



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

September 29, 2021

Michigan Legislature
State Capitol
Lansing, MI 48909

Senators and Representatives,

Today I was proud to sign Enrolled Senate Bill 82 and Enrolled House Bill 4400, which together form the Fiscal Year 2022 state budget. These bipartisan budgets put Michiganders first, making historic investments to help Michiganders get ahead. When we work together, we can deliver on the kitchen-table priorities that matter most – growing the middle class, supporting our small businesses, and investing in our communities.

We have proven that together, following the guidance of doctors and public health officials, we can keep families and kids safe, businesses thriving, and classrooms open for in-person learning. That means masking up in school because kids can't get vaccinated yet. And it means getting the safe, effective vaccine so that we're protected from hospitalization and death.

The Public Health Code gives health officials the tools they need to protect people from epidemic diseases like COVID-19. The legislature cannot unwind the Public Health Code in a budget bill or un-appropriate funds because they take issue with the actions of local health departments. Budget boilerplate that purports to prohibit state or local health officials from issuing mask and quarantine orders or to penalize local health departments for using their powers under the Public Health Code violates the Michigan Constitution. Consistent with my duty to uphold the constitution, I will not allow unconstitutional budget language to take effect.

I'm grateful that this legislation preserves the ability of state and local governments to protect their employees from COVID-19. Section 222 of Article 1 – a version of which recurs in each department's budget – provides a roadmap for public employers to ensure their employees either receive the safe and effective COVID-19 vaccine or undergo regular testing to keep their co-workers safe. It also avoids any conflict with federal law, recognizing that federal authorities may issue vaccination requirements.

Finally, I am using my veto pen to nix seven anti-choice line items. These line items would create a gag rule preventing reproductive health service providers from even mentioning abortion and otherwise make it hard for women to get the healthcare they need. Even as the U.S. Supreme Court allows Texas's extreme anti-choice law to take effect, abortion is still safe and legal in Michigan. I will continue to stand in the way of any efforts to strip away fundamental rights from women or get in the way of doctors' ability to do their jobs.

In addition, I note the following boilerplate provisions that violate the Michigan Constitution and will therefore not take effect:

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.” Core executive branch functions include management of department operations; hiring, discipline, and management of personnel; and deliberative decision-making, among others. Boilerplate that attempts to insert the legislature into core executive functions violates the constitutional separation of powers. Accordingly, each of the following provisions is unenforceable:
 - Certain boilerplate provisions that appear in multiple articles, such as Department of Agriculture and Rural Development, Article 1, sections 215, 217, and 218.
 - Department of Corrections, Article 2, sections 304, 316, and 942.
 - General Government, Article 5, sections 229, 314(3), 714, 718, 816, 836, 863, 947.
 - Department of Health and Human Services, Article 6, sections 225, 229, 517, 518, 595, 1222(4), and 1508. Section 514 is also unenforceable to the extent that it requires the Department to comply with recommendations in an Office of Auditor General report.
 - Department of Military and Veterans Affairs, Article 10, sections 409 and 453. Section 224 is also unenforceable to the extent that it bars the department from taking an action otherwise permitted by law.
 - Department of Natural Resources, Article 11, section 602.
 - Department of State Police, Article 12, sections 226, 233, 234, 601(2), 602(2)-(5), 603(3), 604(2), 701(3)-(4), 702(2)-(8), and 704(8)-(9). Section 225 is also unenforceable to the extent that it bars the department from taking an action otherwise permitted by law.
 - Department of Transportation, Article 13, sections 353 and 357

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 Article 1, impermissibly skirts the bill requirement of section 22 and the presentment requirement of section 33 and is therefore unenforceable.

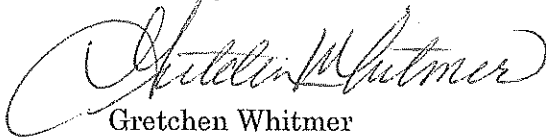
3. Article 4, section 24 of the Michigan Constitution provides, in part: “No law shall embrace more than one object, which shall be expressed in its title.” Accordingly, because each introduces a second object into SB 82, the following provisions are unenforceable:
 - General Government, Article 5, section 836.
 - Department of Health and Human Services, Article 6, section 518.
 - Department of Transportation, Article 13, sections 601 and 660(2).

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 alters statutory requirements with reenactment and publication is therefore unconstitutional and void. Accordingly, each of the following provisions is unenforceable:
 - Department of Environment, Great Lakes, and Energy, Article 4, sections 225 and 237.
 - General Government, Article 5, sections 229, 624, 625, 718, 983, 1009 and 1056.

- Department of Health and Human Services, Article 6, sections 218, 250, 518, 595, 1222(4), 1305, and 1347.
 - Department of Licensing and Regulatory Affairs, Article 9, sections 510 and 803.
 - Department of Natural Resources, Article 11, section 602.
 - Department of Transportation, Article 13, section 302 and 382.
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.” Any provision that assigns the Legislative Auditor General powers and duties other than those provided for in that section is therefore unconstitutional.
 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.” Any provision that dictates spending priorities reserved to the State Transportation Commission is therefore unconstitutional.
 7. Article 8, sections 5 and 6 of the Michigan Constitution grant each board of an institution of higher education in this state “general supervision of its institution and the control and direction of all expenditures from the institution’s funds.” Any provision that deprives an institution of higher education with the supervisory control and budgetary independence provided by those sections is therefore unconstitutional.
 8. Article 11, section 5 of the Michigan Constitution vests the power to “regulate all conditions of employment in the classified service” in the Civil Service Commission. Any provision that abrogates that exclusive grant of authority is therefore unconstitutional.

Thank you for your attention to these matters.

Sincerely,



Gretchen Whitmer
Governor

cc: Michigan Senate
The Honorable Jocelyn Benson