

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

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021**

Introduced by Reps. Huizenga and Albert

ENROLLED HOUSE BILL No. 4400

AN ACT to amend 1979 PA 94, entitled "An act to make appropriations to aid in the support of the public schools, the intermediate school districts, community colleges, and public universities of the state; to make appropriations for certain other purposes relating to education; to provide for the disbursement of the appropriations; to authorize the issuance of certain bonds and provide for the security of those bonds; to prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to create certain funds and provide for their expenditure; to prescribe penalties; and to repeal acts and parts of acts," by amending sections 201, 206, 207a, 207b, 207c, 209, 209a, 210b, 220, 222, 223, 226b, 226d, 229, 229a, 230, 236, 236b, 236c, 241, 245, 245a, 256, 259, 260, 263, 264, 265, 265b, 267, 268, 269, 270c, 274, 274d, 275d, 275f, 275g, 275h, 275i, 276, 277, 278, 279, 280, 281, 281a, 282, 285, 286, and 291 (MCL 388.1801, 388.1806, 388.1807a, 388.1807b, 388.1807c, 388.1809, 388.1809a, 388.1810b, 388.1820, 388.1822, 388.1823, 388.1826b, 388.1826d, 388.1829, 388.1829a, 388.1830, 388.1836, 388.1836b, 388.1836c, 388.1841, 388.1845, 388.1845a, 388.1856, 388.1859, 388.1860, 388.1863, 388.1864, 388.1865, 388.1865b, 388.1867, 388.1868, 388.1869, 388.1870c, 388.1874, 388.1874d, 388.1875d, 388.1875f, 388.1875g, 388.1875h, 388.1875i, 388.1876, 388.1877, 388.1878, 388.1879, 388.1880, 388.1881, 388.1881a, 388.1882, 388.1885, 388.1886, and 388.1891), sections 201, 206, 207a, 207b, 207c, 209, 209a, 222, 223, 229, 229a, 230, 236, 236b, 236c, 241, 245, 245a, 256, 263, 264, 265, 265b, 267, 268, 269, 276, 277, 278, 279, 280, 281, and 282 as amended and sections 226b, 226d, 259, 260, 270c, 275f, 275g, 275h, 275i, and 281a as added by 2020 PA 165, section 210b as amended by 2019 PA 52, section 220 as amended by 2016 PA 249, section 274 as amended and section 275d as added by 2019 PA 62, section 274d as amended by 2018 PA 265, sections 285 and 291 as amended by 2012 PA 201, and section 286 as amended by 2015 PA 85, and by adding sections 201e, 210g, 210h, 226f, 226g, 236h, 236i, 275j, and 286b; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 201. (1) Subject to the conditions set forth in this article, the amounts listed in this section are appropriated for community colleges for the fiscal year ending September 30, 2022, from the funds indicated in this section. The following is a summary of the appropriations in this section:

(a) The gross appropriation is \$431,917,000.00. After deducting total interdepartmental grants and intradepartmental transfers in the amount of \$0.00, the adjusted gross appropriation is \$431,917,000.00.

(b) The sources of the adjusted gross appropriation described in subdivision (a) are as follows:

(i) Total federal revenues, \$0.00.

(ii) Total local revenues, \$0.00.

(s) The appropriation for Muskegon Community College is \$9,431,700.00, \$9,289,100.00 for operations, \$85,100.00 for 1-time performance funding, and \$57,500.00 for costs incurred under the North American Indian tuition waiver.

(t) The appropriation for North Central Michigan College is \$3,612,700.00, \$3,389,300.00 for operations, \$42,200.00 for 1-time performance funding, and \$181,200.00 for costs incurred under the North American Indian tuition waiver.

(u) The appropriation for Northwestern Michigan College is \$9,906,900.00, \$9,567,100.00 for operations, \$88,600.00 for 1-time performance funding, and \$251,200.00 for costs incurred under the North American Indian tuition waiver.

(v) The appropriation for Oakland Community College is \$22,485,200.00, \$22,211,700.00 for operations, \$240,000.00 for 1-time performance funding, and \$33,500.00 for costs incurred under the North American Indian tuition waiver.

(w) The appropriation for Schoolcraft College is \$13,386,700.00, \$13,196,200.00 for operations, \$151,700.00 for 1-time performance funding, and \$38,800.00 for costs incurred under the North American Indian tuition waiver.

(x) The appropriation for Southwestern Michigan College is \$7,081,900.00, \$6,979,400.00 for operations, \$68,400.00 for 1-time performance funding, and \$34,100.00 for costs incurred under the North American Indian tuition waiver.

(y) The appropriation for St. Clair County Community College is \$7,478,700.00, \$7,385,200.00 for operations, \$78,400.00 for 1-time performance funding, and \$15,100.00 for costs incurred under the North American Indian tuition waiver.

(z) The appropriation for Washtenaw Community College is \$14,080,600.00, \$13,855,900.00 for operations, \$189,400.00 for 1-time performance funding, and \$35,300.00 for costs incurred under the North American Indian tuition waiver.

(aa) The appropriation for Wayne County Community College is \$17,782,100.00, \$17,593,400.00 for operations, \$173,700.00 for 1-time performance funding, and \$15,000.00 for costs incurred under the North American Indian tuition waiver.

(bb) The appropriation for West Shore Community College is \$2,630,600.00, \$2,585,600.00 for operations, \$24,800.00 for 1-time performance funding, and \$20,200.00 for costs incurred under the North American Indian tuition waiver.

(3) The amount appropriated in subsection (2) for community college operations is \$328,583,400.00 and is appropriated from the state school aid fund.

(4) From the appropriations described in subsection (1), both of the following apply:

(a) Subject to section 207a, the amount appropriated for fiscal year 2021-2022 to offset certain fiscal year 2021-2022 retirement contributions is \$1,733,600.00, appropriated from the state school aid fund.

(b) For fiscal year 2021-2022, there is allocated an amount not to exceed \$11,700,000.00 for payments to participating community colleges, appropriated from the state school aid fund. A community college that receives money under this subdivision shall use that money solely for the purpose of offsetting the normal cost contribution rate.

(5) From the appropriations described in subsection (1), subject to section 207b, the amount appropriated for payments to community colleges that are participating entities of the retirement system is \$87,200,000.00 appropriated from the state school aid fund.

(6) From the appropriations described in subsection (1), subject to section 207c, the amount appropriated for renaissance zone tax reimbursements is \$2,200,000.00, appropriated from the state school aid fund. Each community college receiving funds in this subsection shall accrue these payments to its institutional fiscal year ending June 30, 2022.

~~(7) The amount appropriated for pregnant and parenting student services is \$500,000.00, appropriated from the state school aid fund, and subject to the conditions of the pregnant and parenting student services act, 2004 PA 500, MCL 390.1531 to 390.1536.~~

Sec. 201e. (1) In addition to the funds appropriated under section 201(2) for community college operations, for the fiscal year ending September 30, 2021 only, there is appropriated an amount not to exceed \$12,696,000.00 from the state school aid fund for operational support payments. These funds are intended to be used for the same purposes as the funds appropriated under section 201(2) for community college operations.

(2) From the amount appropriated under subsection (1), each community college is allocated the following:

(a) Alpena Community College, \$225,700.00.

(b) Post the information contained in the report described in subdivision (a) on the public transparency website described in section 209.

Sec. 226d. It is the intent of the legislature that by February 1, 2022, each community college shall submit to the senate and house appropriations subcommittees on community colleges, the senate and house fiscal agencies, and the state budget director a report on activities related to strategic planning and internal assessment or reassessment to best provide for open and free expression and speech, while protecting students from hate-speech, violence, and discrimination.

Chu ~~Sec. 226f. (1) From the funds appropriated for pregnant and parenting student services in section 201, a community college may establish and operate a pregnant and parenting student services office. If established, an office shall meet all of the following:~~

- ~~(a) Be located on the campus of the community college.~~
- ~~(b) Annually assess the performance of the community college and the office in meeting all of the following needs of students on campus who are pregnant or who are a custodial parent or legal guardian of a minor:~~
 - ~~(i) Comprehensive student health care.~~
 - ~~(ii) Family housing.~~
 - ~~(iii) Child care.~~
 - ~~(iv) Flexible or alternative academic scheduling.~~
 - ~~(v) Education concerning responsible parenting for mothers and fathers.~~
- ~~(c) Identify public and private service providers qualified to meet the needs described in subdivision (b), both on campus and within the local community, and establish programs with qualified providers it selects to meet those needs.~~
- ~~(d) Assist students in locating and obtaining services that meet 1 or more of the needs described in subdivision (b).~~
- ~~(e) If appropriate, provide referrals on prenatal care and delivery, infant or foster care, adoption, and family planning, to individual students who request that information. An office shall not provide referrals for abortion services.~~

Chu ~~(2) By December 1, 2022, a community college that establishes a pregnant and parenting student services office shall report to the house and senate appropriations subcommittees on community colleges, the house and senate fiscal agencies, and the state budget director all of the following:~~

- ~~(a) An itemized list of office expenditures during the preceding fiscal year.~~
- ~~(b) A review and evaluation of the performance of the office in fulfilling its obligations under this section.~~
- ~~(c) The number of students served by the office.~~

Sec. 226g. (1) It is the intent of the legislature that each community college adopt an advocacy policy applicable to faculty, staff, students, student employees, visitors, and contractors by January 1, 2022 and comply with all other requirements of this section.

(2) An advocacy policy established under subsection (1) should include, but is not limited to, policies for distribution and self-distribution of printed political or advocacy materials related to First Amendment activities and political demonstrating. The policy should include a process for filing a complaint or reporting a violation of the advocacy policy and identify the community college staff responsible for investigating complaints and violations. The advocacy policy should include the effective date and be posted on the community college's website.

Sec. 229. (1) Each community college that receives an appropriation in section 201 is expected to include in its admission application process a specific question as to whether an applicant for admission has ever served or is currently serving in the United States Armed Forces or is the spouse or dependent of an individual who has served or is currently serving in the United States Armed Forces, in order to more quickly identify potential educational assistance available to that applicant.

(2) It is expected that each community college that receives an appropriation in section 201 shall work with the house and senate community college subcommittees, the Michigan Community College Association, and veterans groups to review the issue of in-district tuition for veterans of this state when determining tuition rates and fees.

(l) The appropriation for University of Michigan -- Dearborn is \$26,593,700.00, \$26,167,000.00 for operations, \$261,700.00 for 1-time supplemental funding, and \$165,000.00 for costs incurred under the North American Indian tuition waiver.

(m) The appropriation for University of Michigan -- Flint is \$24,197,400.00, \$23,616,200.00 for operations, \$236,200.00 for 1-time supplemental funding, and \$345,000.00 for costs incurred under the North American Indian tuition waiver.

(n) The appropriation for Wayne State University is \$205,496,400.00, \$202,996,700.00 for operations, \$2,030,000.00 for 1-time supplemental funding, and \$469,700.00 for costs incurred under the North American Indian tuition waiver.

(o) The appropriation for Western Michigan University is \$113,432,700.00, \$111,522,200.00 for operations, \$1,115,200.00 for 1-time supplemental funding, and \$795,300.00 for costs incurred under the North American Indian tuition waiver.

(3) The amount appropriated in subsection (2) for public universities is \$1,553,483,000.00, appropriated from the following:

(a) State school aid fund, \$343,168,300.00.

(b) State general fund/general purpose money, \$1,210,314,700.00.

(4) The amount appropriated for Michigan public school employees' retirement system reimbursement is \$13,495,000.00, appropriated from the state school aid fund.

(5) The amount appropriated for state and regional programs is \$316,800.00, appropriated from general fund/general purpose money and allocated as follows:

(a) Higher education database modernization and conversion, \$200,000.00.

(b) Midwestern Higher Education Compact, \$116,800.00.

(6) The amount appropriated for the Martin Luther King, Jr. - Cesar Chavez - Rosa Parks program is \$2,691,500.00, appropriated from general fund/general purpose money and allocated as follows:

(a) Select student support services, \$1,956,100.00.

(b) Michigan college/university partnership program, \$586,800.00.

(c) Morris Hood, Jr. educator development program, \$148,600.00.

(7) Subject to subsection (8), the amount appropriated for grants and financial aid is \$147,783,200.00, allocated as follows:

(a) State competitive scholarships, \$29,861,700.00.

(b) Tuition grants, \$42,021,500.00.

(c) Tuition incentive program, \$71,300,000.00.

(d) Children of veterans and officer's survivor tuition grant programs, \$1,400,000.00.

(e) Project GEAR-UP, \$3,200,000.00.


(8) The money appropriated in subsection (7) for grants and financial aid is appropriated from the following:

(a) Federal revenues under the United States Department of Education, Office of Elementary and Secondary Education, GEAR-UP program, \$3,200,000.00.

(b) Federal revenues under the social security act, temporary assistance for needy families, \$125,326,400.00.

(c) State general fund/general purpose money, \$19,256,800.00.

(9) For fiscal year 2021-2022 only, in addition to the allocation under subsection (4), from the appropriations described in subsection (1), there is allocated an amount not to exceed \$4,740,000.00 for payments to participating public universities, appropriated from the state school aid fund. A university that receives money under this subsection shall use that money solely for the purpose of offsetting the normal cost contribution rate. As used in this subsection, "participating public universities" means public universities that are a reporting unit of the Michigan public school employees' retirement system under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437, and that pay contributions to the Michigan public school employees' retirement system for the state fiscal year.

 ~~(10) The amount appropriated for pregnant and parenting student services is \$500,000.00, appropriated from the state general fund/general purpose money, and subject to the conditions of the pregnant and parenting student services act, 2004 PA 500, MCL 390.1591 to 390.1596.~~

(11) The amount of one-time funding appropriated for the Japan Center for Michigan Universities is \$500,000.00, appropriated from the state general fund/general purpose money and allocated to support the operations of the Japan Center.

(5) Every public university shall submit a written report regarding its actions taken under this section no later than March 15 of each year to the senate and house appropriations subcommittees on higher education, the senate and house fiscal agencies, and the state budget director. This annual report must include the following information, which may be obtained from any reliable source that complies with applicable laws regarding student privacy:

- (a) The number of students who have requested an exemption from the public university's COVID-19 vaccine policy.
- (b) The number of students who have been granted an exemption.

~~Sec. 275j. (1) Subject to section 282, appropriations in section 236 for the pregnant and parenting student support services program are for developing academically or economically disadvantaged student retention programs for 4-year public and independent educational institutions in this state. Preference may not be given to participants on the basis of race, color, ethnicity, gender, or national origin. Institutions should encourage participation from those who would otherwise not adequately be represented in the student population.~~

~~(2) An award made under this program to an individual institution must not be greater than \$50,000.00, and the amount awarded must be matched on a 70% state, 30% college or university basis.~~

~~(3) The department of labor and economic opportunity shall administer the program. All of the following apply to the program:~~

~~(a) The institution shall provide a physical location for the program on its campus.~~

~~(b) The department of labor and economic opportunity shall annually assess the performance of the institution in meeting the following needs of students on campus who are pregnant or who are a custodial parent or legal guardian of a minor:~~

~~(i) Comprehensive student health care.~~

~~(ii) Family housing.~~

~~(iii) Child care.~~

~~(iv) Flexible or alternative academic scheduling.~~

~~(v) Education concerning responsible parenting for mothers and fathers.~~

~~(c) The institution shall identify public and private service providers qualified to meet the needs described in subdivision (b), both on campus and within the local community, and establish programs with qualified providers it selects to meet those needs.~~

~~(d) The institution shall assist students in locating and obtaining services that meet 1 or more of the needs described in subdivision (b).~~

~~(e) If appropriate, the institution shall provide referrals on prenatal care and delivery, infant or foster care, adoption, and family planning to individual students who request that information. An approved program shall not provide referrals for abortion services.~~

~~(4) By December 1, 2022, institutions that establish a pregnant and parenting student support services program shall report to the house and senate subcommittees on higher education, the house and senate fiscal agencies, and the state budget director all of the following:~~

~~(a) A review and evaluation of the performance of the program in fulfilling its goals and objectives.~~

~~(b) The number of students served.~~

~~(c) The number and percentage of program graduates.~~

Sec. 276. (1) Included in the appropriation for fiscal year 2021-2022 for each public university in section 236 is funding for the Martin Luther King, Jr. - Cesar Chavez - Rosa Parks future faculty program that is intended to increase the pool of academically or economically disadvantaged candidates pursuing faculty teaching careers in postsecondary education in this state. Preference may not be given to applicants on the basis of race, color, ethnicity, gender, or national origin. Institutions should encourage applications from applicants who would otherwise not adequately be represented in the graduate student and faculty populations. Each public university shall apply the percentage change applicable to every public university in the calculation of appropriations in section 236 to the amount of funds allocated to the future faculty program.

(2) The program shall be administered by each public university in a manner prescribed by the department of labor and economic opportunity. The department of labor and economic opportunity shall use a good faith effort standard to evaluate whether a fellowship is in default. All of the following apply to the program:

- (a) By April 15 of each year, public universities shall report any anticipated unexpended or unencumbered