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MANAGEMENT AND BUDGET ACT

Senate Bill 259 with House committee amendments
First Analysis (2-24-99)

Sponsor: Sen. Harry Gast
House Committee: Appropriations
Senate Committee: none

THE APPARENT PROBLEM:

On January 27, 1999, the governor vetoed a bill that would have updated the Management and Budget Act, a bill that was passed during that last session of the legislature as Senate Bill 773. In his veto message, the governor praised several of the bill's provisions "particularly as they relate to the legislatively mandated capital outlay process." However, in the veto message, the governor raised objections to the way the bill limited the budget director's authority over work project funds. (See *BACKGROUND INFORMATION* for the text of the veto message.)

The Management and Budget Act, which governs the state's administrative and procedural budgeting system, was codified as Public Act 431 of 1984. Although the act, a law that delineates both administrative practices and budgeting procedures, is amended from time to time, there has not been a comprehensive review and update of the act since 1988.

Beginning in 1992 and continuing intermittently throughout the past three legislative sessions, a committee constituted by representatives from the legislative branch of government (including legislators, the auditor general, and the fiscal agencies) and the executive branch of government (including the Departments of Management and Budget [DMB], and Treasury) reviewed the provisions of the act, the internal procedures of the DMB and Treasury, and the departments' responsibilities vis à vis the legislative appropriations and joint capital outlay committees. During this comprehensive review of the Management and Budget Act, the first in more than 10 years, it became apparent that substantial modifications to the act were needed, since it provides for the powers, duties, functions, and authority of the Department of Management and Budget, and also because it serves as the overarching administrative framework for state government.

Although the governor vetoed Senate Bill 773 at the end of the last legislative session, expressing specific objections to the manner in which the bill would have limited the power of the executive branch and its budget director to control work projects, some in the legislative and executive branches of government continue to argue that the Management and Budget Act should be modernized, and that among the practices and procedures that should be updated are those that govern joint capital outlay, the budget stabilization fund, budget transfers, work projects, facility leases, information technology projects, and personal services contracts, among others. Further, they propose that some sections of the act be repealed.

THE CONTENT OF THE BILL:

Senate Bill 259 would amend 52 sections, and repeal 19 sections, of the Management and Budget Act, Public Act 431 of 1984. Among the many changes that are proposed are several major policies, as well a host of other provisions that are described below.

<u>Joint Capital Outlay Five Year Plans.</u> The bill would amend the act to include a revised joint capital outlay process, including new provisions to allow for project reviews by technical experts during the capital outlay process. The new review procedures would require five-year capital outlay plans for state agencies and colleges and universities, and would establish project phases for planning, review, and the submission of detailed cost studies before new buildings are authorized. [Sections 113, 237, 237a, 242, 246, and 248]

Currently, the joint capital outlay committee of the legislature follows a thirteen-step process to approve new building construction. That process begins when a state agency or institution (for example, a public university) makes a project request. Typically, the executive budget for the coming fiscal year then includes all or a part of that project's cost, and the legislature authorizes the total project cost. A program statement is then approved by DMB, and the joint capital outlay subcommittee (JCOS) of the Appropriations Committee authorizes release of schematic planning funds. Schematic plans are submitted to DMB for approval, and then DMB submits the schematic plans to JCOS for approval, also requesting release of the preliminary plans. The preliminary plans are submitted to DMB for approval, and DMB then submits the preliminary plans to JCOS for approval. Then, final plans are submitted to DMB for review and construction bidding. DMB oversees construction for any state agency project, and colleges and universities oversee their own projects. The State Building Authority pays for or reimburses an agency for the project near its completion date, and once the project is completed, the process draws to a close.

The capital outlay process that is proposed by Senate Bill 259 would be identical to the capital outlay process used in the capital outlay bill (Senate Bill 906) during December 1998, now enacted as Public Act 538 of 1998. Senate Bill 259 would require that all state agencies, and colleges and universities, develop a five-year capital outlay plan, and submit their capital outlay requests annually to DMB. Using a three-step process (authorization, design, and construction), DMB would include approved requests in the executive budget with sufficient funds for program and schematic planning. JCOS and the legislature would authorize planning through the appropriation process. Then, DMB or colleges and universities would select professional services to prepare program statements and schematic plans. Those documents would be submitted to JCOS for approval, and upon approval, final authorization would be provided by including the total cost in an appropriations bill. Then, DMB would select professional services, and would review and approve preliminary plans. Final plans would be submitted for review and construction bidding, with the bid results submitted to DMB and forwarded to the JCOS. As with the current process, DMB would oversee state agency projects, and college and universities would oversee their projects. The State Building Authority would pay for or reimburse an agency near completion, and once the project is completed, the process would draw to a close.

Senate Bill 259 provides that appropriations made for final design and construction would not lapse at the end of the fiscal year. However, each project that has been authorized for final design and construction for three years or more and where construction has not commenced would be terminated.

Senate Bill 259 would define "capital outlay" to mean a project or facility financed either in whole or in part with state funds, including lease purchase agreements, that has the purpose of construction, renovating, or equipping a building or facility for which total project costs exceed $1,000,000. These projects may be on state-owned property, property owned by an institution of higher education, property owned by community colleges, or property under the control of the State Building Authority.

<u>Budget Stabilization Fund.</u> The bill would change the way in which the Budget Stabilization Fund (BSF) maximum fund level is calculated, such that the maximum amount of money dedicated to the fund could not exceed 10 percent of the <u>combined</u> general fund and school aid fund (rather than 25 percent of the general fund, which is the current cap). This would have the effect of lowering the total amount that may be dedicated to the fund. As is currently the law, any excess over the cap must be rebated to taxpayers on the individual income tax returns filed following the close of that fiscal year. [Sections 353, 353e, 354,355, and 356.]

<u>Budget Transfer Limitations.</u> The bill would place limitations on the kinds of budget transfers that departments may submit to the legislature, changes that are recommended in order to curtail transfers that should more properly be included in supplemental appropriations. [Section 393]

<u>Work Project Limitations.</u> The bill would place limits on work projects. Customarily, work projects are set up to fund multi-year projects such as the development of park land, computer system upgrades, or disaster assistance. The bill specifies that a work project appropriation would end when the project is completed or within 48 months of the last day of the fiscal year in which the appropriation was originally made, whichever comes first. For work projects established before the effective date of the bill, the 48-month time period would begin on the last day of the fiscal year in the year in which the bill took effect. The bill would specify four criteria to designate a work project: a specific purpose; a specific plan to accomplish the objective; an estimated completion cost; and, an estimated completion date. Further, the bill would authorize the director to issue directives to lapse existing work project accounts at any time. However, the director

would be required to notify each member of the Senate and House appropriations committees and the fiscal agencies of the works projects he or she has ordered to lapse. Under the bill these directives could be disapproved by either the Senate or House committee within 30 days after the date of notification and, if disapproved, would not be effective. The bill would define "work project" to mean a one-time nonrecurring undertaking for the purpose of accomplishing an objective contained in specific line-item appropriation for that purpose or any other specific line-item appropriation designated as a work project by law under the criteria established under section 451a(1), noted above. [Sections 404 and 451a]

Legislative Oversight of Facility Leases. The bill would clarify the conditions under which the legislature must approve facility lease arrangements, to explicitly require legislative approval by the joint capital outlay committee when a lease is for space that exceeds 25,000 gross square feet, or the annual base cost of the proposed lease is more than $500,000. Under the bill, the director also would be required to submit renewal leases to the JCOS if changes to the lease would cause it to meet these requirements. [Section 221]

Information Technology Projects. The bill would update the department's responsibilities for information technology planning, to allow for consolidation and outsourcing of services. Currently the department issues a report within 60 days after the end of each fiscal year. Under the bill, that report would be due within 120 days after the end of the fiscal year, and the report would have to include a summary of expenditures and source of funding for all information technology projects undertaken, by department; expenditures on information technology hardware, software, consulting services entered into with the private sector and expenditures related to state employees whose primary work assignment involves information technology support; and, a distinction between information technology expenditures made directly by state departments and those expenditures made through contracts with the private sector.

In addition, Senate Bill 259 would require that the department develop and maintain a statewide plan for the effective and efficient utilization of information processing and telecommunication projects and services. The bill would allow the department to arrange for and effect a unified and integrated statewide information processing and telecommunication system and provide for the administration of the system. It would also prohibit a state agency from purchasing or operating a telecommunications facility or system or an automated data processing system unless approved by the Department of Management and Budget. Further, the bill would require that each state agency report to the department and to the appropriate appropriations committees and fiscal agencies on each informational system sold or marketed by the state agency or a contractor hired by the state agency. The report would have to include all costs of development of the system, the income derived from the marketing or sale, and the disposition of the income. [Section 203]

Personal Services Contracts. Senate Bill 259 would require that the Department of Management and Budget and each principal executive department and agency provide to the Senate and House appropriations committees and the fiscal agencies a monthly report on all personal service contracts in an amount greater than $10,000 that are awarded without competitive bidding, pricing, or rate setting. Under the bill, the report would be required to include the total dollar amount of the contract; the dates the contract was in effect; the name of the vendor; and, the type of service to be provided. The bill also would require that the Department of Management and Budget provide to the appropriations committees and fiscal agencies a monthly report for new personal service contracts of $100,000 or more. In addition, each principal executive department and agency would be required to provide to the appropriations committees and fiscal agencies a monthly summary listing of information that identifies any authorizations for personal service contracts that are provided to the Department of Civil Service, pursuant to delegated authority granted to each principal executive department and agency related to personal services contracts. Finally, the Department of Civil Service would be required to include a report of all mixed contracts that the Civil Service Commission did not review for approval under the authority of Civil Service Rule 4-6.3, Standard (E). [Section 281a]

Judicial Branch. Senate Bill 259 would retain the definition of "state agency," to exclude the judicial branch of government, "except for those sections pertaining to the authorization, planning, construction, and funding of a capital outlay project, including construction of a facility to house offices or functions necessary for operations of the judicial branch of government." [Section 115] (Planning for the 262,000 square foot, $90 million, Michigan Hall of Justice, a building to house the Michigan Supreme Court, the Court of Appeals, the State Court Administrative Offices, and the Judicial Institute, was the first capital outlay project to utilize the new proposed joint capital outlay process that was proposed in the capital outlay bill, Senate Bill 906, enacted as Public Act 538 of 1998.)

DMB Reports to the Legislature. Senate Bill 259 would require the DMB director to distribute all administrative and procedural directives to the Senate and House Appropriations Committees and the fiscal agencies. Currently the law requires that the directives (which may issue, alter, or rescind policies) be placed in the appropriate manual and distributed to each principal department and autonomous entity within state government. [Section 131]

Under current law, the DMB director must submit a spending report (a report that compares actual expenditure to allotments) to the appropriations committees by June 1 of each fiscal year. Under Senate Bill 259 those reports would be submitted quarterly, and also distributed to the fiscal agencies. In addition, the bill would require that the state budget director immediately notify the majority and minority chairs of the appropriate appropriations subcommittees and the fiscal agencies when it appeared that a spending plan, or sources of financing related, do not provide the level of program service assumed in the appropriation for the fiscal year. [Section 371]

Under the bill, the state budget director would be required to notify the fiscal agencies of allotments that are adjusted for administrative efficiency. Currently, action taken is reported to the appropriations committees. Under Senate Bill 259, the fiscal agencies would have to be notified within 30 days by any state agency that administers a federal grant for which organizations or units of local government are eligible to apply. Currently, the legislature is notified. [Section 384]

Currently the DMB director prepares monthly financial reports within 30 days after the end of each month, and transmits copies to the appropriations committee members and the fiscal agencies. Under Senate Bill 259, those reports would be submitted within 45 days after each month's end. That monthly statement also would have to include a statement projecting the state and school aid fund balances for the fiscal year in progress, as well as a statement of year-to-date balances for the counter cyclical budget and economic stabilization fund, the renaissance fund, and the natural resources trust fund (or their successors). [Section 386]

Under Senate Bill 259, within 10 working days after the formal presentation of the executive budget, the state budget director would be required to report to the members of the Senate and House appropriations committees and the fiscal agencies on the amounts and sources of all capped federal funds, special revenue funds, and the Healthy Michigan Fund, and to provide an accounting of the state departments or agencies in which the executive budget proposed to spend the funds. [Section 430]

Under Senate Bill 259, within 60 days after the end of the fiscal year, the DMB director would submit to the legislature, the appropriations committees, and the fiscal agencies a report on the status of all revolving funds, including all information reported in the financial plan. [Section 434]

Under current law, the DMB director is required to submit preliminary, unaudited financial statements including notes of the general fund and the state school aid fund to the legislature within 120 days after the end of the fiscal year. Under the bill, this information also would be submitted to the fiscal agencies. [Section 493]

New DMB Responsibilities. Senate Bill 259 would require the department to approve all risk management related programs of state agencies. Risk management programs include but are not limited to worker's compensation, disability management, insurance, safety, loss control, claims handling, exposure analysis, accident investigation, and risk management information systems. Currently, the department reviews but does not approve those programs. [Section 204]

The bill also would require the department to issue directives for the implementation and maintenance of a forms management project within each state agency. Under the bill, the department would be required to coordinate the development of forms at state agencies in order to facilitate the standardization of forms, recommend the elimination of redundant forms, and provide a central source of information regarding forms usage in state government. [Section 205]

Under the current law, the department is allowed but not required to issue management, operation, maintenance, and repair directives. Under the bill, the department would be required to issue these directives, and also to provide for and issue security directives. The bill also would require the director to determine space utilization standards; currently the director may do so. [Section 219].

Under the bill, the department would be required to have a public notice component in its directives regarding the disposition process for surplus land and facilities. [Section 251] Further, currently the department may dispose of surplus by donating or selling the property or equipment to a unit of local government. The bill would clarify that if a unit of local government is not interested in the property or equipment, it may be sold. [Section 267]

Under Senate Bill 259, the state budget director could make federal revenue transfers between the recipient state department and the spending state department only when funds are appropriated in the spending department. [Section 443]

Bidding and Intention to Award Contracts. Currently the department must issue directives prescribing procedures to be used to award construction, repair, remodeling, or demolition contracts pursuant to a bidding procedure, and that procedure must require a public advertisement of intention to award. Under the bill, that intention to award requirement would be eliminated, and instead, under the bill, the procedures would require a "competitive solicitation in the award" of any contract. [Section 241]

Economic Analysis. Under current law the state budget director must establish and maintain an economic analysis, revenue estimating, and monitoring activity. Senate Bill 259 would require either the state budget director or the state treasurer to undertake and complete this function. [Section 342]

Governor's Budget and Economic Forecasts. Under the bill, when the governor submits the executive budget to the legislature and the fiscal agencies, he or she also would be required to submit budget bills containing "itemized statements of estimated state spending to be paid to local units of government." [Section 367] The bill would continue to require two revenue estimating conferences to be held the second week of January and the last week of May each year. However, the principals of the conference could be either the state budget director (who now convenes) or the state treasurer. As the conference establishes an official economic forecast, it would be required to determine three new forecasts of anticipated revenues: "the annual percentage growth in the basic foundation allowance provided for in the state school aid act"; the "compliance with the state revenue limit established by section 26, article IX of the state constitution" (the tax limitation amendment); and, "pay-ins or pay-outs required under the counter cyclical budget and economic stabilization fund." [Section 367b]

Attorney General to Notify Fiscal Agencies of Financial Obligations. Senate Bill 259 would require the attorney general to notify the fiscal agencies within 14 days after entering into a settlement or consent judgment which would result in a state obligation that exceeds $200,000. Currently the attorney general must notify the Senate and House appropriations committees, the Speaker of the House, and the Senate Majority Leader. [Section 396]

Department of Civil Service to Provide Quarterly FTE Report. Under Senate Bill 259, the Department of Civil Service would be required to provide a report to the Department of Management and Budget, the appropriations committees, and the fiscal agencies regarding the status of FTE (full time equivalent) positions for the preceding quarter. Currently that report is due monthly. [Section 454]

Department Directors' Responsibilities. Under Senate Bill 259, the directors of each principal department would be required to submit a schedule of federal financial assistance for the last completed fiscal year (in a form approved by the auditor general) before November 30. Currently that report is due before March 1. [Section 461] Under current law, department directors are required to prepare a plan that responds to an audit, in accordance with the administrative manual. Under the bill that audit plan would be prepared in accordance with the administrative guide to state government, and copies would be distributed to the relevant House and Senate appropriations subcommittees, standing committees, fiscal agencies, and the executive office. [Section 462]

Definitions, References. Under the bill, references to the U.S. Department of Labor and the U.S. Department of Commerce would be modified so as also to reference any successor organization. [Sections 303, 305, 350a, 355] In addition, under the bill, two subsections would be eliminated that define what counts as state spending, when determining state payments to units of local government. The two provisions were adopted to implement the Headlee Amendment. [Section 350] The bill also would eliminate an outdated reference to a date by which a revenue report must be submitted to the legislature. [Section 350e] References to the director of the Michigan Employment Security Commission would be changed to refer instead to the director of the Michigan Jobs Commission. [Section 353] References to the federal public law that specifies the generally accepted government auditing standards would be updated. [Section 461] References to inoperative dates would be eliminated in sections that pertain to departments' internal financial control and audit procedures. [Sections 484 485, 486, and 492]

Repealed Sections. In addition, the bill would repeal 19 sections of the act, although a number of the sections would be updated and replaced elsewhere in the act. The sections that would be repealed include provisions that concern: the forms management program (replaced elsewhere); the management and operation of the labor building; facility security measures (replaced elsewhere); professional services contractors (updated and replaced elsewhere); facility design (updated); appropriations transfers (updated); telecommunications systems (updated); unclassified directors and the review of classification procedures; refundable income tax credits; recommendation for supplemental appropriations; and, internal audits.

MCL 18.113 et al.

HOUSE COMMITTEE ACTION:

The House Appropriations Committee amended the bill as follows:

--to remove an outdated reference to the Michigan Jobs Commission and replace it with a reference to the Department of Career Development or its successor [Section 353];

--to add the new House of Representatives office building to the list of facilities maintained by the Legislative Council [Section 219]; and,

--in three instances within two subsections, to add the requirement that notices be sent by the budget director to each member of the Senate and House Appropriations Committee in matters concerning a) administrative transfers (transfers of funding sources within a budget line-item), b) non-administrative transfers (transfers between line-items within a budget), and c) work projects. [Sections 393 and 451a].

BACKGROUND INFORMATION:

Similar Legislation. As noted, Senate Bill 259 is similar in most instances to Senate Bill 773 of the 1997-98 legislative session. For further information, see the House Legislative Analysis Section's analysis of Senate Bill 773, dated 12-8-98.

Governor's Veto Message. The text of the governor's veto message, dated January 27, 1999, is as follows:

"Today I have vetoed and am returning to you herewith, Enrolled Senate Bill 773.

Enrolled Senate Bill 773 would have amended Public Act 431 of 1984, otherwise known as the Department of Management and Budget (DMB) Act. The bill includes several provisions that would have significantly improved the operations of a number of DMB functions, particularly as they relate to the legislatively mandated capital outlay process. However, I am unable to support the bill because of several significant flaws with regard to the amendments that authorize work projects.

Specifically, Enrolled Senate Bill 773 removes the Budget Director's authority to issue directives that could cause the lapse of unencumbered work project funds. The Budget Director should have the authority to lapse Executive Branch work projects in the event of a potential departmental or overall general fund deficit.

Enrolled Senate Bill 773 also attempts to limit the duration of Executive Branch work projects to 24 months. The bill actually removed all time limits because the work project language included in subsection 451(3) clearly exempts work projects from the lapse restrictions detailed in subsection 451(1).

Furthermore, Enrolled Senate Bill 773 has what I believe to be the unintended consequence of limiting the legislative and judicial branch's ability to establish work projects. Enrolled Senate Bill 773 limits this ability to specific line items in an appropriation bill. Existing law also allows for the designation of work projects at the end of the fiscal year upon the recommendation of the Budget Director and the lack of disapproval by either of the Appropriations Committees.

For these reasons, I am returning Senate Bill 773 without signature. I commend the Legislature, and in particular Senator Gast, for their attempt to streamline many of the legislative processes established in the DMB Act. I would encourage the legislature to continue their efforts in this regard."

FISCAL IMPLICATIONS:

The House Fiscal Agency has issued an analysis of the bill (entitled "Senate Bill 259 As Passed the Senate, February 9, 1999; Proposed Revisions to the Management and Budget Act, Public Act 431 of 1984"), that describes the policy changes that are recommended, but it does not discuss the fiscal implications of the bill. (2-12-99)

ARGUMENTS:

For:

The Management and Budget Act (Public Act 431 of 1984) last underwent a comprehensive review during 1988, more than ten years ago. It is time to modernize the act; to bring the act into conformance with current and best practice. Following a six-year review by stakeholders in both the legislative and executive branches of government, the amendments to the act that are proposed in Senate Bill 773 are the result of long and careful deliberations, as well as considerable compromise. This bill will enable agencies of state government, and most especially the Department of Management and Budget, to more effectively and efficiently fulfill their responsibilities to the taxpayers. It also will enable greater accountability to the legislative appropriations committees and to the fiscal agencies.

For:

This bill gives to the budget director the authority to lapse work project funds, but allows either the Senate or House appropriations committee to over-rule the directive if a majority of committee members vote to do so within 30 days. In setting forth criteria for work projects and explicitly stating the authority of the executive branch, the bill addresses the concerns about work project funds raised in the governor's veto message of Senate Bill 773, a bill that was substantially similar to Senate Bill 259 when it was enrolled by the legislature during the last legislative session.

For:

The joint capital outlay process that is proposed in this legislation would allow considerably more, and more systematic, project planning and review, to be undertaken by well qualified, technical experts. The process is streamlined, although the opportunities for legislative oversight are ample. Overall, project budgets under the revised joint capital outlay process would be clearer, allowing more information during review by the Joint Capital Outlay Subcommittee of the Senate and House Appropriations Committees.

For:

After various controversial interpretations of the lease provisions in the current Management and Budget Act by different department directors, this bill finally would clarify the legislature's oversight responsibility for facility leases. The bill specifies that if the director proposes to lease space or a facility that meets either of two criteria, approval of the Joint Capital Outlay Subcommittee would be required prior to the State Administrative Board's approval. The two criteria are: The space or facility exceeds 25,000 gross square feet; or, the annual base cost of the proposed lease would be more than $500,000.

POSITIONS:

The Department of Management and Budget supports the bill. (2-23-99)

Analyst: J. Hunault

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.