly. In FY 2001-02, consumers in Michigan purchased 4.96 billion gallons of gasoline; however, with the rise in the price of gas and the slowdown in Michigan's level of economic activity, gasoline consumption fell to 4.64 billion gallons by FY 2006-07, a decline of 6.3%. During the same time, the price of gas was up almost 100.0%. As a result, there has been a significant increase in the

amount of sales tax collected from gasoline sales, as illustrated in Figure 2. In FY 1998-99, when gasoline sold for about $1.00 per gallon, gas purchases generated an estimated $246.4 million in sales tax revenue. In FY 2006-07, the price for gasoline was up to $2.67 per gallon and gas purchases generated an estimated $653.2 million in sales tax revenue. During the first nine months of FY 2007-08, sales tax collections from gasoline sales are running ahead of the FY 2006-07 level by 24.9%. At this pace, sales tax collections from gasoline sales will top $800.0 million in FY 2007-08, which will be up more than $150.0 million from the FY 2006-07 level.

Figure 2



Source: Estimates by the Senate Fiscal Agency

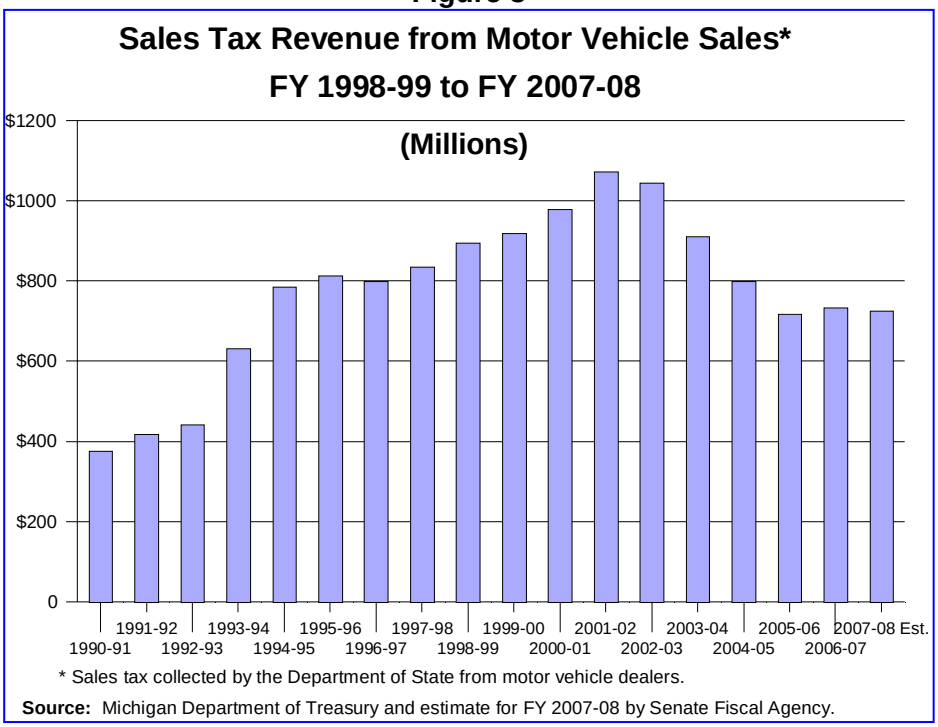
Almost all consumers live on a fixed budget, so when they are forced to spend more on gasoline, they must cut back on their spending in other areas, such as purchases of motor vehicles. That is why total sales tax collections have been very weak lately even though sales tax collections from gasoline sales have been up dramatically.

Sales Tax on Motor Vehicles

When economic conditions deteriorate, real incomes decline and job security decreases. As a result, consumers tend to cut back on their spending and one of the first areas reduced is spending on the relatively more expensive durable goods such as motor vehicles. If people feel less confident about their current and future financial situation, they are less willing to engage in any major multiyear financial commitments. To reduce their spending on motor vehicles, they purchase a less expensive new vehicle than they otherwise would have, purchase a used vehicle instead of a new one, or postpone the purchase of a motor vehicle.

Given the relatively high price for motor vehicles, the ups and downs in motor vehicle sales have a noticeable impact on sales tax collections. Figure 3 shows sales tax revenue collected from new and used motor vehicles purchased from motor vehicle dealers from FY 1990-91 to FY 2006-07. During the strong economic activity that prevailed during the latter half of the 1990s, sales tax collections from motor vehicle transactions increased steadily and remained strong through FY 2001-02. The slowdown in Michigan's economic activity, which began in the early 2000s, was reflected in the motor vehicle sales tax collections beginning in FY 2002-03, and they remain weak up to the present time. In fact, the sales tax collected from motor vehicle sales in FY 2006-07 was less than what was collected in FY 1994-95. This decline in motor vehicle sales tax collections has been very steady. During the 38 months from August 2003 through September 2006, motor vehicle sales tax collections fell below the year-ago level 36 times. After peaking at $1.07 billion in FY 2001-02, motor vehicle sales tax receipts fell for four consecutive years before posting a modest increase in FY 2006-07. By the end of FY 2006-07, motor vehicle sales tax receipts were down 31.6%, or $338.7 million, from the FY 2001-02 level. So far in FY 2007-08, motor vehicle sales tax collections are down from the year-ago level by 0.8%.

Figure 3



Conclusion

Sales tax revenue has not experienced much growth in recent years, even though sales tax collections from gasoline sales have been up significantly. Most consumers live on a fixed budget, so as their spending increases in one area, such as gasoline, it has to decline in other areas. One area in which sales tax collections are down significantly in recent years is motor vehicle sales.

State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2008

The Great Lakes-St. Lawrence River Basin Water Resources Compact
By Julie Cassidy, Legislative Analyst

Introduction

On July 9, 2008, Michigan ratified the Great Lakes-St. Lawrence River Basin Water Resources Compact. The Compact is the result of many years of planning, involving all the Great Lakes states and Canadian provinces, for the increased protection of the waters of the Great Lakes Basin. Now that all of the involved states have ratified the Compact, congressional approval is required for it to take effect. This article discusses the events leading to the adoption of the Compact, its primary functions, and recent State and Federal legislation to implement it.[1]

History

In 1985, the Great Lakes governors and Canadian premiers signed the Great Lakes Charter, a voluntary agreement through which the Great Lakes states and provinces cooperatively manage the waters of the Great Lakes. In June 2001, the governors and premiers signed the Great Lakes Charter Annex 2001 ("Annex 2001"), which focuses specifically on water withdrawals by outlining the basic principles that state and provincial governments should use when evaluating withdrawal proposals. Annex 2001 also calls for coordinated standards that guide water use decisions toward the common goal of protecting and enhancing the Great Lakes ecosystem. Both the original charter and the Annex were nonbinding, and required statutory authority to be implemented.

In 2005, the governors signed two documents to implement the Annex 2001 agreement and establish the decision-making standard to be used in evaluating proposals: the Great Lakes Basin Sustainable Water Resources Agreement (a good-faith agreement) and the Great Lakes Basin Water Resources Compact (a binding agreement). The Compact specifies that each party will manage and regulate new or increased withdrawals within its jurisdiction in accordance with the Compact.

In addition, the Federal 1986 Water Resources Development Act included a requirement for the approval of each Great Lakes governor for diversions outside of the Basin. Amendments enacted in 2000 prohibit Great Lakes water exports without the approval of each Great Lakes governor, and also "encourage the Great Lakes States, in consultation with the Provinces of Ontario and Quebec, to develop and implement a mechanism that provides a common conservation standard embodying the principles of water conservation and resource improvement for making decisions concerning the withdrawal and use of water from the Great Lakes Basin".

In Michigan, legislation was enacted several years ago as a result of Annex 2001; a Great Lakes Conservation Task Force report recommending the enactment of comprehensive water withdrawal laws, as well as any implementation laws arising from the Annex 2001 process; and groundwater shortages around the State. Public Act 148 of 2003 required the Department of

[1] For a detailed description of the Compact and Michigan's recently enacted legislation, please see the Senate Fiscal Agency analysis of Senate Bills 212, 723, 727, 858, 859, and 860, and House Bills 4343, 5065, 5066, 5067, and 5073 (Analysis as Enacted, 7-31-08), which may be found at www.senate.michigan.gov/sfa)

Environmental Quality (DEQ) to prepare a statewide groundwater inventory and map; increased water use reporting fees for certain facilities with a capacity to pump over 100,000 gallons per day; extended the reporting requirement to farms with the same capacity; and created the Groundwater Conservation Advisory Council to study the sustainability of the State's groundwater use and monitor the implementation of and make recommendations on statutory conformance with Annex 2001.

Public Acts 33 through 36 of 2006 took the next step in implementing the provisions of the Great Lakes Charter and amending documents. Specifically, these Acts did the following: prohibited withdrawals causing adverse resource impacts to designated trout streams for two years, and, beginning February 28, 2008, prohibited all withdrawals resulting in adverse resource impacts; established a requirement that certain large-quantity water users obtain a water withdrawal permit and pay a fee; required the Groundwater Conservation Advisory Council, in consultation with several State departments, to develop an assessment tool to determine whether a proposed withdrawal will create an adverse resource impact; required each water users' sector to begin designing generally accepted water management practices or environmentally sound and economically feasible water conservation measures; authorized large-quantity users in a watershed to form a water users committee through which the DEQ can facilitate the resolution of a situation in which a withdrawal causes an adverse resource impact; and required a bottled water producer proposing a new or increased withdrawal of at least 250,000 gallons of water per day to demonstrate to the DEQ that specified criteria would be met.

In June 2007, the Advisory Council's final report was submitted to the Legislature. The report outlined a withdrawal assessment process that included both an automated screening tool for determining a withdrawal's potential impact, and a site-specific analysis for withdrawals falling into certain categories. Executive Order 2007-8 then dissolved the Council and transferred its responsibilities to the DEQ.

Under recently enacted legislation, the Compact was approved in Michigan and the State's water withdrawal registration and permitting process was increased in scope and revised to reflect the Council's recommendations. Additionally, the Council was reconstituted to facilitate the withdrawal assessment process and the implementation and future adaptation of the assessment tool.

Great Lakes-St. Lawrence River Basin Water Resources Compact

Public Act 190 of 2008 added the Compact to the Natural Resources and Environmental Protection Act (NREPA) as Part 342. The Compact provides for intergovernmental cooperation and consultation through which the parties intend to protect, conserve, restore, improve, and effectively manage the Basin's waters and water-dependent resources. All new or increased diversions are prohibited, subject to certain exceptions. The Compact establishes a minimum standard of review and decision for withdrawals, and allows parties to impose a more restrictive standard for withdrawals under their authority. The Compact's highlights are described below.

Great Lakes-St. Lawrence River Basin Water Resources Council. The Council consists of the all of the Great Lakes governors. The Council and the parties must use the standard of review and decision and procedures contained in or adopted pursuant to the Compact as the means to

exercise their authority under it. The Council must identify priorities and develop plans and policies relating to Basin water resources. Additionally, it must adopt and promote uniform and coordinated policies for water resources conservation and management in the Basin.

Program Review & Findings. Every five years, each party must submit to the Council and the regional body (which consists of the Council members and the premiers of Ontario and Quebec) a report detailing its water management and conservation and efficiency programs that implement the Compact. The Council, in cooperation with the provinces, must review its programs and those of the parties and make findings on whether the Compact's water management program provisions are being met, and, if not, recommend options to assist the parties in meeting them.

Inventory, Registration, & Reporting. Within five years of the Compact's effective date, each party must develop and maintain a water resources inventory. The Council must assist each party in developing a common base of data regarding the management of the Basin's water resources and in establishing systematic arrangements for the exchange of those data with other states and provinces. Within five years of the Compact's effective date, any person who withdraws at least 100,000 gallons per day average in any 30-day period (including consumptive uses) from all sources, or diverts any water, must register the withdrawal or diversion. All registrants annually must report the monthly volumes of the withdrawal, consumptive use, and diversion to the originating party (where an application or registration is made or required). Each party annually must report this information to a Great Lakes-St. Lawrence River water use data base repository, for uses specified in the Compact.

Conservation & Efficiency Programs. The Compact provides that the Council commits to identify, in cooperation with the provinces, Basin-wide water conservation and efficiency objectives to assist the parties in developing their water conservation and efficiency programs. The objectives must be based on specific goals, which include ensuring improvement of the waters and water-dependent natural resources, and protecting and restoring the Basin's hydrologic and ecosystem integrity. Within two years of the Compact's effective date, each party must develop its own goals and objectives consistent with the Basin-wide goals and objectives, and develop and implement a voluntary or mandatory water conservation and efficiency program for all Basin water users within its jurisdiction. Every five years, the Council, in cooperation with the provinces, must review and modify as appropriate the Basin-wide objectives, and the parties must consider the modifications in implementing their programs.

Party Powers & Duties. Each party, within its jurisdiction, must manage and regulate new or increased withdrawals, consumptive uses, and diversions in accordance with the Compact. No party may approve a proposal for withdrawal, diversion, or consumptive use of water that is subject to the Compact if it determines that the proposal is inconsistent with the Compact or the standard of review and decision or any implementing rules or regulations. The party may approve, approve with modifications, or disapprove any proposal depending on its consistency with the Compact and the standard of review and decision. No party may approve a proposal subject to Council and/or regional review unless it is first submitted to and reviewed by either the Council or regional body, or both, and approved by the Council, as applicable.

Originating Party Approval. No proposal subject to management and regulation under the Compact may be undertaken unless it has been approved by the originating party.

Regional Review. The Compact states that it is the intention of the parties to participate in regional review of proposals with the provinces. Proposals for exceptions from the Compact's diversion prohibition subject to regional review must be submitted by the originating party to the regional body for regional review, and, where applicable, to the Council for concurrent review. A majority of the members of the regional body may request regional review of a regionally significant or potentially precedent-setting proposal. The Compact prescribes the procedures for regional review, including the originating party's provision of its technical review of the proposal, and the regional body's declaration of finding that the proposal meets the standard of review and decision, does not meet the standard, or would meet the standard if certain conditions were met. The originating party and the Council must consider the declaration before making a decision on the proposal.

Proposals Subject to Prior Notice. Beginning within five years after the Compact's effective date, an originating party must give all parties and the provinces notice and an opportunity to comment on any proposal for a new or increased consumptive use of 5.0 million gallons per day or greater average in any 90-day period. Comments must address whether the proposal is consistent with the standard of review and decision.

Exception for Straddling Community. A proposal to transfer water to an area within a straddling community but outside the Basin or outside the source Great Lake watershed must be excepted from the prohibition against diversions and be managed and regulated by the originating party provided that all the transferred water will be used solely for public water supply purposes within the straddling community, and the following conditions are met: if the proposal results from a new or increased withdrawal of at least 100,000 gallons per day average over any 90-day period, the proposal meets the exception standard (described below); if the proposal results in a new or increased consumptive use of at least 5.0 million gallons per day average over any 90-day period, the proposal also will undergo regional review; and all water withdrawn from the Basin will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.

(The Compact defines "straddling community" as any incorporated city, town, or the equivalent of a city or town, wholly within any county that lies partly or completely within the Basin, whose corporate boundary existing as of the Compact's effective date is partly within the Basin or partly within two Great Lakes watersheds.)

Exception for Intra-Basin Transfer. A proposal for an intra-Basin transfer that would be considered a diversion under the Compact and not otherwise excepted must be excepted from the prohibition against diversions, if the following provisions apply.

If the proposal results from a new or increased withdrawal of less than 100,000 gallons per day average over any 90-day period, the proposal is subject to management and regulation at the discretion of the originating party.

If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period and if the consumptive use resulting from the withdrawal is less than 5.0 million gallons per day average over any 90-day period, the proposal must meet the

exception standard and be subject to management and regulation by the originating party, except that the water may be returned to another Great Lake watershed rather than the source watershed; and the originating party must notify the other parties before making any decision on the proposal.

If the proposal results in a new or increased consumptive use of 5.0 million gallons per day or greater average over any 90-day period, the proposal is subject to management and regulation by the originating party and must meet the exception standard, ensuring that water withdrawn will be returned to the source watershed; and the proposal must undergo regional review and be approved by the Council.

Also, except in the case of a withdrawal of less than 100,000 gallons per day, the applicant must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies.

Exception for Straddling Counties. A proposal to transfer water to a community within a straddling county that would be considered a diversion under the Compact must be excepted from the prohibition, if it satisfies all of the following conditions:

-- The water will be used solely for the public water supply purposes of the community within a straddling county that is without adequate supplies of potable water.
-- The proposal meets the exception standard, maximizing the portion of water returned to the source watershed as Basin water and minimizing the surface water or groundwater from outside the Basin.
-- The proposal is subject to management and regulation by the originating party, regardless of its size.
-- There is no reasonable water supply alternative within the Basin in which the community is located, including conservation of existing water supplies.
-- Caution will be used in determining whether the proposal meets the conditions for this exception (which should not be authorized unless it can be shown that it will not endanger the integrity of the Basin ecosystem).
-- The proposal undergoes regional review and is approved by the Council.

Substantive consideration also will be given to whether the proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to Basin waters.

Exception Standard. Proposals subject to management and regulation must be declared to meet the exception standard and may be approved as appropriate only when the following criteria are met:

-- The need for all or part of the proposed exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies.
-- The exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed.

-- The exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the Basin's waters and water-dependent natural resources with consideration given to the potential cumulative impacts of any associated precedent-setting consequences.
-- Implementation of the exception will incorporate environmentally sound and economically feasible water conservation measures to minimize water withdrawals or consumptive use.
-- Implementation will ensure that the exception s in compliance with all applicable municipal, state, and Federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909.
-- All other applicable criteria have been met.
-- All water withdrawn will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.

No surface water or groundwater from outside the Basin may be used to satisfy any portion of the criterion related to the return of the water unless certain conditions are met.

New or Increased Withdrawals & Consumptive Uses. Within five years of the Compact's effective date, each party must create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard. Each party must set and may modify threshold levels for the regulation of new or increased withdrawals to assure an effective and efficient water management program. Any party that fails to set threshold levels that comply with the Compact within 10 years must apply a threshold level of 100,000 gallons per day or greater average in any 90-day period.

Decision-Making Standard. Proposals subject to management and regulation must be declared to meet the decision-making standard and may be approved as appropriate only when the following criteria are met:

-- All water withdrawn will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.
-- The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water-dependent natural resources and the applicable source watershed.
-- Implementation of the withdrawal or consumptive use will incorporate environmentally sound and economically feasible water conservation measures.
-- Implementation will ensure that that the withdrawal or use is in compliance with all applicable municipal, state, and Federal laws, as well as regional interstate and international agreements, including the Boundary Waters Treaty.

Additionally, the proposed use must be reasonable, based upon a consideration of specified factors. These include the balance between economic development, social development, and environmental protection of the proposed withdrawal and use and other existing or planned withdrawals and water uses sharing the water source. Another factor is the probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use under foreseeable conditions, to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water-dependent

natural resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts.

Applicability. A proposal to withdraw water and to remove it from the Basin in any container greater than 5.7 gallons must be treated in the same manner as a proposal for a diversion.

Assessment of Cumulative Impacts. The parties, in cooperation with the provinces, must conduct collectively within the Basin an assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from the waters of the Basin, every five years or each time the incremental Basin water losses reach 50.0 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever occurs first, or at the request of one or more of the parties. The assessment will form the basis for a review of the review and decision standard, Council and party regulations, and their application.

Enforcement. The Compact prescribes procedures for a person aggrieved by any Council or party action, including administrative procedures and judicial review. The Compact also prescribes procedures by which the Council or any party may compel compliance, as well as remedies for a prevailing party in an action, including equitable relief and recovery of litigation costs. Each of the parties may adopt provisions for additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction.

Michigan's Implementation Legislation

Public Acts 179 through 189 of 2008 amended NREPA and the Safe Drinking Water Act to bring the State's water withdrawal registration and permitting system into conformity with the Compact.

Public Act 189 reestablished the former Advisory Council as the Water Resources Conservation Advisory Council, revised its membership, and gave it new duties related to the testing and evaluation of the assessment tool, recommendations for updates to the withdrawal assessment process, and recommendations on the State's compliance with certain aspects of the Compact.

Previously, a person who proposed to engage in producing bottled drinking water from a new or increased large-quantity withdrawal of more than 250,000 gallons per day had to demonstrate to the DEQ that certain conditions would be met. Under Public Act 188, the conditions apply to a withdrawal of more than 200,000 gallons per day, as well as an intra-Basin transfer of more than 100,000 gallons per day average over a 90-day period.

Public Act 187 requires the DEQ to use the assessment tool to evaluate a new or increased large-quantity withdrawal for a proposed waterworks system by a community supply. If the proposal falls into a particular category, the community supply must certify that it is implementing applicable environmentally sound and economically feasible water conservation measures. The Act also expanded the withdrawals subject to a requirement that the DEQ evaluate the impact of a proposed system for a community supply.

The current penalty for knowingly making a new or increased large-quantity withdrawal that causes an adverse resource impact or violating a withdrawal permit requirement or term is a

civil fine of up to $5,000 per day. Public Act 186 increases the maximum fine to $10,000 per day, beginning October 7, 2008.

Public Act 185 requires the DEQ to make the internet-based withdrawal assessment tool available for testing and evaluation on October 1, 2008, and to implement it on July 9, 2009. The tool must assign each withdrawal to one of four categories based upon its potential to cause an adverse resource impact. Public Act 184 requires the DEQ to notify certain entities by e-mail if a proposed withdrawal falls into a particular category; and allows the entities to form a water resources assessment and education committee in order to assess water use trends in the withdrawal's vicinity and educate water users. Public Act 183 creates a rebuttable presumption that a proposed withdrawal will not cause an adverse resource impact, under certain circumstances.

Public Act 182 requires the DEQ, by March 31, 2009, to prepare a set of generic water conservation measures applicable to all large-quantity water users. Then, the DEQ must review conservation measures submitted by a specific water user's sector and approve them as a replacement for the generic measures for that sector. The Act also requires a registrant or permit holder to certify that he or she has reviewed environmentally sound and economically feasible water conservation measures; and requires the DEQ, upon receiving a registration falling into a particular category, to notify other registrants and permit holders using water from the same sources so that they can consider implementing water conservation measures.

Public Act 181 requires a property owner to request the DEQ to conduct a site-specific review if the assessment tool indicates that a proposed withdrawal falls into a particular category; and requires a property owner to obtain a withdrawal permit and DEQ authorization in order to register and make a withdrawal, under certain circumstances. Public Act 180 revised requirements for a property owner to register with the DEQ before making a large-quantity withdrawal, and revised water withdrawal permit requirements.

Public Act 179 added various definitions and revised several definitions used in Part 327 (Great Lakes Preservation) of NREPA, including the definition of "adverse resource impact". Until February 1, 2009, the term means decreasing the flow of a river or stream by part of the index flow so that its ability to support characteristic fish populations is functionally impaired. Beginning on that date, the definition will depend on the type and size of the river or stream involved, or the impact on the level of surface water.

Congressional Action

The U.S. Congress recently has taken action on a pair of bills to approve the Compact. The House Judiciary Committee voted to report H.R. 6577 in July 2008, and the Senate passed Senate Joint Resolution 45 unanimously in August. Reportedly, President Bush has indicated that he will sign the Compact into law once both chambers have approved it.

Debate Surrounding the Compact

According to the Compact's proponents, unmanaged diversions of Great Lakes water, as well as large-quantity in-Basin uses, could result in groundwater shortages, reduce the flow of rivers

and streams, lower lake levels, and harm natural resources. The State's economy is reliant upon an abundance of water, especially with regard to three of its major industries: manufacturing, agriculture, and tourism. While the Great Lakes states have individual state laws in place and agreed under the nonbinding Great Lakes Charter to regulate large withdrawals, monitor water use, and consult with one another before approving large diversions, a cooperative, binding agreement is considered necessary to ensure that sustainable water use practices are implemented on a Basin-wide basis.

With Public Act 190 of 2008, Michigan became the eighth, and final, state to ratify the Compact. If approved by Congress, the Compact will provide a framework for management of the waters of the Basin by all of the affected states and provinces and facilitate environmentally responsible economic development in the Great Lakes region. The establishment of the Compact's decision-making standard will ensure consistency in water use determinations throughout the Basin.

The provisions of the State legislation regarding the assessment tool, the withdrawal review process, and water conservation measures satisfy the Compact's requirement for each state to implement a water conservation program. Michigan's assessment tool is unique in that it is the only science-based mechanism for evaluating withdrawals to be adopted by any party to the Compact. By reestablishing the Advisory Council and requiring it to examine new scientific data and recommend changes to the assessment process and statutory definitions, the legislation will result in the continued responsiveness and accuracy of the State's system for evaluating withdrawals. The user-friendly assessment tool will provide certainty for water users, and the site-specific review process for specified withdrawals and the local committee provisions will ensure that proposals undergo multiple levels of review involving all stakeholders.

Some questions have been raised, however, regarding the benefits of the Compact. Under the Federal Water Resources Development Act (WRDA), any Great Lakes governor may veto a proposed diversion out of the Basin. There are concerns that under the Compact, Michigan could lose some of its sovereignty regarding intra-Basin water use decisions. Some people believe that the fact that Michigan's Governor has used this veto power to prevent diversions in the past demonstrates that the Act is sufficient to protect the State's water resources.

On the other hand, the gubernatorial veto power is not guaranteed, as Congress could amend the WRDA in the future. If Michigan loses congressional seats due to a declining population, the influence it could exercise with regard to this issue is questionable. Furthermore, the power to veto under the WRDA applies only to the transfer of water out of the Basin. The Compact establishes a framework for decision-making with regard to in-Basin uses. Additionally, many people believe that the Compact would be more likely to withstand a legal challenge than the WRDA.

What everyone agrees upon, presumably, is the need to safeguard the future of a resource that contains approximately 84% of North America's fresh surface water, and about 21% of the world's supply.