

Michigan Department of Transportation
Public Act 66 of 2019
Overview of Unenforceable Sections (209 & 306)

Section 209. Not later than November 30, the state budget office shall prepare and transmit a report that provides for estimates of the total general fund/general purpose appropriation lapses at the close of the prior fiscal year. This report shall summarize the projected year-end general fund/general purpose appropriation lapses by major departmental program or program areas. The report shall be transmitted to the chairpersons of the senate and house of representatives standing committees on appropriations and the senate and house fiscal agencies.

Explanation: The Governor's signing letter (dated September 30, 2019) states that Section 209 violates Article 4, Section 24 of the Michigan Constitution. (No law shall brace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.) However, the letter also provides that the State Budget Office will make a good faith effort to comply with the reporting requirements provided for in Section 209. **MDOT recommends the inclusion of Section 209 in the FY2021 Executive Budget Recommendation in the spirit of transparency.**

Section 306. (1) The amounts appropriated in part 1 to support tax and fee collection, law enforcement, and other program services provided to the department and to transportation funds by other state departments shall be expended from transportation funds pursuant to annual contracts between the department and those other state departments. The contracts shall be executed prior to the expenditure or obligation of those funds. The contracts shall provide, but are not limited to, the following data applicable to each state department:

- (a) Estimated costs to be recovered from transportation funds.
 - (b) Description of services provided to the department and/or transportation funds and financed with transportation funds.
 - (c) Detailed cost allocation methods appropriate to the type of services being provided and the activities financed with transportation funds.
- (2) Not later than 2 months after publication of the state of Michigan comprehensive annual financial report, each state department receiving funding pursuant to an interdepartment contract with the department shall submit a written report to the department, the state budget director, and the house and senate fiscal agencies stating by spending authorization account the amount of estimated funds contracted with the department, the amount of funds expended, the amount of funds returned to the transportation funds, and any unreimbursed transportation-related costs incurred but not billed to transportation funds.
- (3) The auditor general shall use a risk-based approach in developing an audit program for the use of transportation funds.

Explanation: The Governor's signing letter (dated September 30, 2019) states that Section 306 is unenforceable to the extent that it assigns the auditor general powers and duties other than those specified in Article 4, Section 53 of the Michigan Constitution. (The Legislature by a majority vote of the members elected to and serving in each house, shall appoint an auditor general, who shall be a certified public accountant licensed to practice in the state, to serve for a term of eight years. He shall be ineligible for appointment or election to any other public office in the state from which compensation is derived while serving as the auditor general and for two years following the termination of his service. He may be removed for cause at any time by two-thirds vote of the members elected to and serving in each house. The auditor general shall conduct post audits of financial transactions and accounts of the state and all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of the state established by this constitution or by law, and performance post audits thereof. The auditor general upon direction by the Legislature may employ independent accounting firms or legal counsel and may make investigations pertinent to the conduct of audits. He shall report annually to the Legislature and to the governor and at such other times as he deems necessary or as required by the Legislature. He shall be assigned no duties other than those specified in this section.) **MDOT recommends the inclusion of Section 306 to ensure transparency in the use of transportation funds with the proviso that the auditor general is consistent with Article 4, Section 53 auditor general powers. In addition, the following verbiage was deleted from Subsection 2 to address the OAG unenforceable issue: "A copy of the report shall be submitted to the auditor general, and the report shall be subject to audit."**