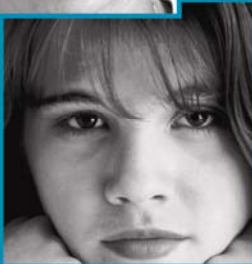


CONNECTICUT
VOICES
FOR CHILDREN



New Haven Office
33 Whitney Ave.
New Haven CT 06510
Phone: 203.498.4240
Fax: 203.498.4242

Hartford Office
53 Oak St. Suite 15
Hartford CT 06106
Phone: 860.548.1661
Fax: 860.548.1783

Web Site: www.ctkidslink.org
E-mail: voices@ctkidslink.org

When the State Budget is Late: Establishing Clearer Guidelines for Connecticut

Shelley Geballe, J.D., M.P.H.

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I. Introduction

Of the forty-six states with fiscal years starting July 1, 2009¹ to adopt a FY 10 budget, Connecticut was second to last. Only Pennsylvania lagged Connecticut in adopting a state budget.² Despite the Governor's veto of the FY 10 budget adopted by the General Assembly,³ however, some funds continued to flow to support Connecticut's government and state-funded programs and services until the biennium budget was adopted at the end of August and became law without Governor Rell's signature. Governor Rell's Executive Orders No. 28, 31, and 33 authorized funding in July, August and part of September, respectively, for some budget accounts, but provided *little* or *no* funding for others.⁴

Connecticut now has failed to adopt a timely budget in each of the last three recessions,⁵ yet "[n]either the state constitution nor statute statutes expressly provide" the "legal authority for state expenditures" and "do not dictate a required course of action in the absence of an approved budget"⁶ adopted by July 1, according to an analysis by the Office of Legislative Research. It is time to address this serious void in state law.

This report first reviews the Connecticut Attorney General's Opinions regarding current constitutional and statutory authority to continue spending funds in the absence of a state budget when the new fiscal year begins. It then reviews Governor Rell's Executive Orders that made allotments for the months of July, August, and part of September, highlighting the discretion she exercised as demonstrated by the variation in the budget accounts she chose to fund. The report next examines statutory procedures in other states when no budget has been adopted by the beginning of the fiscal year. It concludes by urging the General Assembly to amend state law to

¹ New York's fiscal year starts April 1, Texas' on September 1, and Michigan and Alabama on October 1. National Association of State Budget Officers, *Budget Processes in the States* (Summer 2008), Table 1, p. 5.

² On July 20, 2009, the General Assembly overrode the Governor's veto of the consensus revenue forecasting bill and agreement on the magnitude of the FY 10-11 deficits thereafter resulted. Despite new budget plans from the Governor and the Appropriations and Finance Committees, issued on July 30, 2009 to address the agreed-upon deficits, Connecticut remained without a budget until the very end of August when PA 09-3 (June Special Session), *An Act Concerning Expenditures and Revenue for the Biennium Ending June 30, 2011* was passed by the General Assembly and became law without the Governor's signature.

³ SB 1801, *An Act Concerning the State Budget for the Biennium Ending June 30, 2011, and Making Appropriations Therefor*.

⁴ While some state-funded programs and services may be funded on a quarterly or semi-annual basis so may not -under ordinary circumstances - have had funding allotted in July and August, the Governor's Executive Orders provided no explanation for allotting \$0 for many budget accounts.

⁵ Different approaches were used in the two prior recessions. In the 1991 budget crisis, the General Assembly adopted a series of continuing resolutions to keep state government running and then-Governor Weicker also issued a series of Executive Orders. In the 2003 recession, then-Governor Rowland vetoed the General Assembly's continuing resolution and, in the alternative, issued a series of Executive Orders. See Connecticut General Assembly, Office of Legislative Research, *History of State Action in Absence of a Budget Before the Beginning of a New Fiscal Year* (2009-R-0255, June 26, 2009), p. 1

⁶ Connecticut General Assembly, Office of Legislative Research, *History of State Action in Absence of a Budget Before the Beginning of a New Fiscal Year* (2009-R-0255, June 26, 2009), p. 1.

more precisely define what must occur when Connecticut enters a new fiscal year without either a state budget or a continuing resolution that has been adopted by the General Assembly and not vetoed by the Governor. Specifically, it recommends that state law be amended to either: a) provide for continuing appropriations at the prior year's estimated spending levels; OR b) expressly authorize the General Assembly to adopt continuing resolutions when a budget has not been adopted (and specify what should be included in such a resolution) and expressly prohibit any funds from being allotted except for narrowly-defined purposes (such as protecting the public health and public safety) in the absence of a budget or a continuing resolution.

These changes would reduce the confusion and uncertainty in the operation and delivery of state-funded services that result from current law and practice, assure greater predictability for those reliant on state funding, and assure a closer adherence to the constitutionally-mandated separation of powers between the General Assembly and the Governor than currently exists in the absence of such a statute.

II. No Constitutional Provision or State Statute Sets Forth Specific Procedures to Be Followed When Connecticut Fails to Adopt a Budget by the Start of a New Fiscal Year

Connecticut law is quite explicit as to: a) how the General Assembly is to be kept apprised of the status of the state budget;⁷ b) how the state budget is to be proposed⁸ and adopted,⁹ and the extent of the Governor's veto authority;¹⁰ c) the requirement that the budget must be balanced;¹¹ d) how much the budget may grow from year to year;¹² e) how funds may be transferred within the budget during a fiscal year;¹³ f) how deficiencies in agency budgets are to be addressed;¹⁴ g) how

⁷ Conn. Gen. Stat. §2-36b (requiring a detailed presentation no later than November 30 each year by the Secretary of the Office of Policy and Management and the director of the Office of Fiscal Analysis to the Appropriations and Finance, Revenue and Bonding Committees on such matters as estimated state revenues and expenditures; tax credits; estimated deficiencies and the reasons for the deficiencies; projected balance in the Budget Reserve Fund; projected bond authorizations, allocations and issuances; analysis of revenue and expenditure trends and major cost drivers affecting state spending; and possible uses of any surplus funds).

⁸ E.g., Conn. Gen. Stat. §4-71 to §4-75 (specifying required contents of the budget the Governor must submit to the General Assembly, the date by which it must be submitted, and the process by which it is to be presented to the General Assembly); Conn. Gen. Stat. §4-77 (specifying the process by which agency heads are to transmit information needed to prepare the following year's budget to the Office of Policy and Management, and the required contents of such submissions)

⁹ Conn. Gen. Stat. §2-34 (specifying allowable titles for appropriations bills); Conn. Gen. Stat. §2-35 (specifying requirements for appropriation bills and acts and requiring a report of revised revenue estimates prior to adoption of a budget)

¹⁰ Conn. Const. Art. 4, §16 (granting the Governor power to disapprove any item or items in any appropriations bill while at the same time approving the remainder of the bill, and requiring a signing statement with the reasons for any disapproval(s)).

¹¹ Conn. Const. Art. 3, §18 (requiring a balanced state budget); Conn. Gen. Stat. §2-35 (mandating that total estimated revenue for each fund cannot be less than the total net appropriations made from each fund when the budget is adopted)

¹² Conn. Const. Art. 3, §18 and Conn. Gen. Stat. §2-33a (mandating that the increase over the amount of general budget expenditures authorized for the prior fiscal year cannot exceed the greater of the percentage increase in personal income or the percentage increase in inflation, except if Governor declares an emergency or existence of extraordinary circumstances and the General Assembly votes to exceed the cap by affirmative votes cast by at least 3/5th of the members of both Houses).

¹³ E.g., Conn. Gen. Stat. §4-94 (requiring Governor's recommendation and Finance Advisory Committee approval of transfers of funds within the General Fund to budget accounts in excess of their regular appropriation); Conn. Gen. Stat.

unexpended balances at the end of a fiscal year are to be treated;¹⁵ h) when and how the Governor must report to the General Assembly regarding projected deficits;¹⁶ i) how contingency appropriations can be made;¹⁷ and j) how quarterly allotments are to be requested and approved, and by how much these allotments can be reduced by the Governor – without the approval of the General Assembly - when deficits arise during a fiscal year.¹⁸

Curiously, the Connecticut Constitution and state statutes are *not* explicit about what happens when *no* budget has been approved at the start of a fiscal year.

A. The Governor’s authority to expend state funds in the absence of a state budget rests on interpretations of state law by the Attorney General that he concedes can “cause uncertainty and confusion in the operation and delivery of state services.”¹⁹

In both of the last two recessions (1991 and 2003), Connecticut also failed to adopt a budget by the start of the state fiscal year. The General Assembly and Governor responded with a series of continuing resolutions and Executive Orders.²⁰ Legislative leadership sought the counsel of the Attorney General because Connecticut has no statute that explicitly authorizes the General Assembly to approve a continuing resolution or the Governor to issue an Executive Order to authorize the spending of funds that have not been appropriated. The three Attorney General Opinions issued to answer their questions²¹ collectively have opined that:

§4-95a (authorizing Finance Advisory Committee to appropriate state funds to secure federal funds or offset the loss of federal funds when the General Assembly is not in session).

¹⁴ Conn. Gen. Stat. §2-36, §2-36a (requiring periodic reports about budget accounts in which a potential deficiency exists, and specifying the process by which a deficiency bill is adopted).

¹⁵ Conn. Gen. Stat. §4-89 (specifying as a general rule that the unexpended balances of appropriations in the state budget act must lapse at the end of the period for which they were made, with multiple exceptions).

¹⁶ Conn. Gen. Stat. §4-82a (requiring the Governor to report, before October 30, January 30 and April 30, on whether or not a deficit is projected for the fiscal year in progress).

¹⁷ Conn. Gen. Stat. §4-84 (requiring the Governor’s budget to include a recommended appropriation for contingencies not to exceed \$100,000 per fiscal year).

¹⁸ Conn. Gen. Stat. §4-85 (setting out the process by which agencies request and the Governor approves quarterly allotments and limiting the Governor’s unilateral modification of those allotments (rescissions) to 3% of any budget fund, and 5% of any appropriation to a specific budget account).

¹⁹ 2003 Op. Conn. Atty Gen. 2003-012 (July 16, 2003), available at: www.ct.gov/ag/cwp/view.asp?A=1770&Q=281974.

²⁰ In 1991, there were four continuing resolutions adopted by the General Assembly and signed by the Governor. See 1991 Conn. Sp. Act No. 91-1 and No. 91-2 (June Special Session)(appropriating funds for July 1 to July 14, 1991); 1991 Conn. Sp. Act No. 91-3 (June Special Session)(appropriating funds for July 15 to July 28, 1991); 1991 Conn. Sp. Act No. 91-4 (June Special Session)(appropriating funds for July 29 to August 4, 1991); 1991 Conn. Sp. Act No. 91-5 (June Special Session)(appropriating funds for August 5 to August 18, 1991). In addition, then-Governor Weicker signed several Executive Orders that permitted the operation of state government while minimizing discretionary spending and specifically authorizing that funds be expended in situations where there was a gap between the expiration and effective dates of the General Assembly’s continuing resolutions. See Executive Order No. Five (August 4, 1991)(the subject of the November 4, 1991 Attorney General Opinion). In 2003, in the absence of a budget, the General Assembly adopted a continuing resolution on June 30 that Governor Rowland vetoed claiming that the General Assembly had no legal authority to adopt a continuing resolution. Governor Rowland then issued multiple executive orders that continued spending, a week at a time, to continue government operations. See Office of Legislative Research, *History of State Action in the Absence of a Budget Before the Beginning of a New Fiscal Year* (2009-R-0255, June 26, 2009).

²¹ 1991 Op. Conn. Atty Gen. 1991-019 (June 7, 1991)(www.ct.gov/ag/cwp/view.asp?A=1770&Q=281260); 1991 Op. Conn. Atty Gen. 1991-033 (November 4, 2003) (www.ct.gov/ag/cwp/view.asp?A=1770&Q=281288); 2003 Op. Conn. Atty Gen. 2003-012 (July 16, 2003), available at: www.ct.gov/ag/cwp/view.asp?A=1770&Q=281974.

- Even in the absence of a duly-enacted state budget, “certain types of *expenses associated with the necessary operation of government* must be incurred and paid. Additionally, *costs associated with statutory duties imposed on State officials or costs required to be incurred by statute* must also be paid” (quoting the Connecticut Supreme Court’s 1892 decision in *State v. Staub*,²² 61 Conn. 553, emphasis added);
- The Staub standard has not been applied in modern times in the absence of an entire State budget,²³ and practical problems would “inevitably arise in applying the Staub standard.”²⁴ For this reason, the “most prudent approach” and the one that the Attorney General “strongly advise[d] be taken to avoid fiscal confusion and uncertainty” is for the General Assembly to adopt a continuing resolution if the state enters a new fiscal year without a budget.²⁵ The General Assembly’s plenary constitutional authority to appropriate state funds gives it legal authority to adopt a temporary appropriations measure; no specific statutory authorization is needed.²⁶
- A continuing resolution, when adopted by the General Assembly, must be presented to the Governor.²⁷ The Governor may veto the resolution,²⁸ and if vetoed, the General Assembly has the authority to override the Governor’s veto²⁹ and the continuing resolution then has the force of law. In the absence of such an override, the resolution has no legal effect.³⁰
- In the absence of a budget or a continuing resolution, or if there is a gap between the expiration date of a continuing resolution and the effective date of another resolution or the budget itself, the Governor has the legal authority to issue an executive order to assure that the “essential services” of government continue and that “the costs associated with statutory duties imposed

²² State v. Staub, 61 Conn. 553 (1892) concerned the failure of the legislature to enact a specific appropriations measure. The Connecticut Supreme Court held that “In the absence of a specific appropriation the existence of a law requiring an expenditure to be incurred is an appropriation of money for that purpose, and the law imposes on the comptroller the duty of settling and adjusting demands against the state for such expenses.”

²³ The Attorney General noted that although Staub has not been applied “in the absence of a State budget in recent times,” the general principle articulated in Staub – that there exists a constitutional requirement for funding of a certain level of government operations -- had recently been affirmed in Pellegrino v. O’Neill, 193 Conn. 670, 675-76 (1984). 1991 Op. Conn. Atty Gen. 1991-019 (June 7, 1999), pp. 7-8.

²⁴ 1991 Op. Conn. Atty Gen. 1991-019 (June 7, 1991)(www.ct.gov/ag/cwp/view.asp?A=1770&Q=281260), p.8.

²⁵ 1991 Op. Conn. Atty Gen. 1991-019 (June 7, 1991)(www.ct.gov/ag/cwp/view.asp?A=1770&Q=281260), pp. 2-3.

²⁶ The Attorney General notes that no statute authorizes continuing resolutions, and cites to a Connecticut Supreme Court case, Eielson v. Parker, 179 Conn. 552, 561 (1980), which noted that “our constitution contains no provision expressly conferring upon the general assembly the power to make appropriations” but declared it to be “of no moment,” because such legislative power is “readily inferable from article fourth, §22, concerning the duties of the state treasurer” to disburse monies belonging to the state as “he may be directed by law,” cases in other states construing similar directives “have consistently found such directives to require ‘an authority from the legislature’” and two hundred years of jurisprudence that has recognized that “legislative power encompasses fiscal power.”

²⁷ The June 7, 1991 Attorney General Opinion concluded that a continuing resolution “should be presented to the Governor pursuant to the State Constitution, Article Fourth, §15, to avoid any question as to its binding effect.”

²⁸ The July 16, 2003 Attorney General Opinion noted that the “state constitution vests the Governor with the authority to veto legislation when he deems appropriate, including legislation regarding appropriations. See Conn. Const. art. Fourth, §§15 and 16.” (p.5)

²⁹ The July 16, 2003 Attorney General Opinion noted that the “General Assembly had the authority to override the Governor’s veto pursuant to Conn. Const. art. fourth, §15.” (p. 5)

³⁰ 2003 Op. Conn. Atty Gen. 2003-012 (July 16, 2003), p. 5

on State officials or costs required to be incurred by statute” also be paid.³¹ Since, “under our system, unlike that of many states, no special appropriations are required,” state laws requiring expenditures are “deemed to be appropriations in the absence of a duly enacted budget under State v. Staub.”³² The Governor thus has legal authority to expend funds to fulfill the requirements imposed by such statutes. Further, the Connecticut Constitution grants supreme executive power to the Governor, which includes not only taking actions to enforce state law and protect state residents, but also ensuring that state government itself continues to operate.

- What is best if a budget is delayed beyond the start of the new fiscal year is for the legislative and executive branches to agree on a temporary spending measure that is approved by the General Assembly and signed by the Governor; “such consensus would provide stability and certainty in this critical time.” However, if consensus cannot be achieved “even for a temporary measure,” then either a continuing resolution approved by the legislature over the Governor’s veto or an executive order issued by the Governor is “legally acceptable.” “Both would ensure that essential government operations continue.”³³

In his three Opinions, however, the Attorney General repeatedly noted the limitations of either of these non-consensual measures, writing that “[b]oth are in effect stopgap, temporary measures that maintain necessary government functions and avoid damage to public health or safety.” He warned that “[c]are must be taken with both measures to avoid expending or withholding state money in a manner that is arbitrary or capricious, or otherwise fails to follow specific statutory or constitutional requirements.”³⁴ He also acknowledged the limitations of the Staub standard as a guide for the General Assembly and Governor in the absence of a state budget. Specifically, he noted that the Staub standard:

“suffers from a significant lack of clarity, rendering the choice among spending options difficult to make and support. The necessity to select expenses actually allowable could cause uncertainty and confusion in the operation and delivery of State services. Doubt and anxiety would be rampant not only among State employees, but also among recipients of services and the public in general. It would prevail even after the initial determination as to which services and programs would continue to be funded in the absence of a budget, since the initial decisions very likely would be reviewed and possibly challenged in the courts.”³⁵

Governor Rell’s recent Executive Orders amply illustrate these concerns, and point to a need for a statute that provides greater clarity and certainty.

³¹ The Attorney General noted: “In the absence of a special appropriation the existence of a law requiring an expenditure to be incurred is an appropriation of money for that purpose, and the law imposes on the comptroller the duty of settling and adjusting demands against the state for such expenses.” 1991 Op. Conn. Atty Gen. 1991-033 (November 4, 2003) (www.ct.gov/ag/cwp/view.asp?A=1770&Q=281288).

³² 1991 Op. Conn. Atty Gen. 1991-033 (November 4, 2003), p. 3.

³³ 2003 Op. Conn. Atty Gen. 2003-012 (July 16, 2003), p. 5.

³⁴ 2003 Op. Conn. Atty Gen. 2003-012 (July 16, 2003), pp. 5-6.

³⁵ 1991 Op. Conn. Atty Gen. 1991-019 (June 7, 1991), p. 2.

B. Governor Rell's Executive Orders illustrate the uncertainty and confusion that result from the current ad hoc process.

On June 30, 2009, Governor Rell signed Executive Order No. 28, mandating that all expenditures from July 1, 2009 through July 31, 2009 or the date of approval of an appropriations act for FY 2010 (whichever occurs first) be in accordance with the allotments for July 2009 attached to her Order.³⁶ On July 30, 2009, she issued a similar order for August spending.³⁷ These Orders used FY 2009 estimated spending as the base,³⁸ then approved allotments for some, but not all, of the budget accounts. Appendix 1, attached hereto, presents the July and August allotments for the General Fund budget accounts. Under Executive Order No. 33, which was to cover the period from September 1 to the earlier of the approval of an appropriations act for FY 10 or September 30, 2009, all expenditures were to be “in accordance with the allotments for the month of September 2009...provided, however, that the Governor may, in her discretion, provide for additional emergency expenditures as they occur.”³⁹

As explained below, there was much variation in Governor Rell's allotments both across the budget funds, and across the budget accounts within each fund. Yet, her Executive Orders failed to provide clear explanation for her choices about what specific allotments were authorized. Further, although her Orders stated that allotments were being made to preserve funding for certain priorities, such as protecting the public health, her Order's allotments at times appeared inconsistent with these priorities. Specifically:

- *There was unexplained variation in allotments by budget fund.* The Governor's allotments for July and August for the various budget funds were both above, and below, what one would expect if the allotments were equal to two months (1/6th) of the year's spending (using FY 2009 estimated spending as the budget base). As shown in Table 1 below, funding allotted for the General Fund for these two months totaled about \$450 million less than would be expected (\$2,885 million) - a reduction of about 15%. There was no allotment at all for the Mashantucket Pequot

³⁶ This Order also directed all department heads and executive branch personnel to: a) limit the purchase of goods to those essential to governmental functions; b) limit the purchase of services pursuant to personal service agreements to those that are necessary for the provision of direct care, the administration of justice and the protection of the public health and safety (and required pre-approval of such agreements by the Governor's Office and the Office of Policy and Management); c) use personnel and other resources in an effective and efficient manner; and d) perform all otherwise lawful acts necessary to effectuate the order.

³⁷ The legal authority the Governor cited for her authority for issuing the Orders was: a) Article Fourth, Section 5 of the Connecticut Constitution (vesting the “supreme executive power of the State in the Governor”); Article Fourth, Section 12 of the Connecticut Constitution (requiring that the Governor “shall take care that the laws be faithfully executed”) and Connecticut General Statutes. §3-1 (authorizing the Governor to “take any proper action concerning any matter involving the enforcement of the law of the State and the protection of its citizens”). Her Orders noted the absence of an approved appropriations act for the FY 2009-2010 fiscal year that confronted the state with a “severe financial emergency” that “poses a direct and imminent risk of harm to the preservation of order, the administration of justice and the protection of the public health and safety.” The Orders concluded that it is “therefore necessary and proper that the Governor provide for the continuing operations of the State government in the absence of an approved appropriations act.”

³⁸ The fact that the Governor chose to use FY 09 estimated spending as the “base” for FY 10 allotments is itself significant, as FY 09 estimated spending is significantly less than the FY 10 current services budget, the FY 10 budget initially proposed by the Governor and the budget in SB 1801 (the vetoed budget bill). For example, FY 09 estimated General Fund spending is \$17.309 billion. This is \$1.275 billion *less* than the FY 10 current services budget (\$18.584 billion as of February 2009), \$200 million less than the Governor's proposed FY 10 budget (\$17.509 billion as of February 2009), and \$229 million less than SB 1801 (\$17.529 billion).

³⁹ Governor M. Jodi Rell, Executive Order No. 33 (September 1, 2009).

and Mohegan Fund for these two months, and the Banking Fund's allotment was just 2/3rd what would be anticipated. On the other hand, the July 2009 allotments for the Special Transportation Fund and several other funds actually exceeded the expected amount for two months' spending. The Governor gave no explanation for this variation.

	FY 09 estimated spending	Governor's July 2009 Allotment	Governor's August 2009 Allotment	Allotments as % of FY 09 estimated spending (2 months=16.7%)
General Fund	17,308,595,672	1,304,509,765	1,151,217,921	14.2%
Special Transportation Fund	1,139,189,266	110,341,057	116,081,966	19.9%
Banking Fund	38,594,033	2,159,150	1,541,783	9.6%
Insurance Fund	23,821,812	2,522,255	1,799,240	18.1%
Consumer Counsel and Public Utilities Fund	23,403,506	2,310,549	1,488,000	16.2%
Workers' Compensation Fund	22,857,296	1,957,785	1,340,190	14.4%
Mashantucket Pequot and Mohegan Fund	92,998,519	0	0	0.0%
Soldiers, Sailors and Marines' Fund	3,249,254	288,671	264,193	17.0%
Regional Market Operation Fund	982,746	70,805	61,600	13.5%
Criminal Injuries Compensation Fund	2,625,000	218,750	218,750	16.7%
TOTAL	18,656,317,104	1,424,378,787	1,274,013,643	14.5%

- *There was unexplained variation in allotments across and within state agency budgets.* As shown in Appendix 1, for example, there was much variation across state agency budgets in the share of a year's funding that was allotted for spending in July and August. For example, the allotments approved for July and August for the Office of Policy and Management totaled just over 1% of FY 09 estimated spending, far below the amount one would expect if a full two months of spending had been allotted (i.e., 16.7% of FY 09 estimated spending). Other agencies that received relatively low levels of allotted funds in these first two months included the Office of Workforce Competitiveness (1.6% of FY 09 estimated spending for the two months); the State Department of Education (4.9%) and the Department of Economic and Community Development (6.4%), the Department of Public Health (11.0%), and the Department of Correction (11.3%). While there may be understandable reasons for this divergence (e.g., differences in *when* particular state payments are normally made over the course of a fiscal year), the Governor gave no explanation in her Orders.

Further, as shown in Appendix 1, there also was variation *within* state agency budgets in the allotment of funds. For example, although the Governor's Order emphasized the need to protect public health, multiple budget accounts within the Department of Public Health's budget

were allotted *no* funding for July and August, including AIDS Services, Community Health Services, Venereal Disease Control, and Childhood Lead Poisoning.

Also unclear from the Governor's Executive Orders was whether state-funded programs that received no funding for July and August but still continued providing needed services would be compensated retroactively for the services they provided and the costs they incurred once a state budget *was* adopted. While the failure to provide these two months of funding resulted in cash flow problems for many state-funded non-profits, total elimination of funding for expenses that were already incurred in July and August could endanger their fiscal stability.

III. Other States' Statutory Procedures May Provide Some Guidance for Needed Changes to Connecticut Law

Surveys of all fifty states conducted by the National Association of State Budget Officers (NASBO)⁴⁰ and the National Conference of State Legislatures (NCSL)⁴¹ identified several types of state action that occur, singly or in combination, when state budgets are late in adoption. As reported in these surveys:

- Several states authorize the on-going allocation of general revenue to various funds and fund accounts into the next fiscal year at the same level as the prior year. For example, Rhode Island law states that "In an emergency caused by a failure of the General Assembly to pass the annual appropriations bill, the same amounts appropriated in the previous fiscal year shall be available for each department and divisions thereof, subject to monthly or quarterly allotments." If Wisconsin's biennial budget is not in effect by July 1 in odd years, the prior year's appropriation levels continue until the budget is enacted. In Utah, legislative rule stipulates that a "base budget" appropriation, equal to the previous year's ongoing appropriation, must be passed by both chambers within the first ten days of the annual general session.
- Twelve states have constitutional or other provisions or procedures that allow for the automatic continuous payment of state funds for *some* agencies and services (Arizona, California, Georgia, Hawaii, Illinois, Indiana, Kentucky, Minnesota, Missouri, Montana, Oklahoma, Pennsylvania).⁴²

⁴⁰ National Association of State Budget Officers, *Budget Processes in the States* (Summer 2008), Table 14; National Association of State Budget Officers, *Budget Processes in the States* (January 2002), Table N.

⁴¹ National Conference of State Legislatures, *Legislative Budget Procedures* (September 2008), Table 6-4.

⁴² In Arizona, designated revenue fund expenditures can continue. In California, there are selected permanent/continuous appropriations (federal mandates, some multiple year appropriations, Constitutionally-required school appropriations, court mandates, and payments required under the Fair Labor Standards Act) and due to administrative interpretations of court rulings, a large portion of state spending continues despite lack of appropriations. In Georgia, payments for debt service are continuous and dedicated revenue fund expenditures can continue. In Hawaii, expenditures from revolving and trust funds and funds established to provide services by any department or establishment to other state departments or establishments, or to any political subdivision of the state, may be made without appropriation or allotment. In Illinois, pension contributions, debt service payments and certain mass transit distributions can continue. In Indiana, payments continue for all psychiatric hospitals, the School for the Deaf, the School for the Blind, the Veterans' Home and the Boys' School. In Kentucky, "constitutional obligations" continue. In Minnesota, the state constitution requires that "no money be paid out of treasury . . . except in pursuance of an appropriation by law," however spending can continue as amounts collected from the federal government and certain dedicated funds are appropriated by general statutory provisions, rather than by direct items of appropriations (and, in 2005, some agency operations for essential services continued under a court order. In Missouri, payments on the state

- In eleven states,⁴³ legislatures pass temporary budgets. In some cases, this is authorized explicitly by state statute (e.g., Massachusetts) or attorney general opinion (e.g., Connecticut, Tennessee).
- More than twenty states⁴⁴ have provisions that direct the government to shut down if there is no budget (although courts have at times intervened to continue some essential state services).
- In other states, there is no state law on the issue and because the state always has passed a budget on time, it is not known what would occur if the budget were *not* passed on time.⁴⁵

As the National Conference of State Legislatures has highlighted, states incur many costs when their budgets are late. They include: the costs of holding special legislative sessions; lost wages from furloughing state employees (and a resulting loss of personal income taxes); the costs and disruptions resulting from the inability of state agencies and local governments to budget and deliver services; a downgrading of the state's credit rating (resulting in less favorable terms on loans and higher debt service costs); and a decline in public confidence in elected officials and damage to the state's image.⁴⁶ Statutory changes that encourage timely resolution of budget disputes and that make clear and predictable what spending is allowable if a budget is late could reduce uncertainty and confusion in the operation and delivery of state services and its associated costs.

IV. A Proposal for Connecticut

Connecticut's experience over the last three recessions has made evident the need for some statutory clarity regarding what is to occur when the General Assembly and Governor cannot agree on a state budget by the start of the new fiscal year on July 1. In the absence of such clarity, the constitutionally-mandated separation of powers between the General Assembly (that is authorized to adopt a budget that appropriates funds) and the Executive (that is authorized to implement that budget) is at great risk.

The separation of powers provision of Article Second of the Connecticut Constitution provides in relevant part: "The powers of government shall be divided into three distinct departments, and each

debt and appropriations to the state transportation department continue and in Montana several programs do not receive an appropriation or receive "statutory funding" and they remain in operation. In Pennsylvania, state employees must be paid from revenues under a Commonwealth Court decision. National Conference of State Legislatures, *Legislative Budget Procedures* (September 2008), Table 6-4; National Association of State Budget Officers, *Budget Processes in the States* (Summer 2008), Table 14.

⁴³ These include: Connecticut, Massachusetts, Michigan, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, and Tennessee. National Conference of State Legislatures, *Legislative Budget Procedures* (September 2008), Table 6-4.

⁴⁴ These states include Alabama, Alaska, Arizona, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Minnesota, Mississippi, Montana, New Jersey, New Mexico, North Dakota, Oklahoma, Texas, Vermont, and Wyoming. National Conference of State Legislatures, *Legislative Budget Procedures* (September 2008), Table 6-4.

⁴⁵ These states include Delaware, Florida, Louisiana, Nebraska, Nevada, South Dakota, Utah, and Washington. Washington state law makes the failure to pass a budget at least 30 days before the next biennium a misdemeanor (though no penalty has ever been applied). National Conference of State Legislatures, *Legislative Budget Procedures* (September 2008), Table 6-4.

⁴⁶ National Conference of State Legislatures, *Late State Budgets* (June 29, 2009).

of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.” As the Connecticut Supreme Court explained:

[T]he primary purpose of this constitutional doctrine is to prevent commingling of different powers of government in the same hands. The constitution achieves this purpose by prescribing limitations and duties for each branch that are essential to each branch's independence and performance of assigned powers. This court has stated: ‘It is axiomatic that no branch of government organized under a constitution may exercise any power that is not explicitly bestowed by that constitution or that is not essential to the exercise thereof.’ The separation of powers doctrine serves a dual function: it limits the exercise of power within each branch yet ensures the independent exercise of that power. Massameno v. Statewide Grievance Committee, 234 Conn. 539 (1995) (citations omitted)

Either of two statutory alternatives could create the clarity and predictability needed and assure conformance with the core separation of powers requirements.

One option would be to amend state law in a manner consistent with Rhode Island, and provide for continuing appropriations at the prior year’s estimated spending levels if a budget is not in place by July 1. While the prior year’s spending levels may well be in excess of estimated revenues for the new fiscal year, current state law in Connecticut already establishes procedures to address mid-year deficits that allow for some modest reductions by the Governor without legislative approval and larger reductions only with legislative approval.

Alternatively, state law could be amended to:

- a) Expressly authorize the General Assembly to adopt continuing resolutions when a budget has not been adopted (and specify what should be included in such a resolution);⁴⁷
AND

⁴⁷ The June 7, 1991 Attorney General Opinion includes a list of matters that should be considered by the General Assembly in adopting a continuing resolution. They include: a) the requirement to present the resolution to the Governor for approval; b) the need to specify the “rate of operations” that is to be funded (which may include a prior appropriations act, a bill that passed one or both houses, a budget proposal, or the current budget); c) that if the “current” rate is used, it should be the rate equal to the total funds available during the last fiscal year before the one covered by the resolution; d) that consideration should be given to the rate of spending, so that a yearly amount of funds authorized in a continuing resolution is not spent in an abnormally short time (using the agency’s usual pattern of spending in prior years as the guide); e) that the continuing resolution specify that all payments are subject to a continuation of legislative funding and if funds are later reduced when a budget is adopted, that offsets will be made for prior overpayments; f) that the continuing resolution should maintain sub-items in the same amount as in the prior year (not just the total agency budget); g) that the resolution could provide that no project or activity not conducted in the prior fiscal year be initiated or otherwise undertaken with funds under the resolution; h) that the resolution may last until a regular appropriation act is passed for a particular activity, a comprehensive appropriations act is passed, or a fixed cut-off date, in the legislature’s discretion; i) that care be taken to avoid programs being inadvertently terminated or commenced; j) that the resolution make clear that no other budgetary or appropriations laws are repealed; and k) that any termination dates on revenue legislation are removed so all revenue laws are extended, consistent with the continuing resolution). 1991 Op. Conn. Atty Gen. 1991-019 (June 7, 1991), pp. 10-11.

b) Expressly prohibit any funds from being allotted by the Governor in the absence of a continuing resolution except for very specific and narrowly-defined purposes (such as protecting the public health and public safety).

This latter approach would encourage a more prompt resolution of any budget impasse as the threat of a near-total government shut-down would add a greater sense of urgency to budget negotiations and circumscribe the Governor's currently broad discretion to make allotments without funds having been appropriated by the General Assembly. It also would make explicit the General Assembly's authority to adopt continuing resolutions and establish the allowable terms of such resolutions.