

INFORMATION BRIEF

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Updated: December 2010

Unallotment

Executive Branch Power to Reduce Spending to Avoid a Deficit

This information brief provides background on the workings of and legal requirements under the unallotment law. This law specifies conditions under which the executive branch can reduce expenditures to prevent a budget deficit when revenues are less than anticipated.

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Executive Summary

The unallotment law authorizes the executive branch to unilaterally reduce spending under enacted appropriations to prevent a state budget deficit when revenues are less than anticipated (page 3).

The Commissioner of Management and Budget may reduce spending under the unallotment power only after all of the following occur:

- A balanced budget has been enacted into law
- Expected revenues have been determined to be less than anticipated
- The governor has approved the unallotment
- The commissioner has sought advice from the Legislative Advisory Commission
- The budget reserve has been exhausted (pages 1 to 6)

The Minnesota Court of Appeals has upheld the constitutionality of the unallotment law under the separation of powers, but questions may remain whether the broad discretion it grants to the executive branch is an unconstitutional delegation of the legislature's power (pages 6 to 7).

The unallotment law grants executive branch officials broad discretion in choosing which spending to reduce to prevent a deficit. Appropriations to the judiciary and legislature and for unemployment compensation are not subject to allotment and, thus, are likely exempt. Moneys in the state's risk management (self-insurance) fund are explicitly exempt. But spending under all other appropriations is generally subject to unallotment, including the following:

- Appropriations to constitutional officers
- Interfund transfers
- Appropriations made in prior biennia that remain unspent
- Appropriations for state intergovernmental aid and other statutory "entitlement" programs (pages 7 to 12)

The unallotment statute authorizes the Commissioner of Management and Budget to suspend or defer statutory requirements or obligations that would prevent effecting the reductions. The exact scope of this authority is unclear—for example, the extent to which it would allow "rewriting" state aid formulas or other program parameters to put into effect spending reductions (pages 12 to 14).

The unallotment power may not be used to reduce spending in future biennia, and the law does not specify how an unallotment affects the form or preparation of the budget for the next biennium (pages 14 to 17).

Introduction

The “unallotment” law¹ specifies conditions under which the executive branch can reduce expenditures to prevent a budget deficit when revenues are less than anticipated. The key part of the law provides:

(a) If the commissioner [of management and budget] determines that probable receipts for the general fund will be less than anticipated, and that the amount available for the remainder of the biennium will be less than needed, the commissioner shall, with the approval of the governor, and after consulting the legislative advisory commission, reduce the amount in the budget reserve account as needed to balance expenditures with revenue.

(b) An additional deficit shall, with the approval of the governor, and after consulting the legislative advisory commission, be made up by reducing unexpended allotments of any prior appropriation or transfer. Notwithstanding any other law to the contrary, the commissioner is empowered to defer or suspend prior statutorily created obligations which would prevent effecting such reductions.

[See Appendix A at the end of this information brief for the complete text of [Minnesota Statutes, section 16A.152.](#)]

Unallotment Procedures

To use unallotment, MMB must determine a deficit exists.

The first prerequisite to unallotment is that the Commissioner of Management and Budget “determines that probable receipts for the general fund will be less than anticipated, and that the amount available for the remainder of the biennium will be less than needed....”

The statute does not specify when or how the commissioner “determines” that a shortfall exists.² For example, the statute does not require that this determination be made in connection with the state revenue and expenditure forecasts that the commissioner must issue in February and November.³

¹ [Minn. Stat. § 16A.152](#), subd. 4.

² The statute requires that the Commissioner of Management and Budget determine both that: (1) probable receipts for the general fund will be less than anticipated; and (2) the amount available for the remainder of the biennium will be less than needed. Thus, unallotment cannot be used if there is a sufficient general fund balance to cover a shortfall in receipts. It also appears that unallotment cannot be used if the projected general fund deficit is caused exclusively by higher than anticipated expenditures, instead of lower than expected receipts.

³ The Commissioner of Management and Budget must prepare forecasts in November and February. [Minn. Stat. § 16A.103.](#)

A forecast showing a shortfall almost certainly would constitute a determination that “the amount available for the remainder of the biennium will be less than needed.” It also is likely that the commissioner could make this determination without issuing a formal forecast.

A balanced budget must be enacted before unallotment can be used.

Although the language of the statute is not explicit on whether unallotment can occur before a balanced budget has been enacted, the Minnesota Supreme Court has ruled that unallotment may not be used until a balanced budget has been enacted into law. The statute does not specify what the baseline revenues are that the commissioner must determine will now be “less than anticipated” to permit use of unallotment. In the 2010 case of *Brayton v. Pawlenty*,⁴ the Supreme Court held that these baseline revenues (at least initially) are to be determined by reference to an enacted, balanced budget for the biennium. In *Brayton*, Gov. Tim Pawlenty vetoed a tax increase and used unallotment to reduce spending under enacted appropriations to match the forecast revenues absent the tax increase. As a result, no balanced budget had been enacted. Thus, the *Brayton* decision requires enactment of a balanced budget before unallotment may be used.⁵

The governor must approve unallotments.

After the Commissioner of Management and Budget determines that the amount available for the biennium is less than needed, the governor must approve the commissioner’s actions before the commissioner can either reduce the amount in the budget reserve or reduce allotments.

MMB must consult the Legislative Advisory Commission before unallotting.

The Commissioner of Management and Budget must consult with the Legislative Advisory Commission (LAC)⁶ before reducing the amount in the budget reserve to deal with a projected budget deficit and before reducing allotments, if this step is necessary to deal with the projected

⁴ 781 N.W.2d 357 (Minn. 2010).

⁵ In the words of the court:

[W]e cannot conclude that the Legislature intended to authorize the executive branch to use the unallotment process to balance the budget for an entire biennium when balanced spending and revenue legislation has not been initially agreed upon by the Legislature and the Governor. Instead, we conclude that the Legislature intended the unallotment authority to serve the more narrow purpose of providing a mechanism by which the executive branch could address unanticipated deficits that occur after a balanced budget has previously been enacted. *Brayton v. Pawlenty*, 781 N.W.2d 357, 366-67 (footnote omitted).

⁶ The LAC consists of six members: the majority leader of the Senate and the speaker of the House (or their designees); the chairs of the Senate committee on finance and the House committee on ways and means; and the chairs of the Senate and House budget committees or divisions “responsible for overseeing the items being considered....” It is not clear who the appropriate budget committee chairs would be to consider proposed uses of the budget reserve or proposed unallotments. *Minn. Stat. § 3.30*. For an unallotment that affects items within more than one budget committee or division, the LAC has held these meetings with an expanded membership (beyond the statutory six members) that includes all of the affected budget chairs.

deficit. The law requires only consultation with the LAC and does not give the LAC authority to act on the executive branch's proposed actions.

In other circumstances (e.g., review of federal funds), the law allows the Commissioner of Management and Budget to seek review by submitting requests to individual members of the LAC, without a commission meeting (unless one of the LAC members requests further review).⁷ The unallotment law does not specifically authorize this method of individual consultation, implying that consultation must be with the full LAC at a meeting.

The commissioner must notify legislative budget committees within 15 days after reducing allotments. The notice must be written and must specify:

- (1) the amount of the reduction in the allotment;
- (2) the agency and programs affected;
- (3) the amount of any payment withheld; and
- (4) any additional information the commissioner determines is appropriate.⁸

The budget reserve likely must be exhausted before unallotment can be used.

The executive branch clearly **may** use the budget reserve account to help eliminate an anticipated general fund shortfall. It appears that the executive branch **must** use the budget reserve account before using unallotment authority, although this is not clear.

The law provides that when the Commissioner of Management and Budget determines that a shortfall exists, “the commissioner shall, with the approval of the governor, and after consulting the legislative advisory commission, reduce the amount in the budget reserve account as needed to balance expenditures with revenue.”⁹

The use of the word “shall” suggests that use of the budget reserve account is a mandatory first step in eliminating a projected shortfall.¹⁰ However, the fact that the statute requires approval of the governor creates some ambiguity. Arguably, the governor could disapprove use of the budget reserve—if the governor had no authority, the language requiring his approval arguably would be meaningless.¹¹ On the other hand, the approval of the governor could be read to refer not to use of the budget reserve, but rather to the determination that there is a general fund shortfall.

⁷ See [Minn. Stat. § 3.30](#), subd. 2 (“A recommendation of the commission must be made at a meeting of the commission unless a written recommendation is signed by all the members entitled to vote on the item.”).

⁸ [Minn. Stat. § 16A.152](#), subd. 6.

⁹ [Minn. Stat. § 16A.152](#), subd. 4(a).

¹⁰ [Minn. Stat. § 645.44](#), subd. 16 (defining “shall” as “mandatory”).

¹¹ Language in another subdivision, governing use of the budget reserve, provides that “The budget reserve may be used when a negative budgetary balance is projected and when objective measures, such as reduced growth in total wages, retail sales, or employment, reflect downturns in the state’s economy.” [Minn. Stat. § 16A.152](#), subd. 3. The use of the term “may” in this subdivision could be used to support an argument that unallotment can be used before using the budget reserve.

The legislative history appears to support the interpretation that the commissioner must use the entire budget reserve before using unallotment. Until 1983, the law permitted the executive branch: (a) to make transfers from the budget reserve account; (b) to reduce allotments; or (c) to make any combination of transfers and reductions. In 1983, the authority to make any combination of budget reserve transfers and reductions was stricken and replaced by language authorizing unallotment to make up any “additional deficit” (implying that the budget reserve must be used first).¹² Although use of the budget reserve was not an issue in the *Brayton* case (it had already been exhausted), the dissenting justices viewed using the budget reserve as mandatory.¹³

The law does not impose specific timing requirements on the use of unallotment.

The statutory duty to reduce allotments is mandatory to the extent needed to make up a projected deficit not solved by use of the budget reserve account. However, the statute does not specify a timetable. The authors presume unallotment would have to occur in time to make up the projected deficit within the biennium. Arguably, the Commissioner of Management and Budget must unallot immediately once the conditions that require unallotment have been determined to exist, and the commissioner has approval of the governor and has consulted the LAC. However, in the past, it has been a common practice of commissioners and governors to wait until the legislature had time to rewrite the budget before unallotting. The requirement to obtain the governor’s approval and to consult with the LAC may imply that the commissioner has some discretion in the timing of unallotment.

Constitutionality of Unallotment Law

Because the unallotment law grants the executive branch extraordinary power to modify appropriations enacted by law, some have questioned whether this is an unconstitutional delegation of legislative power to the executive branch. In one case, the Minnesota Court of Appeals has held that unallotment authority does not unconstitutionally delegate legislative power to the executive branch. Rather, it enables the executive branch to protect the state from financial crisis in a manner designated by the legislature.¹⁴

In *Brayton v. Pawlenty*, the plaintiffs challenged the constitutionality of the statute, as applied in that case. However, the Supreme Court invalidated the unallotment as not authorized by the statute and, thus, did not reach the issue of the statute’s constitutionality. Two justices that concurred in the court’s opinion noted that the “sweeping discretion” granted to the executive branch by the statute “raises serious separation of powers concerns.”¹⁵ By contrast, the three

¹² [Laws 1983, ch. 342](#), art. 18, § 1.

¹³ “[T]he Commissioner must first exhaust the budget reserve account before invoking the unallotment authority.” *Brayton v. Pawlenty*, 781 N.W.2d 357, 378 (Gildea, L., dissenting).

¹⁴ *Rukavina v. Pawlenty*, 684 N.W.2d 525, 535 (Minn. App. 2004), *review denied* (Minn. 2004).

¹⁵ *Brayton v. Pawlenty*, 781 N.W.2d 357, 369 (Minn. 2010) (Page, A., and Anderson, P., concurring).

dissenting justices concluded that the unallotment statute provided sufficient standards for the use of the executive power to avoid unconstitutionally delegating legislative power.¹⁶

Items Subject to Unallotment

Allotments are administrative limits on appropriations.

Since the unallotment authority applies to “allotments” of appropriations, it is important to determine what an allotment is. The statute defines an allotment as:

“Allotment” means a limit placed by the commissioner [of management and budget] on the amount to be spent or encumbered during a period of time pursuant to an appropriation.¹⁷

Under this definition, an allotment is an administrative limit the Commissioner of Management and Budget puts on the spending of an appropriation. An allotment may limit the amount of an appropriation that may be spent in a specific period of time (e.g., a month or quarter). Allotments also typically specify limits for categories or types of spending (e.g., salaries, supplies, grants, and so forth).

The law imposes few limits on the type or amounts of appropriations that may be unalloted.

When the appropriate circumstances exist and the appropriate process has been followed, the commissioner appears to have broad authority to reduce allotments as necessary to make up the deficit.

- No programs are exempt from the unallotment authority.¹⁸
- Unlike some other state laws, the commissioner is not required to make across-the-board cuts.
- No maximum percentage limits how much the commissioner can cut from any program.¹⁹

¹⁶ *Id.* at 375-81 (Gildea, L., dissenting).

¹⁷ [Minn. Stat. § 16A.011](#), subd. 3.

¹⁸ The legislature has enacted some narrow exceptions to this general rule. [Minn. Stat. §§ 16B.85](#), subd. 2(e) (risk management fund); [477A.011](#), subd. 36(y) (onetime 2010 local government aid payment to the city of Coon Rapids).

¹⁹ By contrast, in a temporary provision enacted in 1993, the legislature required the Commissioner of Finance to uniformly unallot all appropriations in November 1993 if the forecast indicated the budget reserve and cash flow account would not be funded at \$400 million for the 1994-95 biennium. [Laws 1993, 1st spec. sess., ch. 4, § 2](#). The law limited the unallotment to no more than 1 percent of biennial appropriations. Various appropriations were exempted, such as those for debt service, maximum effort school loans, and AFDC. Because revenues exceeded the original estimates, the commissioner did not unallot appropriations in November 1993.

- The statute authorizes the commissioner to defer or suspend statutory obligations that would otherwise prevent the unallotment.

The statute contains two further provisions governing unallotment:

(d) In reducing allotments, the commissioner may consider other sources of revenue available to recipients of state appropriations and may apply allotment reductions based on all sources of revenue available.

(e) In like manner, the commissioner shall reduce allotments to an agency by the amount of any saving that can be made over previous spending plans through a reduction in prices or other cause.

Paragraph (d) seems purely discretionary. It likely was added to the statute to make it clear that the commissioner has flexibility in reducing statutory entitlements.²⁰

Paragraph (e), on the other hand, is mandatory. The commissioner is required to reduce allotments by the amount of savings that can be achieved. Arguably, these reductions must occur before the commissioner makes other reductions in allotments.

The exact scope of MMB’s authority to separate appropriations into allotments is unclear.

The statute explicitly authorizes the Commissioner of Management and Budget to set “allotment periods.”²¹ The statute also authorizes the commissioner to set allotments as part of the power to approve agency spending plans. The plans, by statute, must certify “the amount required for each activity is accurate and is consistent with legislative intent. . . .”²² This implies the power to set allotments by “activity” and consistency with legislative intent. It is not clear whether the commissioner has broader authority to define allotments as to other parts of an appropriation.

Unallotment likely does not apply to appropriations for the judiciary and legislature.

The unallotment authority likely does not extend to the legislative or judicial branches. The unallotment statute does not specifically exempt the legislative or judicial branches. However, [Minnesota Statutes, section 16A.14](#), subdivision 2a, provides that:

The allotment and encumbrance system does not apply to:

²⁰ A common method of cutting aids to counties and cities has been to cut them based on the amount of “levy plus aid,” rather than simply the amount of state aid payments. This spreads the cuts across cities and counties more in proportion to their total budget resources, rather than simply based on the amount of state money they receive. It seems likely that paragraph (d) was added to permit this type of flexibility.

²¹ [Minn. Stat. § 16A.14](#), subd. 1.

²² [Minn. Stat. § 16A.14](#), subd. 3.

- (1) appropriations for the courts or the legislature;
- (2) payment of unemployment benefits.

If the courts and the legislature are not subject to the allotment system, it is likely they are not subject to the executive authority to reduce allotments.²³

Appropriations to constitutional officers likely can be unallotted.

Unlike appropriations to the judiciary and legislature, the unallotment authority appears to apply to appropriations to constitutional officers (the governor, lieutenant governor, secretary of state, auditor, and attorney general). Neither the statutory definition of allotments nor the unallotment statute exempts appropriations to constitutional officers. However, the constitution likely imposes some outer limits on unallotting appropriations to constitutional officers.

For example, it would probably not be permissible to substantially unallot the entire budget of a constitutional officer and expect other state agencies to carry out the officer's functions or that the functions would not be performed at all. In the *Mattson* case,²⁴ the Minnesota Supreme Court held a law that transferred the state treasurer's function and appropriations to other state agencies unconstitutional because it violated the constitution's distribution of executive powers among the constitutional officers. Any unallotment of appropriations to constitutional officers would need to be analyzed from the perspective of the constitutional duties and responsibilities of the affected officer.

²³ In 1986, the executive branch unallotted funds from the appropriations to the legislature and the judicial branch. In 2003, the governor issued an unallotment order that applied to the legislative and judicial branches. The Senate and the judicial branch objected to the unallotment as illegal. Patricia Lopez, "Did Pawlenty prune the wrong branches," *Star Tribune* (Feb. 12, 2003). This dispute was resolved without the executive branch explicitly conceding that the unallotment power did not apply, but with both branches agreeing to "voluntary" reductions of the amounts specified in the original order. "Dispute over Pawlenty cuts to Legislature, courts settled," *Star Tribune* (Feb. 13, 2003). For example, in a letter to Speaker Steve Sviggum, Commissioner of Finance Dan McElroy stated:

I understand that there are some concerns about the unallotment process and how it may or may not apply to the legislature and the courts. I recognize that there are differences in the encumbrance processes that state agencies must follow, and as a result, propose another way to resolve the issue.

... I hope that you might volunteer to participate in this effort to meet balanced budget requirements. I have made a similar request to the courts.

Copy of letter in authors' files. This letter does not unambiguously concede that the unallotment power does not apply to the legislative and judicial branches, but appears implicitly to do so.

The dissent in *Brayton* states that the statute exempts the judiciary and legislature from the unallotment power. *Brayton v. Pawlenty*, 781 N.W.2d 357, 379 (Gildea, L., dissenting).

²⁴ *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986).

Unspent appropriations for prior biennia may be unalloted.

The unallotment provisions explicitly extend to any “unexpended allotments of any *prior* appropriation or transfer.”²⁵ The Court of Appeals in 2004 held that this allowed unallotment of appropriations and transfers made in previous biennia that were still unspent.²⁶ Most appropriations lapse at the end of the biennium, so this authority will not have wide application.²⁷ However, some appropriations, either by their own terms or by statute (e.g., appropriations for permanent improvements) do not lapse and would be subject to unallotment.²⁸

MMB may unallot interfund transfers.

Interfund transfers may be unallotted if the transfer is made from the general fund to another fund or between accounts within the general fund.

The general unallotment provisions apply to “any prior appropriation *or transfer*.”²⁹ Unlike typical appropriations, however, the timing of unallotments of interfund transfers raises questions. As a practical matter, once a regular appropriation has been spent, it can no longer be unallotted. The money is simply no longer in the state treasury; it has been used to pay salaries or to purchase goods and services. In the language of the unallotment statute, this allotment has been “expended.”³⁰ However, for an interfund transfer, this may not be case. The money may have been transferred from the general fund to a dedicated fund but may remain unspent in the dedicated fund, or it may be unclear if the money has been spent when the fund receives money from both transfers and other sources.

A 2004 Court of Appeals case addressed this issue.³¹ In 2003, the Commissioner of Finance unallotted \$49 million of interfund transfers from the general fund to the Minnesota Minerals 21st Century Fund. The transfers had been made before the biennium in which the deficit occurred, but money remained in the fund.³² The court rejected the plaintiffs’ argument that the transfer was “expended” when the transfer was completed and held that the moneys remaining in the

²⁵ [Minn. Stat. § 16A.152](#), subd. 4(b) [emphasis added].

²⁶ *Rukavina v. Pawlenty*, 684 N.W.2d 525, 534 (Minn. App. 2004), *review denied* (Minn. 2004).

²⁷ [Minn. Stat. § 16A.28](#).

²⁸ [Minn. Stat. § 16A.28](#), subd. 5 (appropriations for permanent improvements do not lapse). Many appropriations for permanent improvements are made from the bond proceeds fund. These appropriations could not be unallotted to solve a general fund budget deficit. However, unexpended general fund appropriations for permanent improvements from prior biennia could be unallotted.

²⁹ [Minn. Stat. § 16A.152](#), subd. 4(b) [emphasis added].

³⁰ The statutory authority applies to “unexpended allotments.” [Minn. Stat. § 16A.152](#), subd. 4(b).

³¹ *Rukavina v. Pawlenty*, 684 N.W.2d 525 (Minn. App. 2004) *review denied* (Minn. 2004).

³² According to the court, the legislature appropriated or transferred “approximately \$60 million” to the fund. At the time of the unallotment, no money in the fund was “encumbered or obligated” for any project. *Id.* at 529. Although it is not explicitly stated in the court’s opinion, these transfers or appropriations were made in 1999, 2000, and 2001. The deficit resulting in the unallotment occurred in the fiscal year 2002-03 biennium.

fund were “unexpended” within the meaning of unallotment statute.³³ Implicitly, the court held that the moneys must be paid out of the state treasury to be “expended” and not just transferred from the general fund to another fund.³⁴

MMB may eliminate deficits in nongeneral funds with unallotment.

[Section 16A.152](#), subdivision 4(c), provides for reductions in allotments in funds other than the general fund, as needed to eliminate projected shortfalls in those funds. For the purpose of unallotment, each fund is considered separately. If a deficit is projected in the current biennium in a fund, the commissioner may make unallotments in appropriations from that fund.

Unallotment likely does not apply to a requirement to deposit revenues in a special fund.

It is likely not permissible to unallot deposits of funds in special funds to increase general fund resources. As described above, the statute allows unallotting transfers from the general fund to another fund. But a provision directing deposit of money in a dedicated fund, outside of the general fund, is likely not an appropriation for which an allotment may be established. Thus, there is no allotment to reduce. Appropriations are authorizations to “expend or encumber an amount in the treasury.”³⁵ These deposit provisions do not permit spending of these revenues. Rather, they simply direct an executive branch official (usually the Commissioner of Revenue) to place receipts from a specific source into the separate fund. A separate legislative appropriation is required to permit spending of the money. These appropriations can be unallotted, but doing so will not provide resources to the general fund.

The unallotment power applies to appropriations for state aid payments.

The unallotment power likely extends to appropriations of state aids to schools and other local government units. The power of the Commissioner of Management and Budget to reduce allotments to prevent a general fund deficit applies to all general fund appropriations; the statute does not exempt or limit the appropriations to which it applies.³⁶ Thus, it seems reasonable to conclude that the unallotment power described in [section 16A.152](#) includes allotments of appropriations of state aids. This interpretation is confirmed by past practices and the history of

³³ *Id.* at 534-35.

³⁴ In this case, all of the money in the fund originated with the interfund transfers or appropriations. As a result, the court did not need to face the issue of how to determine whether a transfer was unexpended when a fund has both direct revenues (e.g., fees or tax revenues deposited in the fund) and interfund transfers and some of this money had been paid out of the state treasury. In such a case, unless the appropriation specifies the source of the funding (beyond the fund), it may be unclear whether the transfer or the fund’s direct revenues were expended. For example, should a “first-in-first-out” rule apply to determine the source of the moneys expended?

³⁵ [Minn. Stat. § 16A.011](#), subd. 4.

³⁶ As described above, various appropriations are not subject to the allotment system, such as appropriations to the legislative and judicial branches of government.

amendments to the statute. During the early 1980s, the Commissioner of Finance unallotted both school aid and aid to cities and counties.³⁷ For a short period of time during 1981, the unallotment statute provided an exemption for state aids paid to school districts.³⁸ Since then, the statute has not limited the types of appropriations that may be unallotted.

MMB authority to create separate allotments is unclear.

The extent of the Commissioner of Management and Budget's power to set up allotments for appropriations and specifically for state aid appropriations is not clear. As discussed above, the statute fairly clearly allows allotments to limit payments under an appropriation by "period of time," "activity," and "purpose." The commissioner seems clearly to have power to divide aid appropriations on those bases. Thus, the commissioner could reduce the allotment of local government aid to be paid in July, while not reducing the allotment for December.

Similarly, for example, the commissioner could likely set up separate allotments for the "grandfather" portion of local government aid and the "formula" part of local government aid, since these parts of the program would likely be considered to serve somewhat different purposes. In some cases it might be a fact question as to whether the Commissioner of Management and Budget has actually established such individual allotments of aid for each recipient. If this has not been done (either for the current budget or in the past), it could lead to an inference that it was not contemplated by law or is not necessary to manage the budget.

It is not clear whether the commissioner could set a separate allotment for the July formula aid paid to each city and then reduce the allotments for only selected cities. Arguments can be made against such an expansive view of the commissioner's authority to establish allotments. First, the allotment power is designed to impose controls on spending to ensure that funds are spent in an orderly way and in accordance with the requirements and purposes of the underlying appropriation and the spending plan. It is not clear how establishing individual allotments by local unit of government for aid program or a component of an aid program is needed to serve these purposes.

Second, it seems unlikely that the legislature intended to give the commissioner such broad powers under the unallotment statute that the commissioner could create separate allotments simply to reduce them. The unallotment powers vest extraordinary discretion in the executive branch (i.e., to prevent spending of legal appropriations) to prevent a budget deficit. Completely "rewriting aid formulas" would not seem to be necessary to achieve this end and could undo important policy decisions by the legislature in designing the aid formulas. However, the commissioner is given authority to undo similar types of policy decisions in other areas of the budget. Thus, the extent of the commissioner's power in this regard is simply not clear under the statute.

³⁷ Letter from Val Vikmanis, Acting Commissioner of Finance to Speaker Harry Sieben (Jan. 5, 1982) (copy in the authors' files). This letter notes that a legal challenge to the unallotment by the city of Duluth was rejected.

³⁸ This limitation was added by the first law enacted by the 1981 Legislature in response to an unallotment in 1980. [Laws 1981, ch. 1, § 2](#). The same 1981 Legislature later repealed it. [Laws 1981, 1st spec. sess., ch. 2, art. 2, § 3](#), codified at [Minn. Stat. § 16A.15](#), subd. 1 (1982).

The extent that MMB can use unallotment to rewrite state aid formulas is unclear.

The law is not clear on whether the Commissioner of Management and Budget can develop formulas to reduce allotments of state aid appropriations. The commissioner may be able to cut state aid payments using a newly developed formula, if the formula relies on other revenues (i.e., in addition to the state aid) of the recipients of the aid in making the reductions.

The statute explicitly authorizes the commissioner to “consider other sources of revenue available to recipients of state appropriations and may apply allotment reductions based on all sources of revenue available.”³⁹ This provision was added to the statute in 1983.⁴⁰ Its exact effect is unclear. However, it may allow the commissioner to cut state aid using formulas that take into account other revenues of the recipients of the aid payments.

As discussed above, it is unclear whether the commissioner can establish separate allotments for each recipient of state aid and, then, selectively reduce the amounts for individual local governments. The best reading of the statute probably is that the commissioner cannot do so; the individual payments are not separate allotments that can be reduced. Reductions, instead, must be across broader categories (i.e., a percentage aid). Given this limitation, it is quite possible that the legislature, in adding the “consider other sources of revenues” language, sought to give the commissioner more discretion to allocate state aid cuts. Some arguments that support this view include the following:

- Even before the language was added to the statute, the commissioner could “pick and choose” among all the allotments in imposing reductions. Thus, the language was not necessary to allow the commissioner to choose *among* allotments based on other revenues. Given that, the 1983 amendment could have been intended to also allow the commissioner to make state aid cuts in this manner, even if the individual aid entitlements are not separate allotments.
- Prior to the 1983 amendment, legislative discussions occurred regarding the best way to cut aid to schools and other local units when reductions are made. These discussions typically focused on whether aid should be cut across the board (i.e., as a simple fraction of aid) or in proportion to broader measures of the local unit’s revenues (typically levy plus aid). Since 1983, legislatively enacted aid reductions usually have been distributed in the latter fashion, because it is considered more evenhanded. Some local governments rely much more heavily on state aid than other units. Across-the-board cuts in aid fall more heavily on these units relative to their resources than on units less dependent on aid. These aid-dependent units tend to be local governments with smaller local tax bases and/or greater need measures under the formulas.
- The wording of the second half of the sentence of the 1983 amendment lends support to this view. It states the commissioner “may *apply* allotment reductions based on all

³⁹ Minn. Stat. § 16A.152, subd. 4(d).

⁴⁰ Laws 1983, ch. 342, art. 18, § 1, codified as Minn. Stat. § 16A.15, subd. 1 (1984) (since renumbered to be § 16A.152, subd. 4).

sources of revenue available.”⁴¹ In this regard, it is worth noting the subtle difference in language—“apply[ing]” a reduction, as opposed to simply reducing allotments. This could suggest developing formulas or other mechanisms for cuts.

Although unallotment of these school aid payments is (or can be) offset by levy increases for school districts, there is a one-year lag in the receipt of the school district revenues from the levy. For example, if fiscal year 2011 aid is unallotted, a school district will not receive the revenues from the offsetting levy increase until fiscal year 2012 (taxes payable in calendar year 2011).

Effects of Unallotment on Future Spending and Budgets

The law is unclear if later receipt of sufficient revenues automatically restores unallotments or deferred statutory obligations.

The law is unclear as to whether a reduced allotment springs back to its original level if sufficient revenues are received during the biennium to eliminate an anticipated budget deficit.

On one hand, an allotment is an administrative limit placed on an appropriation.⁴² The statute granting the executive authority to reduce allotments does not reduce the underlying appropriation, which thus remains unchanged in law. Further, to put in effect an unallotment, the statute authorizes the executive to “defer or suspend” statutory obligations that would prevent effectuating the reductions. The terms “defer or suspend” imply that the unallotment may be temporary. Therefore, it can be argued that the unallotment ceases to have effect if there is no longer a projected general fund deficit. Once the reduction in allotment ceases to have effect, there is authority to spend money pursuant to the original appropriation.⁴³

On the other hand, the statute provides only for reducing allotments. The statute does not mention reinstatement of previously reduced allotments. The lack of a statutory provision that reinstates unallotted money arguably means there is no authority or requirement to make these reinstatements.

There is a stronger argument that the Commissioner of Management and Budget has authority (as opposed to a duty) to increase a previously reduced allotment, if the reduction were no longer needed to prevent a general fund shortfall. An allotment is a limit placed by the commissioner on the use of the appropriation. As long as the appropriation still is available, the commissioner arguably could reverse a reduction on the allotment limits.⁴⁴

⁴¹ [Minn. Stat. § 16A.152](#), subd. 4(d) [emphasis added].

⁴² [Minn. Stat. § 16A.011](#), subd. 3.

⁴³ In her *Brayton* dissent, Justice Gildea appears to believe that unallotted spending is automatically reauthorized if adequate revenues are received (presumably within the biennium). She states, “The unallotment itself does not impact the appropriation legislation; it merely delays incurring the obligation until revenue is in place to pay for it.” *Brayton v. Pawlenty*, 781 N.W.2d 357, 379 (Gildea, L., dissenting).

⁴⁴ Past commissioners of finance have taken the view that unallotments can be restored during the biennium. (This is different than requiring an unallotment to be restored, of course.) During the early 1980s, the Department of

The Commissioner of Management and Budget may “defer or suspend” prior statutorily created obligations that would otherwise prevent unallotment. This deferral or suspension authority likely applies only as long as the projected shortfall lasts. The use of temporary terms such as “defer or suspend” suggest that the entitlements under the statutes come back into effect if there no longer is a projected budget deficit. It seems likely, however, that past entitlements (e.g., aid payments to political subdivisions) that were unallotted would not spring back into effect if higher revenues appear in later fiscal years.⁴⁵

Unallotment has little effect beyond the current biennium.

After the end of the biennium, most appropriations end. [Section 16A.28](#) provides that appropriations “lapse” at the end of the biennium.⁴⁶ Once the appropriation has lapsed, the authority to spend money under it has ended and the unallotment is irrelevant.⁴⁷ Some appropriations are not subject to the lapse statute. An unallotment of one of these appropriations could, in theory, become null, and the authority to spend under the appropriation could spring back to life in the next biennium if there is sufficient money in the fund from which the appropriation was made. However, the statute makes no provision for such a result.

The law does not specify how unallotments are to be reflected in the base budget.

The law specifying the format for the governor’s budget does not explicitly address the effect of unallotments on the base budget. It provides, in part that:

Tables listing expenditures for the next biennium must show the appropriation base for each year. The appropriation base is the amount appropriated for the

Finance used the unallotment statute in this manner to manage the state’s cash flow problems. For example, in the fall of 1980, the commissioner unallotted school and local aid payments and then re-allotted them when the state had sufficient money during the fiscal year. Letter from Val Vikmanis, Acting Commissioner of Finance, to Speaker Harry Sieben, (Jan. 5, 1982) (copy in authors’ files). This arrangement was challenged in court by the city of Duluth and upheld, according to the letter.

⁴⁵ This, in fact, has been the practice. Various aids to local governments have been unallotted over the years. These reductions have all been treated as permanent reductions for the fiscal years in which they were made. This money is not repaid when there are sufficient revenues in a later year. However, the aid formulas and open appropriations would continue in effect, unless the legislature rewrites them or another unallotment is made.

⁴⁶ The statute provides a number of exceptions to this, e.g., for capital improvements. [Minn. Stat. § 16A.28](#), subd. 5. In addition, an individual appropriation may provide that it does not lapse but carries over.

⁴⁷ A 1981 memorandum by the attorney general reaches the same conclusion because, among other things, “It appears axiomatic that appropriations and available funds must be considered together” Memo from Mike Miles, Assistant Attorney General, to Wayne S. Burggraaf, Commissioner of Finance, pp. 7, 9 (April 15, 1981). However, an exemption could occur if a “specific authorizing appropriation” provided otherwise. In any case, a legal conclusion that an unallotment that is restored may have little practical effect, if the governor or Commissioner of Finance do not wish to restore the allotment. In order for restoration to occur, the Commissioner of Finance would likely need to determine that adequate moneys were available to reinstate it. The conclusive numbers will only be available after the end of the biennium when the underlying appropriations have lapsed, as discussed in the text.

second year of the current biennium. The tables must separately show any adjustments to the base required by current law or policies of the commissioner of finance.⁴⁸

It is not crystal clear how an amount that is unallotted in one biennium should be reflected in an agency's base budget when the governor submits a budget for the next biennium. On one hand, the statute defines the base as the "amount appropriated." A literal and probably the best reading of the statute would exclude the effect of unallotments. The amount appropriated generally would be the amount specified by the law (i.e., before any reduction under the unallotment statute). Moreover, the reference in the last sentence quoted above to "policies of the commissioner" would appear to allow latitude for the governor to separately treat an unallotment as an adjustment to the base, but one that must be shown separately. However, because unallotments are not explicitly referenced, it could be argued that the governor can treat them as, in effect, adjustments to base appropriations. This may be a plausible interpretation if the statute is viewed against the backdrop that the budget is essentially the governor's presentation to the legislature and, thus, the legislature may have intended to give the governor broad discretion in applying its requirements.

MMB cannot unallot appropriations for future biennia.

The commissioner does not have the power during the current biennium to unallot appropriations for the next biennium for several reasons.

- **The plain language of the statute limits the power to the current biennium.** The unallotment statute explicitly refers to the current biennium. Its language provides: "If the commissioner determines ... that the amount available for the *remainder of the biennium* will be less than needed [then the commissioner may draw down the budget reserve and, if that is insufficient, unallot]."⁴⁹
- **There is little policy rationale for extending the power to the next biennium.** It seems unlikely that the legislature intended to give such extraordinary power to the executive branch when it is not needed. The policy purpose of the unallotment power was to provide a method of ensuring the budget will be balanced as required by the constitution. In doing so, it invests extraordinary powers in the Commissioner of Management and Budget and the governor (i.e., to unilaterally reduce valid appropriations enacted by law after only notice to and comment by a small group of legislators). There is no need to vest such power in the executive branch for the appropriations in the next biennium, since the legislature and governor can make these decisions when they enact the budget.
- **Many of the underlying appropriations have yet to be made.** The statutory definition of an "allotment" as a limit on the amount to be spent "pursuant to an appropriation"

⁴⁸ Minn. Stat. § 16A.11, subd. 3(b).

⁴⁹ Minn. Stat. § 16A.152, subd. 4(a) [emphasis added].

means allotment can occur only after there has been an appropriation.⁵⁰ If there has not been an appropriation, there cannot be an allotment, and it would seem to follow that there cannot be a reduction in an allotment. This conclusion is reinforced by the provision of the unallotment law that a deficit must be made up “by reducing unexpended allotments of any *prior appropriation* or transfer.”⁵¹ Most appropriations for the next biennium will not be made until the legislature and governor act to adopt a budget. Obviously, it is not possible to reduce allotments for these appropriations. However, a large dollar amount of appropriations are, in effect, in place under standing (or open and standing) appropriations for debt service and state aid and benefit programs.⁵² It seems highly unlikely that the sum of these standing appropriations could be more than the revenue projections. Thus, as a practical matter, it seems highly improbable that a Commissioner of Management and Budget could now (or some other time during the current biennium) find there is a deficit in the next biennium, based solely on these standing appropriations.

- **It is inconsistent with the Supreme Court’s ruling in *Brayton*.** The *Brayton* opinion makes it clear that the unallotment power is only triggered by revenues being less than anticipated in an enacted, balanced budget.⁵³ Since a balanced budget would not have been enacted for a future biennium, unallotment would not be available or would not carryover from an unallotment in a prior biennium.

⁵⁰ [Minn. Stat. § 16A.011](#), subd. 3.

⁵¹ [Minn. Stat. § 16A.152](#), subd. 4(b) [emphasis added].

⁵² See, e.g., [Minn. Stat. § 290A.23](#) (open and standing appropriation for property tax refund program); [§ 477A.03](#) (ongoing annual appropriations for local government aid and county program aid).

⁵³ *Brayton v. Pawlenty*, 781 N.W.2d 357, 366-69 (Minn. 2010).

Appendix A: Minnesota Statutes § 16A.152

16A.152 BUDGET RESERVE AND CASH FLOW ACCOUNTS.

Subdivision 1. **Cash flow account established.** A cash flow account is created in the general fund in the state treasury. Amounts in the cash flow account shall remain in the account until drawn down and used to meet cash flow deficiencies resulting from uneven distribution of revenue collections and required expenditures during a fiscal year.

Subd. 1a. **Budget reserve.** A budget reserve account is created in the general fund in the state treasury. The commissioner of management and budget shall transfer to the budget reserve account on July 1 of each odd-numbered year any amounts specifically appropriated by law to the budget reserve.

Subd. 1b. **Budget reserve increase.** On July 1, 2003, the commissioner of management and budget shall transfer \$300,000,000 to the budget reserve account in the general fund. On July 1, 2004, the commissioner of management and budget shall transfer \$296,000,000 to the budget reserve account in the general fund. The amounts necessary for this purpose are appropriated from the general fund.

Subd. 2. **Additional revenues; priority.** (a) If on the basis of a forecast of general fund revenues and expenditures, the commissioner of management and budget determines that there will be a positive unrestricted budgetary general fund balance at the close of the biennium, the commissioner of management and budget must allocate money to the following accounts and purposes in priority order:

(1) the cash flow account established in subdivision 1 until that account reaches \$350,000,000;

(2) the budget reserve account established in subdivision 1a until that account reaches \$653,000,000;

(3) the amount necessary to increase the aid payment schedule for school district aids and credits payments in section 127A.45 to not more than 90 percent rounded to the nearest tenth of a percent without exceeding the amount available and with any remaining funds deposited in the budget reserve;

(4) the amount necessary to restore all or a portion of the net aid reductions under section 127A.441 and to reduce the property tax revenue recognition shift under section 123B.75, subdivision 5, paragraph (a), and Laws 2003, First Special Session chapter 9, article 5, section 34, as amended by Laws 2003, First Special Session chapter 23, section 20, by the same amount;

(5) to the state airports fund, the amount necessary to restore the amount transferred from the state airports fund under Laws 2008, chapter 363, article 11, section 3, subdivision 5; and

(6) to the fire safety account in the special revenue fund, the amount necessary to restore transfers from the account to the general fund made in Laws 2010.

(b) The amounts necessary to meet the requirements of this section are appropriated from the general fund within two weeks after the forecast is released or, in the case of transfers under paragraph (a), clauses (3) and (4), as necessary to meet the appropriations schedules otherwise established in statute.

(c) The commissioner of management and budget shall certify the total dollar amount of the reductions under paragraph (a), clauses (3) and (4), to the commissioner of education. The commissioner of education shall increase the aid payment percentage and reduce the property tax shift percentage by these amounts and apply those reductions to the current fiscal year and thereafter.

Subd. 3. **Use.** The use of the budget reserve should be governed by principles based on the full economic cycle rather than the budget cycle. The budget reserve may be used when a negative budgetary balance is projected and when objective measures, such as reduced growth in total wages, retail sales, or employment, reflect downturns in the state's economy.

Subd. 4. **Reduction.** (a) If the commissioner determines that probable receipts for the general fund will be less than anticipated, and that the amount available for the remainder of the biennium will be less than needed, the commissioner shall, with the approval of the governor, and after consulting the Legislative Advisory Commission, reduce the amount in the budget reserve account as needed to balance expenditures with revenue.

(b) An additional deficit shall, with the approval of the governor, and after consulting the legislative advisory commission, be made up by reducing unexpended allotments of any prior appropriation or transfer. Notwithstanding any other law to the contrary, the commissioner is empowered to defer or suspend prior statutorily created obligations which would prevent effecting such reductions.

(c) If the commissioner determines that probable receipts for any other fund, appropriation, or item will be less than anticipated, and that the amount available for the remainder of the term of the appropriation or for any allotment period will be less than needed, the commissioner shall notify the agency concerned and then reduce the amount allotted or to be allotted so as to prevent a deficit.

(d) In reducing allotments, the commissioner may consider other sources of revenue available to recipients of state appropriations and may apply allotment reductions based on all sources of revenue available.

(e) In like manner, the commissioner shall reduce allotments to an agency by the amount of any saving that can be made over previous spending plans through a reduction in prices or other cause.

Subd. 5. **Restoration.** The restoration of the budget reserve should be governed by principles based on the full economic cycle rather than the budget cycle. Restoration of the budget reserve should occur when objective measures, such as increased growth in total wages, retail sales, or employment, reflect upturns in the state's economy. The budget reserve should be restored before new or increased spending commitments are made.

Subd. 6. **Notice to committees.** The commissioner shall notify the committees on finance and taxes and tax laws of the senate and the committees on ways and means and taxes of the house of representatives of a reduction in an allotment under this section. The notice must be in writing and delivered within 15 days of the commissioner's act. The notice must specify:

- (1) the amount of the reduction in the allotment;
- (2) the agency and programs affected;
- (3) the amount of any payment withheld; and

(4) any additional information the commissioner determines is appropriate.

Subd. 7. **Delay; reduction.** The commissioner may delay paying up to 15 percent of an appropriation to a special taxing district or a system of higher education in that entity's fiscal year for up to 60 days after the start of its next fiscal year. The delayed amount is subject to allotment reduction under subdivision 4.

Subd. 8. **Report on budget reserve percentage.** (a) The commissioner of management and budget must periodically review the formula developed as part of the Budget Trends Study Commission authorized by [Laws 2007, chapter 148](#), article 2, section 81, to estimate the percentage of the preceding biennium's general fund expenditures and transfers recommended as a budget reserve.

(b) The commissioner must annually review the variables and coefficients in the formula used to model the base of the general fund taxes and the mix of taxes that provide revenues to the general fund. If the commissioner determines that the variables and coefficients have changed enough to result in a change in the percentage of the preceding biennium's general fund expenditures and transfers recommended as a budget reserve, the commissioner must update the variables and coefficients in the formula to reflect the current base and mix of general fund taxes.

(c) Every ten years, the commissioner must review the methodology underlying the formula, taking into consideration relevant economic literature from the past ten years, and determine if the formula remains adequate as a tool for estimating the percentage of the preceding biennium's general fund expenditures and transfers recommended as a budget reserve. If the commissioner determines that the methodology underlying the formula is outdated, the commissioner must revise the formula.

(d) By January 15 of each year, the commissioner must report to the chairs and ranking minority members of the house of representatives Committee on Ways and Means and the senate Committee on Finance, in compliance with sections [3.195](#) and [3.197](#), on the percentage of the preceding biennium's general fund expenditures and transfers recommended as a budget reserve. The report must specify:

(1) if the commissioner updated the variables and coefficients in the formula to reflect significant changes to either the base of one or more general fund taxes or to the mix of taxes that provide revenues to the general fund as provided in paragraph (b);

(2) if the commissioner revised the formula after determining the methodology was outdated as provided in paragraph (c); and

(3) if the percentage of the preceding biennium's general fund expenditures and transfers recommended as a budget reserve has changed as a result of an update of or a revision to the formula.

Appendix B: Uses of the Unallotment Power

Since enactment of the authorizing statute in 1939, the unallotment power has been used relatively infrequently. The table below lists the cases that the authors are aware of in which unallotment was used to make permanent budgetary reductions. As noted earlier in the text, in at least one instance the unallotment power was also used to delay payments mandated by statute for cash flow purposes, but did not permanently reduce spending.

Governor	Fiscal Year	Amount (in millions)
Al Quie	1981	\$195*
Rudy Perpich	1987	\$109
Tim Pawlenty	2003	\$278
Tim Pawlenty	2009	\$269
Tim Pawlenty	2010-2011	\$2,506**

* The portion of this unallotment that reduced state aid payments to school districts was restored by the legislature. [Laws 1981, ch. 1, § 1](#).

** This included the unallotment invalidated by the court in *Brayton v. Pawlenty*. The entire unallotment was voided by law, but the 2010 Legislature enacted many of the reductions in the unallotment into law. See generally [Laws 2010, 1st spec. sess., ch. 1, art. 1, § 2](#) (“The allotment reductions made by the commissioner of management and budget from July 1, 2009, to the effective date of this section are void.”) and the remainder of the chapter for enacted budget reductions contained in the unallotment.

For more information about state budget issues, visit the government finance area of our web site, www.house.mn/hrd/hrd.htm.