

# State Action in the Absence of a Budget Before the Beginning of a New Fiscal Year

By: Rute Pinho, Principal Analyst  
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## Issue

What is the governor's authority to operate state government in the absence of an approved budget? What actions were taken in prior years in which the state was without a budget for the new fiscal year?

This report updates OLR report [2009-R-0255](#).

## Summary

Neither the state constitution nor state statutes specify a required course of action in the absence of an approved state budget, nor do they expressly provide legal authority for state expenditures. However, attorney general opinions issued in 1991 and 2003 ruled that, based on implied constitutional and statutory authority, the (1) governor may issue an executive order to ensure continued essential and necessary government operations and (2) General Assembly may adopt continuing resolutions for that same purpose. However, the governor has the authority to veto the resolution. In the absence of an override, the resolution would have no legal effect.

The state used different approaches in the three most recent instances when it lacked a budget for the new fiscal year: 1991, 2003, and 2009. (The Legislative Library researched back to the 1960s and found no other examples.) During the 1991 budget debate, the legislature enacted a series of continuing resolutions to keep the government running, and Governor Weicker issued a series of executive orders to address periods not covered by the resolutions. In 2003, Governor Rowland

vetoed a continuing resolution enacted by the legislature and instead issued a series of executive orders. In 2009, Governor Rell also issued a series of executive orders, which unlike the orders issued by Weicker and Rowland, included specific allotment amounts for state expenditures.

Copies of all of the aforementioned executive orders are attached to this report. Generally, they cite the following sources of authority: (1) the constitution vests the state's supreme executive power in the governor ([Conn Const. art IV, § 5](#)); (2) the constitution requires that the governor "take care that the laws be faithfully executed ([Conn Const. art IV, § 12](#)); and (3) state law authorizes the governor to "take any proper action concerning any matter involving the enforcement of the laws of the State and the protection of its citizens" ([CGS § 3-1](#)).

## 1991

### *Attorney General Opinions*

In early June 1991, legislative leaders sought an opinion from the attorney general on the state's ability to continue paying for state services if a budget was not adopted by June 13 (payroll for the last two weeks of June was payable in the next fiscal year). In pertinent part, the attorney general concluded, based on the state Supreme Court's decision in *State v. Staub*, 61 Conn. 553 (1892), that "even in the absence of appropriations passed by the legislature, 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."

In *Staub*, the state sought to have the comptroller issue funds for school-age children to each district in accordance with statute. However, as the legislature had not adopted a budget, the comptroller refused based on statutes (1) requiring specific appropriations for all state expenditures and (2) forbidding any disbursing officer of the state to allow or pay any account or claim until a special appropriation was made. The court found that the legislature's failure to adopt an appropriations bill acted to suspend these statutory requirements (*Id.* at 566-67), noting that "the command to provide for the essential operations of the government must prevail against a rule of procedure in applying the funds raised by taxation for the support of the government" (*Id.* at 566).

The attorney general opined that the *Staub* standard would be difficult to apply because it does not provide any insight into making choices on spending options. Thus, he suggested that the legislature adopt a continuing resolution in order to avoid "fiscal confusion and uncertainty." The

opinion noted that while there is no specific statute authorizing the General Assembly to pass a continuing resolution, no such specific authorization is needed: the legislature has plenary constitutional authority to appropriate state funds (Attorney General Opinion [No. 91-019](#)).

### ***Executive and Legislative Actions***

The legislature adopted a budget on June 30, 1991, which Governor Weicker vetoed the same day ([PA 91-1, June Special Session](#)). Subsequently, the legislature enacted several temporary appropriations measures to keep the state operating for several weeks after the fiscal year began ([SA 91-1](#) through [SA 91-5](#) of the June Special Session). Generally, the acts appropriated funding for one- to two-week periods from July 1 through August 18, 1991. Additionally, Governor Weicker signed several executive orders specifically authorizing that funds be expended in situations where there was a gap between the expiration and effective dates of continuing resolutions, including closing certain agencies and requiring others to operate at reduced levels (see Attachment 1). A legislator inquired as to whether the governor had the authority to do the former. In opinion [No. 91-033](#), the attorney general concluded that he did based on the same reasoning as the earlier opinion and the fact that the Connecticut Constitution vests the supreme executive power of the state in the governor.

The legislature ultimately adopted a budget on August 21, 1991, which Governor Weicker signed into law the following day ([PA 91-3, June Special Session](#)).

## **2003**

### ***Attorney General Opinion***

In 2003, following Governor Rowland's veto of the legislature's two-week continuing resolution (described further below), legislative leaders asked the attorney general about the legislature's authority to adopt a continuing resolution in the absence of a state budget. In opinion [No. 03-012](#), the attorney general concluded, for the reasons stated in the above-referenced 1991 opinions, that the legislature had the authority to adopt the continuing resolution. However, the governor also had the constitutional authority to veto it. Additionally, in accordance with those same opinions, the governor had the authority to issue an executive order to ensure continued operations.

The opinion notes the attorney general's preference for an agreement among the legislative and executive branches on a temporary spending measure approved by the General Assembly and signed by the governor, as occurred in 1991, because it would provide "stability and certainty." However, the opinion specifically concludes that an executive order, or a continuing resolution approved over the governor's veto, are both legally acceptable. The opinion cautions that "care

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.”

### ***Executive and Legislative Actions***

In May and June 2003, the legislature adopted two separate budget acts that were subsequently vetoed by Governor Rowland ([PA 03-185](#) and [PA 03-279](#)). The legislature then adopted a two-week continuing resolution on June 30 to fund state government operations until July 14 ([PA 03-2, June 30 Special Session](#)). Governor Rowland vetoed the resolution, noting that there was no authority for such a document. He then issued a series of executive orders directing agencies to “limit expenditures to minimum and essential levels” and the treasurer to expend the sums necessary to carry out the orders. The first four executive orders covered one-week periods, while the fifth took effect on July 29, 2003 and was scheduled to expire at the end of FY 04 (see Attachment 2). The legislature adopted a final budget on July 31, 2003, which Governor Rowland signed into law on August 16, 2003 ([PA 03-1, June 30 Special Session](#)).

## **2009**

### ***Executive and Legislative Actions***

In 2009, Governor Rell vetoed the budget adopted by the legislature on June 26, 2009, in a special session and subsequently issued a series of executive orders to continue state operations ([PA 09-1, June Special Session](#)). The executive orders each covered monthly periods from July 1 through September 30. Unlike the executive orders issued in 1991 and 2003, Governor Rell’s orders specified the monthly allotments for state expenditures and directed agencies to limit the purchase of goods to those “essential to governmental functions” and services provided under personal service agreements to those “necessary for the provision of direct care, the administration of justice and the protection of the public health and safety,” subject to the approval of the Governor’s Office and Office of Policy and Management (see Attachment 3).

The legislature ultimately adopted a budget on August 31, 2009, which took effect on September 8, 2009 without Governor Rell’s signature ([PA 09-3, June Special Session](#)).

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