

**DATE:** September 10, 2007

**TO:** House Fiscal Agency Governing Board  
Members of the House Appropriations Committee

**FROM:** Mitchell E. Bean, Director

**RE:** Implications of Having No Budget in Place by October 1, 2007, or  
Passing an Interim Budget

Members have inquired about the authority of the administration to continue to fund critical services if there is no budget in place by October 1, 2007. Members have also inquired about the feasibility and implications of creating an interim continuation budget in the event that full-year budgets are not enacted by October 1, 2007.

The State Budget Office asked the Attorney General for advice on these matters. We have discussed these issues with the State Budget Office and read the advisory provided to them by the Attorney general.

Although an interim budget may be enacted, it must satisfy all the constitutional provisions that a normal fiscal year budget is required to include. ***Without a budget of some sort in place October 1, however, the administration has no legal authority to fund essential services.***

It is important to note that the Office of Financial Management has determined that in order to make critical payments due October 1, and to avoid violating the State Constitution provision prohibiting payments without an appropriation, a budget of some type needs to be in place when the Legislature adjourns on September 27.

Important points from the Attorney General advisory and our discussions are summarized below.

### ***No-Budget Scenario***

Article 9, Section 17, Constitution of the State of Michigan, prohibits payments from the state treasury without an appropriation. ***There are no constitutional exceptions for expenditures for bond payments or "essential services."***

The absence of an appropriation puts all state contracts in jeopardy. If there is no budget in place on October 1, the state has no ability to pay employees, pay for any contracts, etc. (Op No 6707)

In general, payments could be made only from legitimately-encumbered funds—such as work project accounts—and from multi-year appropriation bills if they are valid for the current fiscal period and ensuing fiscal period.

Please be advised that there are a number of critical payments that need to be in the hands of recipients by October 1.

We have been advised by the Office of Financial Management that in order to make payments by October 1 using the current accounting system, spending authority must be in place by September 24. There is, however, a way the system can be circumvented that would extend the deadline until September 27, when the Legislature adjourns.

An estimate—based on payments made October 1, 2006—of payments that are considered to be critical includes:

**Actual Payments Made October 1, 2006**

<u>Payment</u>	<u>Department</u>	<u>October 1, 2006 Amount Paid</u>	
Adoption subsidy payrolls	Human Services	\$17,500,000	Warrants due to clients
Electronic benefits program	Human Services	\$9,500,000	Contractual agreement
Supplemental income	Human Services	\$2,350,000	Contractual agreement
Medicaid weekly payrolls-warrants	Community Health	\$16,000,000	Non-statutory
Medicaid weekly payrolls-EFTs	Community Health	\$118,000,000	Non-statutory
CMH payments-warrants	Community Health	\$1,667,030	Non-statutory
CMH payments-EFTs	Community Health	\$34,395,645	Non-statutory
SBA bond payments-warrants	Management & Budget	\$4,840,000	Bond covenants
SBA bond payments-EFTs	Management & Budget	\$12,930,000	Bond covenants
MSHDA housing/utility allowances	Labor/Economic Growth	\$9,100,000	Mortgage payments
Municipal bond authority	Treasury	\$2,125,000	Bond covenants
Debt service payments	Treasury	\$13,764,000	Bond covenants
Debt service interest payments	Transportation	\$16,839,187	Bond covenants
<b>TOTAL PAID</b>		<b>\$259,010,862</b>	

The impact on state employee paychecks would occur on October 18, 2007, when—due to the two-week lag in payroll—warrants would include only one week of pay.

While Article 9, Section 17, prohibits payments without appropriation, it does not prohibit the state from incurring costs. Costs would continue to be incurred for goods and services until cancellation notices within contractual agreements have been issued and taken effect. It is important to note that if a breach of contract for failure to pay were to occur, it could create a significant legal and financial liability for the state. In addition, there would be long-term negative consequences for the state's credit rating and for the ability of the state to conduct business in the future.

The Civil Service Commission has broad authority to define the rules of state employment (Const 1963, Article 11, Section 5). The Civil Service Commission retains authority to approve rules that apply immediately to all classified employees (Rule 6-3.6). Under this broad authority, the Civil Service Commission could define the state/employee relationship to include "essential services" that could be maintained. However, payment for "essential services" would still require an appropriation.

Temporary furloughs for state employees require advance notice from the Civil Service Commission, Office of State Employer, and/or appointing authority. Employees covered by SOCC—the Governor, Lt. Governor, Secretary of State, Attorney General, Legislators, and Judges—can continue to work, but no SOCC employee would be paid.

Although the Michigan Supreme Court has ruled that 1951 PA 51—the Michigan Transportation Fund distribution formula—is a continuing appropriation, the Michigan Department of Transportation cannot spend non-constitutionally dedicated funding without a budget bill.

Legally, the Governor can issue emergency orders only for weather-related public safety emergencies and invasions. There is no provision for ordering continuation of "essential services."

### ***Interim Budget Scenario***

An interim budget is permitted, but it must fulfill the requirements of Article 4, Section 31, of the State Constitution including:

- Each house must vote on (pass/reject, but no conference committee required) the FY 2008 executive budget bills before acting on any other FY 2008 budget bill. This requirement applies to an interim budget, and it will be fulfilled when the House passes the last remaining budget bill—the General Government bill.
- One of the FY 2008 executive budget bills as voted on by the Legislature must contain an itemized statement of estimated revenue for the ensuing fiscal period.
- An interim budget must contain an itemized statement of estimated revenue for the ensuing fiscal period. Since "fiscal period" is indefinite (Op No 6788), these are uncharted waters. Informal legal advice from the Attorney General is that the estimated revenue should be at a full fiscal year level, but the appropriation may be at a one-week level, a one-month level, a three-month level, or for some other period of time.

An interim budget must also be consistent with other constitutional references to "fiscal year" requirements, including the following:

- Appropriations for the Civil Service Commission must be made. The State Constitution provides that the Legislature must appropriate funds for a fiscal year. It does not, however, indicate how much or by when the funding must be appropriated. Therefore, there could be consecutive appropriations that equal the fiscal year total mandated by the Constitution.
- The Proposal A guarantee and Supreme Court-ordered special education payments must be made. As with the Civil Service Commission, the State Constitution provides that the Legislature must appropriate funds for a fiscal year; it does not, however, indicate how much or by when. Therefore, there could be consecutive appropriations that equal the fiscal year total mandated by the Constitution.

- Any other constitutional guarantees, including the Headlee provisions, must be complied with in an interim budget.

Please note that the Attorney General has also advised that the three-month interim budget enacted via 1980 PA 268 had numerous statutory and constitutional problems, including:

- Violation of Article 4, Section 25, of the Constitution (amendment by reference without republication).
- An interim budget cannot enact an appropriation by referencing a percentage of prior-year appropriation bills and supplemental bills.
- Article 5, Section 19 (line-item veto authority), is violated by a lump-sum appropriation, because it does not permit the Governor to exercise line-item veto authority unless there are boilerplate allocations that are equivalent to a line item appropriation in Section 1.

The advisory furnished to the State Budget Office by the Attorney General's staff provided guidance on how an interim budget could be prepared that would satisfy state law. The House Fiscal Agency will prepare an interim budget that satisfies state law, if instructed to do so.

If you have any questions, please call me.

c: Key Staff

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