

State Notes

TOPICS OF LEGISLATIVE INTEREST

Summer 2017



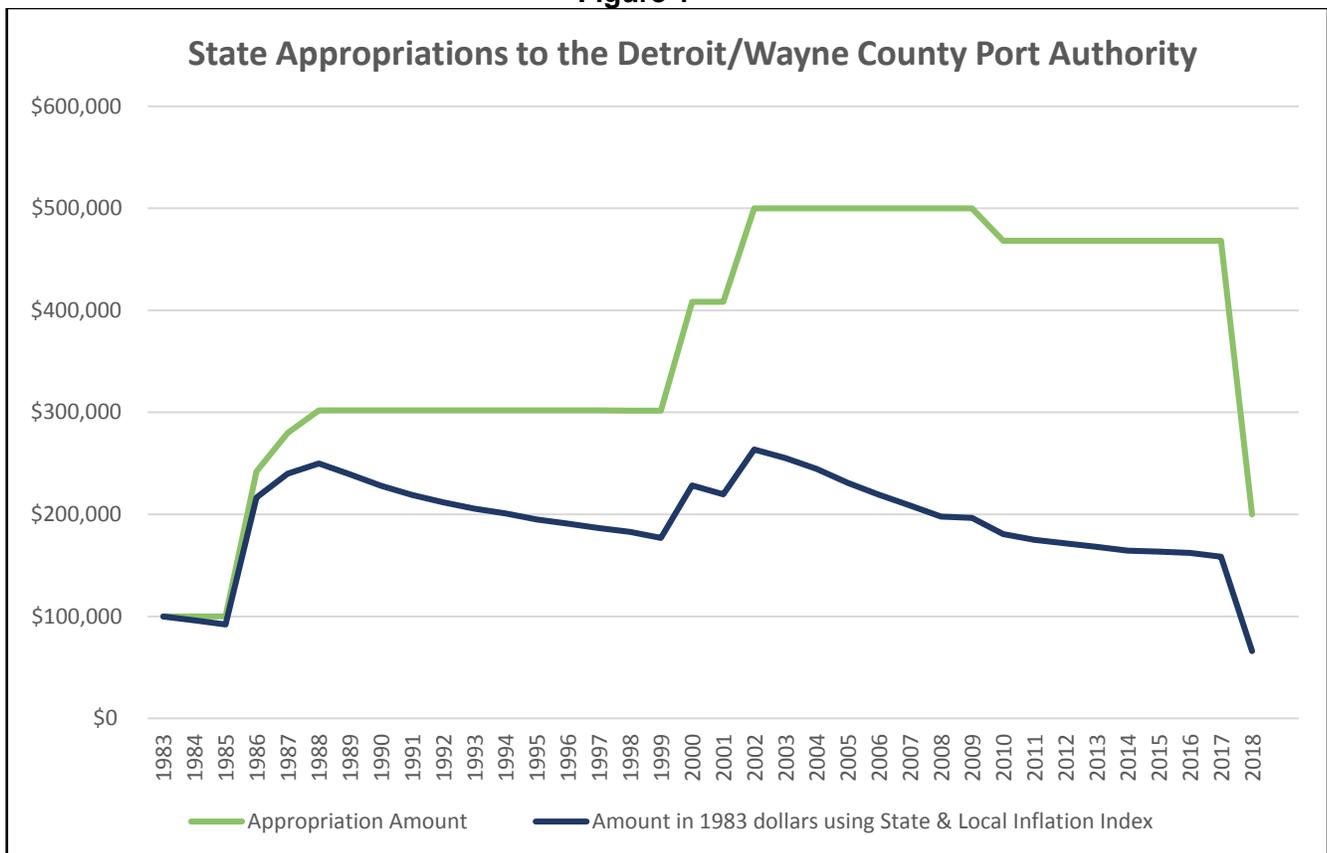
Funding Cuts to the Detroit/Wayne County Port Authority

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In fiscal year (FY) 2017-18, the Detroit/Wayne County Port Authority (DWCPA) will receive the lowest amount of State funding since the 1984-85 fiscal year: \$200,000. The upcoming appropriation amounts to, roughly, 60% of the typical State appropriation the DWCPA has received over the last 15 years. More significantly, because the State has decided to reduce funding to the DWCPA, Detroit and Wayne County will likely follow suit, dropping the DWCPA's total operational budget from about \$970,000 in FY 2016-17 to \$400,000 in FY 2017-18.

Figure 1 shows the history of State appropriations to the DWCPA since the 1982-83 fiscal year.

Figure 1



In addition to the actual appropriation amount, Figure 1 also shows the application of the state and local inflation index to the appropriation amount in 1983 dollars. The index reflects inflation rates calculated for state and local governments and is offered by the U.S. Bureau of Economic Analysis.

The DWCPA was created in 1981 via the Hertel-Law-T. Stopczynski Port Authority Act, Public Act 639 of 1978, at the request of then-Mayor of Detroit, Coleman Young, and then-Chairman of the Wayne County Board of Commissioners, Samuel Turner. According to the DWCPA's articles of incorporation, which Governor Milliken and other officials signed on March 12, 1981, the Authority was formed "for the purpose of exercising and applying within the boundaries of Wayne County, including the Detroit River and any other commercially navigable water lying within said county, all the powers granted to an authority by the Enabling Act." Those powers, as listed in the Port Authority Act, include the power to adopt and amend bylaws, acquire and lease real property, apply for government or private grants or loans, issue revenue bonds to provide funds for the Authority's project improvements, and collect watercraft dockage fees and wharfage fees on goods that are shipped from, are stored on, or pass through DWCPA territory. The DWCPA's stated mission is to "develop and foster economic and recreational growth, through environmental stewardship, in promoting Detroit and Southeast Michigan as an import/export freight transportation and distribution hub for the U.S., Canada and the World marketplace."¹

Executive decisions of the DWCPA, including the decisions to issue bonds, enter into contracts, and lease property, are made by a board of five uncompensated members: two appointed by the County, two appointed by the City, and one appointed by the Governor. Day-to-day management of the DWCPA is handled by the Authority's board-appointed Executive Director. The DWCPA currently has six employees, including its Executive and Deputy Directors.

In furtherance of its mission, the DWCPA is involved in several development projects in the Detroit/Wayne County area. It recently received \$1.0 million in grants and loans from the Michigan Department of Environmental Quality to redevelop the Statler Hotel in Detroit.² Other activities include making efforts to induce cruise ships to use Detroit as a port of call, engaging in talks to begin a water taxi service and cross-river ferry service between Detroit and Windsor, sponsoring a study by the U.S. Army Corps of Engineers to deepen the River Rouge bed to a more standard sea depth, participating in U.S. Environmental Protection Agency brownfield projects throughout metro-Detroit (including cleanup of an old Detroit police station to turn it into a creative arts center), and up until 2014, acting as the fiduciary agent for all U.S. Port Security Grant funding that Detroit received from the U.S. Department of Homeland Security.³

Due to its unique funding model, the DWCPA will likely see its total operating budget reduced in FY 2017-18 by twice the amount the State has cut. Under the provisions of the Port Authority

¹ *Proposed Capital Agenda: FY 2013-14 through FY 2017-18*, City of Detroit, p. 381.

² *State of Michigan Provides \$1M Grant for Redevelopment of Former Statler Hotel Site in Detroit*, Hiller, Kristin, June 9, 2017, Rebusiness Online.

³ *Initiatives & Past Successes*, DWCPA website.



Act, and the DWCPA articles of incorporation, the State provides half of the DWCPA funding annually. The rest comes from the City of Detroit and Wayne County, with each responsible for 25%.⁴ Despite the fact that these funding responsibilities are codified in statute, practical application of the Act has resulted in some, at times significant, funding variance over the years. Table 1 lists the actual funding amounts and percentages, per governmental entity, for the past 15 years.

Table 1

DWCPA Actual Funding Amounts Per Entity							
Fiscal Year	State of Michigan		Wayne County		City of Detroit		Total for Gov. Entity
2015-16	\$468,200	48.36%	\$250,000	25.82%	\$250,000	25.82%	\$968,200
2014-15	\$468,200	48.36%	\$250,000	25.82%	\$250,000	25.82%	\$968,200
2013-14	\$446,043	48.26%	\$250,000	27.05%	\$228,192	24.69%	\$924,235
2012-13	\$342,880	51.65%	\$100,000	15.06%	\$220,923	33.28%	\$663,803
2011-12	\$468,200	49.44%	\$236,000	24.92%	\$242,731	25.63%	\$946,931
2010-11	\$468,200	49.05%	\$236,250	24.75%	\$250,000	26.19%	\$954,450
2009-10	\$468,200	45.32%	\$315,000	30.49%	\$250,000	24.20%	\$1,033,200
2008-09	\$500,000	46.95%	\$315,000	29.58%	\$250,000	23.47%	\$1,065,000
2007-08	\$500,000	46.95%	\$315,000	29.58%	\$250,000	23.47%	\$1,065,000
2006-07	\$500,000	50.00%	\$250,000	25.00%	\$250,000	25.00%	\$1,000,000
2005-06	\$500,000	46.95%	\$315,000	29.58%	\$250,000	23.47%	\$1,065,000
2004-05	\$500,000	46.95%	\$315,000	29.58%	\$250,000	23.47%	\$1,065,000
2003-04	\$500,000	46.95%	\$315,000	29.58%	\$250,000	23.47%	\$1,065,000
2002-03	\$500,000	46.95%	\$315,000	29.58%	\$250,000	23.47%	\$1,065,000
2001-02	\$468,500	45.33%	\$315,000	30.48%	\$250,000	24.19%	\$1,033,500

Due to the language of the Act (MCL 120.124(1)), a reduction from one funding entity will typically result in a reduction from one, or both, of the others. For example, although the State appropriated \$468,200 to the DWCPA in fiscal year 2012-13, it paid out only \$342,880. This is because the State requires that the DWCPA send documentation to the Michigan Department of Transportation confirming that City and County funds have been received before the State will release appropriated dollars for the DWCPA. In FY 2012-13, Wayne County cut \$150,000 from its annual obligation of \$250,000 to the DWCPA. The Department, upon learning of this cut, made a proportional cut of almost \$150,000.

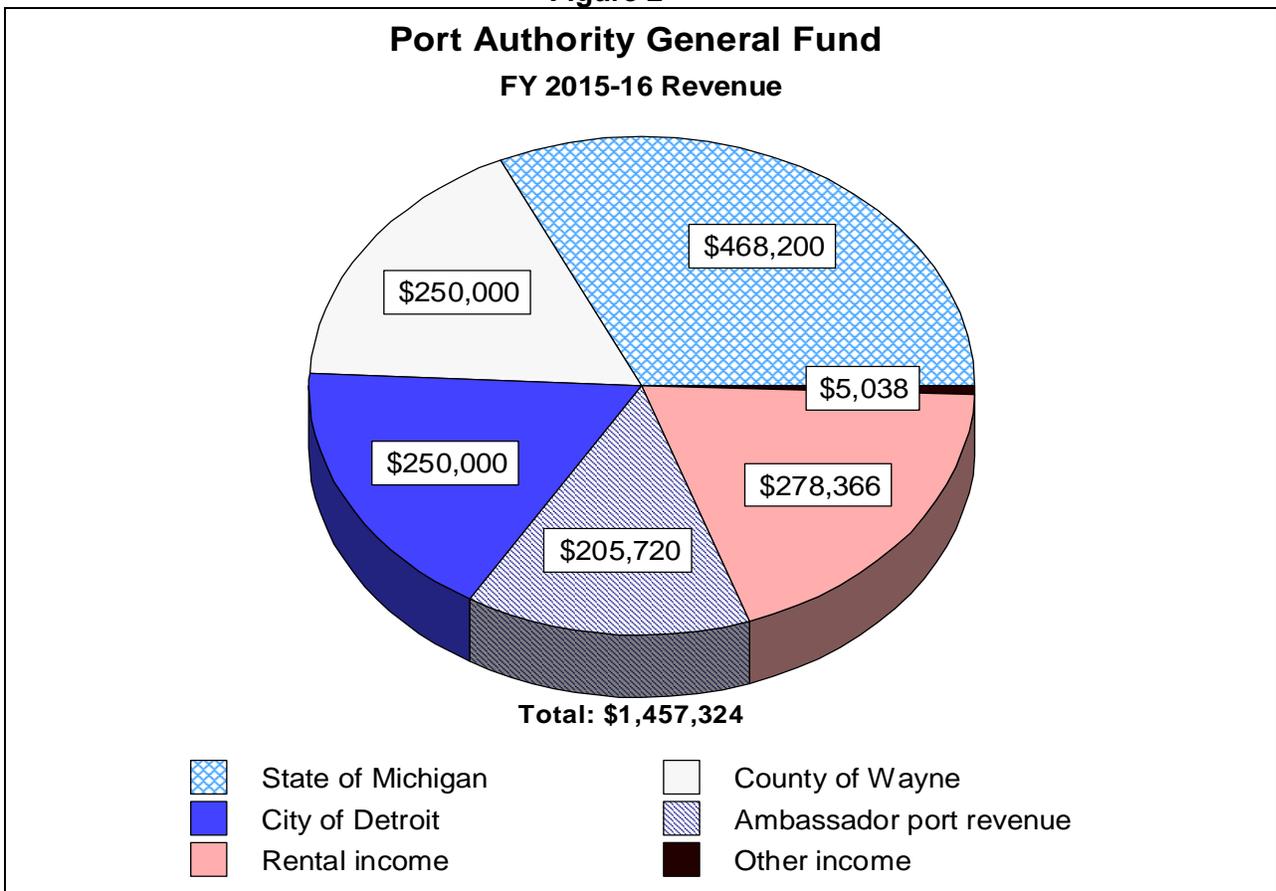
Although it does not necessarily follow that State cuts will result in City and County cuts, Wayne County and the City of Detroit may also reduce funding for FY 2017-18 to \$100,000 in response to the State's appropriation reduction. The DWCPA, which has had an operating budget of or

⁴ [MCL 120.124\(1\)](#): "The state shall provide 50% of the operating budget of the authority...Fifty percent of the operating budget of an authority in which not more than 1 county and not more than one city participate shall be funded equally by the participating county and city."

approaching \$1.0 million for the last 15 years, may soon have to cover its annual expenses with \$400,000 instead. The DWCPA will attempt to cover the budget shortfall with docking revenue, event revenue, and cash reserves, but cannot say definitely that staff cuts will not result in the coming fiscal year. The DWCPA has confirmed that if similar cuts continue into subsequent fiscal years, the DWCPA will not be able to cover its operational costs and may be forced to close.

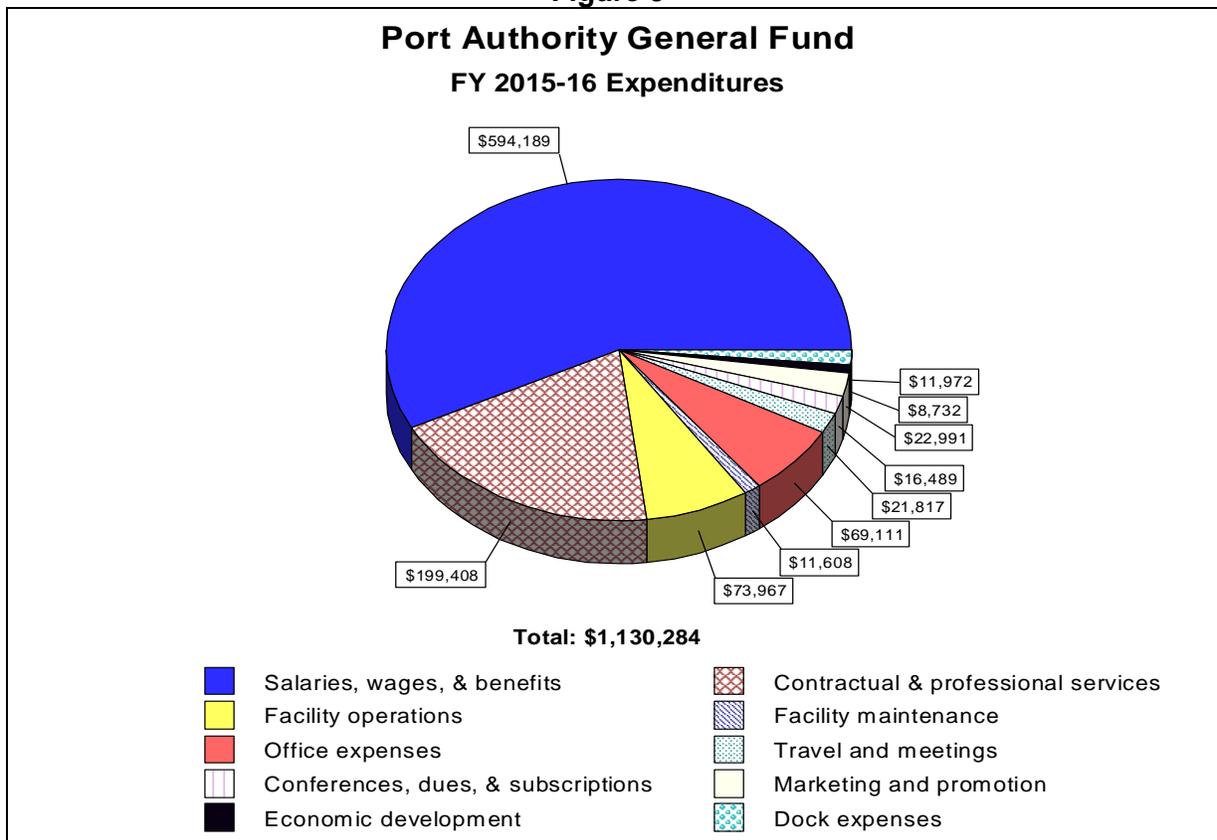
For comparison, an examination of the DWCPA's most recent financial statement⁵ reveals the revenue and expenditure totals shown in Figure 2 and Figure 3:

Figure 2



⁵ Detroit/Wayne County Port Authority Financial Statements: September 30, 2016 and 2015.

Figure 3



Concerning revenue, of particular note is the Ambassador port revenue, which constitutes 2.5% of gross receipts collected by the Ambassador Port Company (APC), less loan payments, interest, and any penalties on a promissory note the DWCPA signed with the APC a dozen years ago. The promissory note was part of a master concession agreement that the DWCPA entered into with the APC in 2005. At the time, the DWCPA needed \$2.1 million to acquire a 34-acre shipping dock previously managed by Detroit Marine Terminals, Inc. (DMT), which had gone bankrupt. Lease payments from the DMT had previously been used to cover City of Detroit bond debt that had been accumulated to update the DWCPA facility. A subsidiary of the Ambassador Bridge Company, the APC, was created at the time to lend the DWCPA the money needed to pay off the City's bond debt once the DMT became insolvent.

In exchange, the DWCPA and the APC agreed to terms for the APC's management of the 34-acre plot in the master concession agreement, which refers to the plot of land as "the facility". Those terms included large grants of authority to the APC. In addition to payments from DWCPA on the \$2.1 million loan, the agreement transferred control of the facility, and its tax exemption,

to the APC. A 2006 review of the deal by Detroit's Research and Analysis Division (RAD) confirms this conclusion.⁶

According to RAD, the deal allows the APC to manage the facility for an initial term of 25 years, with three additional 25-year terms available to the APC at its election. The agreement claims to extend the Authority's tax-exempt status, granted by the Hertel-Law-T. Stopczynski Port Authority Act, to include the APC's operations within the facility as well. The Authority can no longer sell or lien property without the APC's consent. Under the agreement, contract negotiations for materials or real property are to be done by the APC. Additionally, the loan has no structured payment schedule, allowing the APC to deduct payments from the Authority's 2.5% share of gross receipts, while, at the same time, imposing interest and/or penalties on those payments at its discretion whenever gross receipts are insufficient to meet the variable quarterly payment. According to the DWCPA annual audit, as of September 30, 2016, the balance on the original loan amount of \$2,103,000 in 2005 was still \$2,080,696, despite the DWCPA's having made \$1,560,089 in payments since 2005.⁷ Pursuant to the agreement, the interest rate on the loan is variable, but is not allowed to drop below 6%.

The Ambassador port revenue for FY 2015-16 is listed in the DWCPA audit, however the DWCPA has confirmed that it does not receive such payments from APC for use in the DWCPA operating budget. All \$205,720 was used as a loan payment by APC. The entirety of that payment, \$205,720, was 2.5% of gross receipts for FY 2015-16. This would suggest that 100% of gross receipts may have exceeded \$8.0 million for FY 2015-16. If not for the master concession agreement, it is possible that the DWCPA could be self-sustaining with that kind of revenue, even if it had to share most of it with a contractor to manage daily operations.

The DWCPA has confirmed that the reduction in appropriations in the coming fiscal year may force it to close its doors. If this happens, the APC's interest in the 34-acre facility it operates may also be at risk. The concession agreement transferred many of the DWCPA's powers to the APC, but it did not divest title to the property involved. If the DWCPA becomes insolvent, the master concession agreement requires that the City of Detroit take possession of the premises; however, the City of Detroit was not a party to the original agreement. Furthermore, Wayne County and the State may have a claim to the property as well.

⁶ *Memorandum from Division of Research and Analysis to the Detroit City Council* (March 17, 2006).

⁷ Detroit/Wayne County Port Authority Financial Statements: September 30, 2016 and 2015, p 11.