



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

September 30, 2020

Michigan House of Representatives
State Capitol
Lansing, MI 48909-7514
Representatives,

Today I have signed Enrolled House Bill 5396, making omnibus appropriations for the fiscal year ending September 30, 2021. As we navigate an economic crisis and global pandemic, I am pleased that the executive and legislative branches of government came together and produced a budget that funds the programs and services that matter most to our residents, including education, public health, economic development, public safety, and the environment. We worked together to do what is expected and demanded of us and we now have a budget that will serve Michigan well.

This collaborative approach precludes the need for transfers via the State Administrative Board, or extensive use of the line-item veto power. Negotiations, however, largely did not extend to the “boilerplate” language that guides implementation of the budget. Although budget boilerplate can be a useful tool, it must comply with the Michigan Constitution of 1963. To provide direction regarding implementation of this budget, I wish to highlight several constitutional requirements not strictly observed in the boilerplate. What follows is not an exhaustive list, and provisions highlighted below may have other constitutional infirmities.

1. Article 3, section 2 of the Michigan Constitution provides: “The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.”
 - Management of department operations is a core executive function. Boilerplate that requires weekly reporting to the Legislature on aspects of department operations, such as section 419 of the Corrections budget, infringes that executive function and is therefore unenforceable.
 - Hiring, discipline, and management of department personnel is a core executive function. Boilerplate that attempts to micromanage FTEs, staff ratios, workplace policies, or allocation of staff resources, such as section 309 of the Transportation budget and section 601 of the State Police budget, tramples on that executive function and is therefore unenforceable.
 - The deliberative decision-making process is a core executive function. Boilerplate that attempts to involve the Legislature in a department’s deliberative process, such as section 225 of the Military and Veterans Affairs budget, is therefore



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unenforceable.

2. Article 4, section 22 of the Michigan Constitution provides: “All legislation shall be by bill and may originate in either house.” Moreover, article 4, section 33 of the Michigan Constitution provides, in part: “Every bill passed by the legislature shall be presented to the governor before it becomes law”
 - Boilerplate that purports to authorize legislation other than by bill, such as section 218 of the Transportation budget, impermissibly skirts the bill requirement of section 22 and the presentment requirement of section 33 and is therefore unenforceable.
3. Article 4, section 24 of the Michigan Constitution provides, in part: “No law shall embrace more than one object, which shall be expressed in its title.”
 - Boilerplate that merely attempts to thwart the effectiveness of collective bargaining, such as section 225 of the Health and Human Services budget, introduces a second object into the legislation and is therefore unenforceable.
 - Boilerplate that merely attempts to force a department to act within an arbitrarily short period, such as section 540 of the Health and Human Services budget, introduces a second object into the legislation and is therefore unenforceable.
 - Boilerplate that merely attempts to force a department to meet with the Legislature’s preferred stakeholders, such as section 752 of the Transportation budget, introduces a second object into the legislation and is therefore unenforceable.
4. Article 4, section 25 of the Michigan Constitution provides: “No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length.”
 - Boilerplate that purports to alter the requirements of the Management and Budget Act, such as section 217 of the Licensing and Regulatory Affairs budget, impermissibly skirts the reenactment and publication requirements of section 25 and is therefore unenforceable.
 - Boilerplate that purports to restrict access to reproductive services by altering the requirements of Michigan statutes related to family planning services, such as section 1305 of the Health and Human Services budget, impermissibly skirts the reenactment and publication requirements of section 25 and is therefore unenforceable.



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- Boilerplate that purports to block investment in broadband infrastructure by altering the requirements of the Michigan Strategic Fund Act, such as section 983 of the General Government budget, impermissibly skirts the reenactment and publication requirements of section 25 and is therefore unenforceable.
 - Boilerplate that attempts to alter the requirements of Michigan statutes regarding who is responsible for paying for state audits, such as sections 229 and 1102 of the General Government budget, impermissibly skirts the reenactment and publication requirements of section 25 and is therefore unenforceable.
5. Article 4, section 53 of the Michigan Constitution provides: “[The Auditor General] shall be assigned no duties other than those specified in this section.”
- Boilerplate that attempts to assign new duties to the Auditor General, such as section 306 of the Transportation budget (requiring a “risk-based” approach), is unenforceable.
6. Article 5, section 28 of the Michigan Constitution provides, in part: “There is hereby established a state transportation commission, which shall establish policy for the state transportation department transportation programs and facilities, and such other public works of the state, as provided by law.”
- Boilerplate that attempts to dictate spending priorities reserved to the State Transportation Commission, such as section 386 of the Transportation budget, is unenforceable.
7. Finally, those provisions of this bill that express merely the intent, advice, preferences, or wishes of the Legislature do not impose conditions upon appropriations and are non-binding.

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gretchen Whitmer".

Gretchen Whitmer
Governor

cc: Michigan Senate
The Honorable Jocelyn Benson



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