

OFFICE OF THE ADMINISTRATOR

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To the Kent County Board of Commissioners
Re: State of Michigan Budget FY 2021-22

September 30, 2021

Last week the Michigan Legislature passed a budget making specific appropriations to fund the Michigan state government and programs that are run through or by local units of government including Kent County. The Legislature included various “boilerplate” statements not tied to a specific appropriation. The boilerplate language concerned activities of multiple departments including the Department of Agriculture and Rural Development, Corrections, Military and Veterans Affairs, Natural Resources, Transportation, and Health and Human Services.

Questions have been raised about the impact of the boilerplate on Kent County and specifically on the Kent County Health Department and its public health orders that remain in effect. I met with and discussed this matter with our Corporate Counsel Linda Howell. The boilerplate language, the written statement of the Governor, and the Michigan Constitution, the boilerplate have been reviewed and analyzed. The language will have no effect on Kent County, its budget, its Health Department, or existing public health orders.

Additionally, former Attorney General Mike Cox in a written opinion, a copy of which is attached, confirmed the prior conclusions of our counsel concerning the Board’s lack of power to override a health officer’s order or terminate a health officer for issuing an order also were confirmed.

The Legislature’s boilerplate statements attempted to change or amend the existing laws under which the various departments operate, including the Public Health Code. The boilerplate concerning the Public Health Code revolved around mask mandates and attempted to amend the authority of a local health officer in connection with a particular section of the Public Health Code. This section is one of the bases – but not the only basis – for mask mandates currently in place.

The Governor confirmed that the boilerplate concerning the Public Health Code has no effect under the Michigan Constitution for multiple reasons [Article 3, section 2; Article 4, section 22; Article 4, section 24; Article 4, section 25]. Prominent among the reasons supporting a conclusion that the boilerplate is unconstitutional are the Constitution’s requirement that the Legislature must formally amend a statute if it so desires. It can’t amend a law through a budget bill. See Article 4, Section 24 and Article 4, Section 25 of the Michigan Constitution. The Governor’s position is that trying to change a statute through boilerplate in an appropriation bill violates the separation of powers between the Legislature and the Executive branches of our government and the established process for amending an existing statute. A representative of the Governor confirmed that the Governor’s Office reviewed this matter with the Attorney General’s Office and the Attorney General’s Office concurred in the conclusion that the boilerplate is unconstitutional and unenforceable.

As a result, the Governor declared that the boilerplate is unconstitutional and unenforceable. A copy of the Governor’s written statement is attached.

The Governor's Office confirmed that appropriations passed by Legislature would be funded, including funding appropriated for local health departments. The funding will be transmitted to receiving entities in accordance with established schedules for each funding stream. The first installment of funding for local health departments will be sent as scheduled on October 1, 2021. This funding is the general funding for health departments and their programs and is not limited to funds connected with the control of the pandemic and COVID-19, but includes vital services such as well and septic inspections and permits, restaurant licensing and inspections, hearing and vision checks, clinic operations, etc.

The Governor's representatives also stated the Governor is committed to defending any lawsuits that may be filed against her, her office, counties, and / or local health departments by anyone who believes the boilerplate to be enforceable.

The current mask mandate issued by the Kent County Health Officer remains in effect until it expires by its own terms (The PreK-Grade 6 mask mandate "remains in effect until 60 days past the date COVID-19 vaccine is authorized or approved by the FDA and available to persons in pre-kindergarten through grade six, or community transmission for Kent County is categorized as "Low" by the CDC for at least seven consecutive days, or until further notice from the Administrative Health Officer." A copy of the Public Health Order is available at this link: <https://www.accesskent.com/Health/covid-19-public-orders.htm>).

The Kent County Health Department will continue to serve the residents and businesses of Kent County through all its programs while continuing to act to protect the community from COVID – 19.



Alan G. Vanderberg
Kent County Administrator

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