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**POLICY BRIEF**
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# Automatic Continuing Appropriations and Government Shutdowns

A continuing appropriations law could prevent state government shutdowns at the beginning of a new biennium by automatically appropriating some level of funding until the legislature and governor agree on a new biennial budget. This policy brief explores the major policy elements, the experience of two states with similar laws, recent legislative proposals, and potential implications.

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# Introduction

Every two years, Minnesota lawmakers craft a new biennial state budget. The budget establishes the size and scope of state government for the next two years and authorizes the legislature, courts, state agencies, and constitutional officers to access money in the state treasury. While some activities are funded through an ongoing statutory appropriation, most state agencies receive their funding through direct appropriations each biennium.[1] Without funding, state government activities cannot continue.

In 2005 and 2011, Minnesota lawmakers did not enact a complete budget before the start of the new biennium, resulting in a partial government shutdown.[2] Many activities ceased, although a petitioned Ramsey County District Court required continued funding of certain critical functions. In 2001, lawmakers narrowly averted a shutdown but only after state agencies had initiated shutdown planning.

Government shutdowns impact the budget and the state's citizens in both quantifiable and less measurable ways.[3]

The impact to the state budget is the net effect of all shutdown costs, lost revenue, and money saved. More specifically, direct budgetary impacts include the following:

- Salary and benefit cost savings resulting from laying off state workers, net of any unemployment compensation paid
- Forgone and unrecoverable revenue, including state park fees, lottery proceeds, tax compliance revenues, and income tax that would have been paid by laid off state workers and contractors
- Planning costs incurred by state agencies, including time and resources redirected from normal duties to identifying critical activities and staff; issuing layoff notices; communicating with vendors; preparing for an interruption of services provided directly to citizens, clients, and businesses; and securing state facilities and information systems
- Recovery costs, including reopening state facilities and sites, implementing staff recall procedures, reinstating employee security access, and restarting contracts and projects
- The cost of convening a special legislative session to pass a new budget and end the shutdown

When combined, these impacts may result in a net cost or savings to the state budget. Preliminary estimates indicate that Minnesota's 2011 shutdown resulted in a small net savings.

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[1] For more information, see the Terminology box on page 4.

[2] The scope of the 2011 partial government shutdown was significantly larger than in 2005. In 2011, only the agriculture budget bill was enacted during the regular session, providing funding for the Department of Agriculture, the Board of Animal Health, and the Agricultural Utilization Research Institute. In 2005, several of the major budget bills were enacted during the regular session, resulting in fewer shuttered agencies.

[3] National Conference of State Legislatures, *Late State Budgets*, August 27, 2010, last accessed August 19, 2011, http://www.ncsl.org/default.aspx?tabid=17823.

That is, salary savings due to employee layoffs more than offset permanent revenue losses and the costs incurred to plan for, implement, and recover from the shutdown.[4]

Societal or economic impacts do not affect the state budget directly and are more difficult to quantify. These impacts include the following:

- Public anxiety arises due to uncertainty about the extent of the shutdown and its impact on particular programs and services.
- Government programs and activities stop unless the executive branch, legislature, or advocates can convince the courts to authorize emergency funding. For each shutdown, significant resources are devoted to identifying critical activities.
- Frustration, inconvenience, and lost private sector income occur due to the closure of facilities such as state parks and licensing or permitting bureaus, halted highway projects, and unavailable agency contacts and online resources.
- State workers, contractors, vendors, and their families experience financial and emotional stress.
- The public's faith in the state and public officials erodes.
- The state's credit rating is potentially downgraded, reflecting creditor concerns about the state's finances and political process. This may directly affect the state budget in the future if lenders require the state to pay higher interest rates.

Some lawmakers believe state government should not continue to operate unless a new budget is enacted. Others find shutdowns unacceptable and believe the state should continue to function in spite of a political impasse. Over the last six years, several legislators have proposed a continuing appropriation mechanism to prevent future shutdowns. An **automatic continuing appropriations** law, as defined in this publication, is a permanent statute that authorizes funding for the continuous operation of state government if a budget is not enacted by the beginning of the new biennium.

Lawmakers could still develop a new budget every two years. However, if the budget is not law by July 1 of each odd-numbered year, then the automatic continuing appropriations law would authorize funding to continue state government activities.

An automatic continuing appropriations law differs from the temporary "lights-on" law enacted in 2005 and similar proposals introduced in the final days of the 2011 regular legislative session.[5] A **lights-on law** is a onetime, temporary law that appropriates funding for a limited time in order to address only the current budget impasse. An automatic continuing appropriations law would reside in statute and become active whenever a budget is not in place at the start of a new biennium. No additional legislative action is necessary.

[4] Minnesota Management and Budget, *State Government Shutdown Executive Summary,* October 2011. MMB notes that cost estimates are not final; some recovery costs will not be known for up to a year. Costs due to the decline in employee productivity during shutdown planning are much more difficult to estimate and are not included in MMB's estimates.

[5] Laws 2005, 1st Spec. Sess., ch. 2; House Files 1748 and 1753 in the 2011 regular legislative session, respectively.

This publication will explore the key elements of an automatic continuing appropriations law, identify comparable laws in other states, describe recent legislative proposals, and suggest potential implications of adding such a feature to Minnesota's current budget-making process.

### Terminology

**Statutory appropriation:** The legislature establishes statutory appropriations for certain programs in permanent law (or statute) in order to provide state agencies continuous authority to spend either a defined or sum-sufficient amount of money in the treasury for specific purposes (Minn. Stat. § 16A.011, subd. 14a). This legal authority persists even if a new biennial budget is not enacted and regardless of other demands on state resources.

**Direct appropriation:** Unlike statutory appropriations, direct appropriation authority does not reside in statute but is instead dependent upon the legislature and governor enacting a new budget. The legislature authorizes most direct appropriations in session law. Spending authority for direct appropriations typically expires at the end of the biennium.

**Entitlements:** For the purposes of this publication, entitlements are laws that require the payment of benefits (or entitlements) to any person or unit of government that satisfies the eligibility requirements established in law. Some entitlements are funded by statutory appropriations, others by direct appropriations. For instance, while local government aid payments are required by a statutory appropriation, the legislature must appropriate state funds for Medical Assistance benefits each biennium.

There is no statutory or generally accepted definition of entitlements in Minnesota. As a result, there is no definitive list of state entitlement programs. However, the entitlement concept is useful when exploring the potential implications of automatic continuing appropriations. Using the definition above, the House Research Department estimates that entitlement programs account for roughly 70 percent of all general fund spending each fiscal year. Of that amount, entitlements funded by statutory appropriations account for roughly 45 percentage points; entitlements funded anew each biennium via direct appropriations make up the remaining 25.

It is important to note that this definition of entitlements is broad and includes much more than the programs commonly associated with entitlement spending, such as those that provide health care or financial assistance to the infirm or poor. For example, sum-sufficient payments to the Department of Natural Resources for firefighting activities and the Minnesota National Guard for emergency flood prevention work are funded by statutory appropriations and are therefore treated as entitlement spending for the purposes of this publication. For a list of major general fund statutory appropriations, see the House Research Department web resource *Major Statutory Appropriations from the General Fund.*

# Policy Elements

A legislative proposal can be parsed into its key policy elements. For each element, multiple options typically exist. There are at least three elements in an automatic continuing appropriations law: the **scope**, **amount**, and **duration** of the automatic spending.

## Scope

The scope of automatic funding concerns the breadth of government programs and operations that would receive funding under the law. This could vary from all activities in effect on June 30 to select programs that lawmakers determine are critical state functions that must continue even in the absence of a new budget.[6] The scope of funded programs likely would not include those that received onetime funding in the prior budget or that were scheduled to sunset or end before the new biennium begins.

## Amount

Another key policy element is the amount of funding authorized. The U.S. Government Accountability Office (US GAO) has identified several different options, including the three that appear in Table 1.

**Table 1**
**Funding Amount Options**

| Method | Funding Level Provided |
|---|---|
| Current Rate | The amount appropriated for a given program is equal to the total appropriated in the previous fiscal year. However, entitlement program funding would not be limited to prior spending levels but could increase or decrease from this base amount in order to make payments or provide services to all eligible persons or units of government as required by law. |
| Current Operating Level | The amount appropriated for a given program is the amount required to maintain the program at the same activity level that existed at the end of the previous fiscal year. As with the Current Rate option, entitlement program funding would not be pegged to prior operating levels but could increase or decrease in order to make required payments or provide services to all eligible recipients. |
| Restrictive | The amount appropriated for a given program is less than the amount of funding appropriated in the previous fiscal year. It could be a fixed percentage of the previous level (e.g., 70 percent, 80 percent, 95 percent, etc.) or a graduated reduction that reduces funding by a set percentage at regular intervals (e.g., 80 percent of funding for the first month, declining to |

[6] In essence, lawmakers have already established a set of critical activities that should continue to receive adequate funding in spite of a budget impasse. These activities are funded by statutory appropriations instead of biennial session law. For more on this topic, see the Potential Implications section on page 9. The legislature could designate additional programs for exclusion or inclusion in the continuing appropriation authority, based on its policy priorities.

| | |
|---|---|
| | 70 percent the next month, etc.) As with the Current Rate and Current Operating Level options, entitlement spending is exempt. |
| Source: House Research Department, adapted from US GAO, *Continuing Resolutions and an Assessment of Automatic Funding Approaches,* GAO-AFMD-86-16, Report to the Chairman, Committee on Rules, House of Representatives, at 84-86 (1986). | |

House Research Department

Each option treats entitlement appropriations differently than appropriations for all other government programs. Entitlement program funding would not be pegged to prior-year levels but could increase or decrease in order to make all payments required by statute.

In the **current rate** method, funding automatically continues at the same level as the prior fiscal year. The current rate approach is similar to Minnesota's existing base budget concept. By law, the base for nonentitlement programs is last fiscal year's appropriation net of any technical adjustments; the base for entitlement programs is last year's level plus or minus any additional amount that the administering agency anticipates will be necessary in order to satisfy the law and provide payments or benefits to all eligible parties.[7]

The current rate approach may be relatively easy for agencies to administer because of their familiarity with the base funding concept. Of note, real (i.e., inflation-adjusted) spending and program delivery could decline even though nominal spending is the same from one budget period to the next. Flat funding is not necessarily sufficient to continue the same level of program delivery because wages, materials, fuel, and other costs tend to increase from one year to the next.

Under a **current operating level** approach, sufficient funding is automatically appropriated in order to maintain the program level in effect at the end of the prior fiscal year. This could translate into increased spending levels if inflation or other factors increase the cost of operating government and administering state laws. Under this option, agencies likely would determine how much additional money is required to maintain current programming, and the legislature would lose its current ability to modify, approve, or reject requested increases.

In the **restrictive** method, the amount of money appropriated for a given program would be less than the amount appropriated in the previous fiscal year. New funding levels could be set at a fixed or graduated percentage of prior levels. This reduction may require agencies and other recipients of government funds to cut costs by reducing programming and/or eliminating activities or staff. However, without legislative direction via a new budget, it isn't clear how state agencies would determine where to make the required reductions. Instead, agencies may continue to spend at unsustainable levels until funds run out or attempt to adjust spending downward following existing statutory accounting procedures.[8] Alternatively, legislators could structure the automatic continuing appropriations law to expressly allow the executive branch to make necessary reductions where it sees fit.

[7] Minn. Stat. § 16A.11, subd. 3, para. (b).

[8] Minn. Stat. § 16A.14.

## Duration

The **duration** of automatic funding determines the length of time that funds are available without enactment of a new budget. Duration could vary from a period of weeks or months to indefinitely. While a shorter duration could provide some breathing room to allow the legislature and governor to continue working toward a resolution of their differences, it could also serve to simply delay earnest negotiations until the automatic funding extension reaches its end. Indefinite funding authority would ease the strain on state agencies, recipients of government funding or services, and others impacted by state government but may also lessen the impetus to pass a new budget.

# Policies in Other States

At least two states have laws that fit the definition of automatic continuing appropriations used in this publication—Wisconsin and Rhode Island. While in 2008 six states had statutory procedures triggered by the lack of a new budget, only Wisconsin and Rhode Island had, and continue to have, broad automatic continuing appropriations statutes.[9] Table 2 highlights the Wisconsin and Rhode Island laws.

**Table 2**
**Wisconsin and Rhode Island**

| State | Description | Citation |
|---|---|---|
| Wisconsin | If the legislature does not amend or eliminate any existing appropriation on or before the beginning of a new biennium, all existing appropriations are in effect in the new fiscal year and all subsequent fiscal years until amended or eliminated. | Wis. Stat. § 20.002(1) |
| Rhode Island | 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 are available to each department and division. Regardless, appropriations for bond indebtedness are set as required to make payments. | R.I Gen. Laws § 35-3-19 |

House Research Department

For more than 50 years, **Wisconsin's** budget-making process has included an automatic continuing appropriations component. Wisconsin lawmakers often do not meet the June 30 deadline to pass a new budget. When a biennium begins without a new budget in place, automatic funding at current-rate levels continues for all programs funded under the previous state budget. Sometimes a political impasse delays enactment of the new budget. On other occasions, the governor simply takes a few weeks to review the budget bill before signing it. Of note, appropriations for entitlement programs are not capped at prior levels but are allowed to fluctuate up or down in order to make all required payments.

[9] National Association of State Budget Officers, *Budget Processes in the States,* Table 14, 2008, last accessed September 23, 2011, http://nasbo.org/Publications/BudgetProcessintheStates/tabid/80/Default.aspx.

Although the continuing appropriations statute decreases the pressure to enact a state budget on time, Wisconsin lawmakers have always enacted a new budget eventually. In the past four decades, the latest date of budget enactment was November 4, 1971. In more recent times, the budget in 2007 was not final until October 27 of that year. When the budget is significantly delayed and spending continues at prior levels, the cuts required to balance the budget in a projected deficit situation tend to be more severe than if appropriations had been reduced at the outset of the biennium. Under single-party control in the last two budget cycles, Wisconsin lawmakers enacted a new budget before the deadline.[10]

Wisconsin legislative staff believes the law is effective in preventing government shutdowns, and inevitable passage of the budget is not threatened because other factors, such as the part-time nature of the legislature and pressure from local units of government and the general public, force members to pass a new budget eventually.[11] Also, while the legislature or governor have declared an emergency to bypass this restriction, Wisconsin law prevents lawmakers from passing any bill appropriating more than $10,000 or decreasing revenues by the same amount until the budget is passed.[12] Finally, unlike Minnesota, Wisconsin lawmakers pass the entire state budget and associated tax provisions in one law. In Minnesota, the budget is customarily divided into several separate bills that the governor signs into law individually. In comparison, the all-or-nothing budget bill approach in Wisconsin may put relatively more pressure on lawmakers to enact the state budget in a timely manner because the governor and legislature cannot choose to fund portions of state government where they see eye-to-eye while letting other state agencies and programs shut down as they continue to negotiate the budget areas in dispute.

In **Rhode Island**, although a similar law has been in place since 1935, it is rarely invoked. Only in 1992 and 1993 did lawmakers fail to adopt the annual budget on time and in both instances the new budget was enacted roughly two weeks later. As in Wisconsin, Rhode Island lawmakers pass one large budget bill, and entitlement spending is not limited to prior year levels. The law effectively prevents government shutdowns in the rare occasion that a fiscal year begins without a new budget in place. The law does not appear to decrease lawmakers' incentive to enact a new budget.[13]

# Recent Legislative Proposals

Since the 2005 government shutdown, Minnesota legislators have introduced at least 15 different bills proposing automatic continuing appropriations. Members from both political parties have authored bills, either as chief or co-authors. For a list and description of the bills, see Appendix A. Each bill failed to advance at some stage in the legislative process.

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[10] Phone conversation with Bob Lang, Director, Wisconsin Legislative Fiscal Bureau, September 15, 2011.

[11] US GAO, *Continuing Resolutions*, 30; and phone conversation with Bob Lang.

[12] Wis. Stat. § 16.47(2).

[13] Email response from Sharon Reynolds Ferland, House Fiscal Advisor, State of Rhode Island, September 23, 2011.

Legislators introduced the first automatic continuing appropriations bills during the 2005 First Special Session that eventually ended that year's nine-day partial government shutdown. The most recent bill was introduced in 2011.

In form and content, the bills are very similar. In general, they fall into one of two categories—a short provision based on the Wisconsin language, or a more involved proposal that specifies in general terms which budget areas are included and what technical adjustments the commissioner of management and budget may make.

### Scope

In terms of scope, the bills vary. The bills introduced during the 2005 First Special Session and several of those introduced during the 2006 regular session would continue all appropriations from the previous fiscal year. More recent bills would automatically continue only certain appropriations such as those that fund state agency operations (as opposed to pass-through grants and aids, appropriations to other entities, etc.) or only those appropriations in "major appropriations bills," as defined in the bill text.

### Amount

While expressed somewhat differently, all 15 bills propose to continue appropriations at the current rate—i.e., the base level.

### Duration

The bills take one of two approaches to the duration element—base appropriations continue indefinitely (ten) or for one fiscal year (five).

## Potential Implications

As described in the Policy Elements section above, an automatic continuing appropriations law in Minnesota could take many forms. This section explores some potential implications of a hypothetical proposal consisting of the most common policy elements introduced in Minnesota to date—i.e., a law to continue base appropriation levels indefinitely for all major tax and spending bills (i.e., the tax bill and the 11 major finance bills that collectively fund the major budget areas of K-12 education, health and human services, public safety, environment and natural resources, etc.[14]).

[14] For the current list of major finance and revenue bills established by the 2011 House of Representatives, see Permanent Rules of the House, 87th edition, section 4.03(d), as adopted by the House of Representatives on January 27, 2011.

## Preventing Government Shutdowns

By design, an automatic continuing appropriations statute should prevent government shutdowns and the associated financial and intangible impacts incurred by the state, private sector, and general public. This has been the experience of Wisconsin and Rhode Island to date. Because automatic continuing appropriations effectively prevent shutdowns, some may argue that the law would reduce the incentive for the legislature and governor to agree upon a new budget in a timely manner. Currently, the threat or existence of a shutdown may add a sense of urgency to the budget debate and could hasten the inevitable resolution of differences.

## Mismatch Between Base Funding and Current Public Sentiment

Last budgetary period's spending and taxation levels reflect the unique conditions and public sentiment at that time. In the new biennium, the public may demand more, less, or different government spending. Under an automatic continuing appropriations law, appropriations continue unless both houses of the legislature and the governor agree to the changes. As a result, it could be more difficult to change appropriation levels than under the current system, in which many appropriations must be newly enacted each biennium. New fiscal initiatives that have broad public support may be stymied. Outdated or duplicative programs may continue in spite of popular opposition. However, this mismatch between tax and spending levels and current public sentiment may increase the incentive for lawmakers to pass a new budget even though a government shutdown is averted.

## Impact on the Balance of Budget-Making Power Between the Legislative and Executive Branches

Currently, the legislature plays a key constitutional role in setting the state budget. After reviewing the governor's budget proposal, the legislature determines which government functions to fund and how much money to appropriate to each one. If state agencies request inflationary adjustments or the creation, elimination, or modification of programs, the legislature reviews and evaluates these requests, then creates its own budget proposal that it passes and sends to the governor. Although the legislature may have to modify its budget priorities in order to secure the governor's signature, the legislature can also override the governor's veto of budget bills and enact all or part of its budget proposal if it can marshal a two-thirds majority in both bodies.

With automatic continuing appropriations, the legislature retains its essential budgetary role to some degree. The base funding levels used for continuous appropriations reflect a budget enacted by a previous legislature and governor, or a previous legislature only in the case of a veto override.

Because base funding levels would continue in the new biennium, the law may benefit the party whose budget priorities most closely align with status quo government.[15] In a divided

[15] US GAO, *Continuing Resolutions*, 43. However, one could argue that because the state cannot deficit spend (unlike the federal government), an automatic continuing appropriations law that authorizes or directs the executive

government, a party proposing significant changes to the state's tax and/or spending structure may find it more difficult to achieve its desired outcome with an automatic appropriations law in place. This could impact the balance of power between the branches of government and within the legislature itself. If the governor or a House or Senate majority favors base spending levels over the budget proposal advanced by another party, they could simply refuse to either pass a budget at all or agree to a compromise. The ability of each of the three entities to single-handedly halt the budget process could create a strong institutional bias towards base spending.

Further, one-party control of all three entities could lead to enactment of a base budget that persists for the foreseeable future, so long as that party retains control of the governor's office or at least one body of the legislature and prefers its base budget to the proposal forwarded by the other political party. However, agreement in specific areas would not necessarily be prevented. Depending on how the law is structured, the legislature and governor seemingly could modify the tax structure and/or base spending in areas of agreement while allowing automatic continuing appropriations to fund areas of disagreement. Minnesota's tradition of passing the budget in a series of separate bills would seem to accommodate this.

Because a current-rate automatic continuing appropriations law may benefit the party whose budgetary goals align most closely with the status quo, it isn't clear that this policy would necessarily shift more power to the legislative or executive branch as compared to the current situation. The party preferring the status quo could reside in either branch.

However, the relative budget-making power of the executive and legislative branches could change dramatically if the legislature delegates the power to balance a deficit or surplus created by automatic continuing appropriations to the executive branch. This topic is addressed in the next section.

## How to Balance Revenues and Expenditures Without a New Budget

A key assumption underlying the automatic continuing appropriations concept is that the legislature and governor will eventually come to an agreement on a new state budget that balances revenues and expenditures. To date, this has been the case in both Wisconsin and Rhode Island. Automatic appropriations simply maintain continuity and prevent jarring disruptions until that inevitable conclusion. But another possible outcome is that automatic appropriations decrease the urgency to compromise so much that no new agreement is reached and the biennial budget is never balanced.

There is a very low probability that new receipts will exactly match base spending levels. The state's general fund net tax revenues are volatile from one biennium to the next.[16] Anticipated revenues will likely be more or less than the amount that was available to spend in the prior biennium. Under the existing process, every two years the legislature and governor either increase or reduce base spending and/or increase or decrease taxes to match spending with

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branch to cut spending to address a projected budget deficit would benefit a party whose objective is to reduce government spending. For more, see How to Balance Revenues and Expenditures Without a New Budget.

[16] State of Minnesota Budget Trend Study Commission, *Commission Report to the Legislature*, January 12, 2009, 17-21.

forecasted revenues. With automatic continuing appropriations, base spending levels would continue whether they match anticipated receipts or not.

If revenues for the new biennium are inadequate to pay for continued base spending—and there are no revenue-raising or budget-cutting procedures in place to align spending with revenues in the absence of a new balanced budget—the state could run out of money once budget reserves are exhausted. If revenues exceed base spending levels, without a new budget that cuts taxes, increases spending, increases reserves, or some combination of the three, surplus revenue would remain in the state general fund once required contributions to the state's cash flow account, budget reserve, school funding shift payback, and other payments of surplus revenue required by law are made.[17]

Minnesota lawmakers could allow the automatic continuing appropriations law to continue baseline spending levels even if those levels do not match the latest revenue estimates. However, the state constitution severely limits the ability of the state to borrow to pay for current operations.[18] The de facto enactment of an unbalanced budget could mean that, in the absence of a new budget, the state would run out of money at some point toward the end of the biennium, leading to a shutdown. In this scenario, the statute would serve only to delay the onset of the shutdown from the beginning of the biennium until some later date.

There is a mechanism currently in law for bringing an unbalanced state budget back into alignment when projected revenues are less than the amount anticipated when the biennial budget was enacted. Via the **"unallotment" law,** the legislature empowered the executive branch to unilaterally reduce prior appropriations under certain conditions in order to realign spending with available revenue. In part, the law provides that:

> "(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

[17] Minn. Stat. § 16A.152, subd. 2.

[18] The constitution does not authorize the state to borrow money to pay for current operations, except limited authority to borrow in anticipation of the collection of taxes. Minn. Const. art. XI, §§ 5 and 6. The state has de facto borrowed to pay for operations by engaging in various arrangements to delay state payments (requiring school districts to use cash reserves or borrow) or by borrowing in anticipation of nontax revenues (e.g., tobacco settlement payments). The ability to do this is very limited as a practical and legal matter.

would prevent effecting such reductions."[19]

Under this law, when revenues are less than initially anticipated and the commissioner of management and budget has exhausted the budget reserve, the executive branch can reduce prior appropriations as it sees fit.

It is unlikely that the existing unallotment law would apply to a gap between revenues and expenditures created by a continuing appropriation law.[20] However, the unallotment law could be amended to provide authority (under rules the legislature considers appropriate) for executive branch officials to reduce spending to match available revenues.

Currently, the events that trigger the governor's unallotment power are fairly limited. The executive may only reduce amounts previously appropriated by the legislature if there is an unforeseen drop in revenue and consequently not enough money to fund the enacted, balanced budget. There may be constitutional issues if the legislature passed a new law explicitly giving the executive branch unallotment authority in the event of a budget deficit created by automatic continuing appropriations. If the governor could unallot to address a budget deficit caused by automatic continuing appropriations, the executive branch would seemingly have the power to shape the state budget without legislative involvement. A governor could refuse to sign new budget acts passed by the legislature, allow automatic appropriations to kick in, then single-handedly reduce or eliminate base funding via unallotment. Some may argue that this would constitute an unconstitutional delegation of the legislature's budget-making responsibilities.[21]

The legislature could choose not to expand the existing unallotment authority to apply to a deficit created by automatic continuing appropriations. The lack of an alternative method for balancing revenues and expenditures may retain the current pressure brought to bear on the legislature and governor to eliminate a projected deficit via a new balanced budget.

## Treatment of Entitlement Spending

Although the term "entitlement" is not frequently used, a large portion of the state's general fund budget is composed of entitlement-like programs. Each law is designed to provide payment or benefits to any Minnesota citizen or unit of government that meets the eligibility criteria the legislature has established. In fiscal year 2010, these programs accounted for roughly 70 percent of all general fund spending.[22] A key element of an automatic continuing appropriations law is whether and how the law impacts funding for entitlement programs.

[19] Minn. Stat. § 16A.152, subd. 4. For more on the unallotment law, see the House Research publication *Unallotment: Executive Branch Power to Reduce Spending to Avoid a Deficit*, December 2010.

[20] The Minnesota Supreme Court ruled in 2010 that a necessary prerequisite for unallotment is enactment of a balanced budget. *Brayton v. Pawlenty*, 781 N.W. 2d 357, 366-69 (Minn. 2010). Moreover, the unallotment law is only triggered by a reduction in anticipated revenues, a second prerequisite that would not necessarily be met.

[21] Justices Alan Page and Paul H. Anderson expressed this concern about the current unallotment law in concurring opinions in *Brayton v. Pawlenty*. *Id.* at 369.

[22] See the Terminology section on page 4 for more information.

The hypothetical proposal under consideration here uses the existing "base" funding concept to determine the amount of money automatically appropriated for a given activity. Of note, the base is calculated differently for entitlement programs.

Using the statutory base-budget procedures, the amount of money automatically appropriated to nonentitlement programs would be the current rate—i.e., the amount appropriated for that activity in the last fiscal year, net of any technical accounting adjustments. For example, if the Department of Agriculture received a general fund appropriation of $4 million to help Minnesota farmers promote and market agricultural commodities and value-added products last fiscal year, the department would automatically receive another $4 million per fiscal year for those same activities in the new biennium.

The base-level calculation for entitlement programs is more involved. It also starts with last year's level, but includes an additional prospective component. The resulting "forecast base" may be larger or smaller than the amount of money actually spent in the prior period.

The forecast base is the amount of money that agency staff estimates will be needed to provide payments or benefits to all eligible recipients during the coming biennium. When developing a new biennial budget, legislators use these estimates to determine how much to budget for entitlement programs and whether to make any changes to the eligibility criteria or other cost drivers in law in order to spend more or less money on the activity than the budget forecast anticipates. For example, if the Department of Corrections anticipates that more inmates will be incarcerated in state prisons in the next biennium, the forecast base for correctional institutions may be higher than the amount spent the year before. If the legislature does not change parole procedures or other factors when developing the new budget, the agency estimates that more money will be required to operate state prisons in the new biennium.

For the purposes of exploring the potential impact of an automatic continuing appropriations law, entitlement programs can be divided into two categories—those funded by statutory appropriations and those funded by direct appropriations.

**Statutory Appropriations**

By design, lawmakers have funded many entitlement programs with statutory appropriations so that sufficient funds are available to pay all eligible recipients. No further legislative action is required.[23] Although funding all of state government automatically would be a significant departure from the existing budget process, currently approximately 45 percent of all general fund spending each year is automatically allocated via statutory appropriations.
Statutory appropriations may authorize a specific amount of money or an open-ended commitment.[24] Open statutory appropriations authorize state agencies to spend an unspecified, sum-sufficient amount in order to perform certain activities or provide benefits to all eligible recipients. The amount appropriated for these programs is whatever amount is required to fully

[23] Although this is the legislature's intent, the 2011 shutdown and associated court proceedings revealed some disagreement about whether the state can truly administer statutory appropriations in the absence of a new budget if the necessary finance personnel are laid off and consequently unable to calculate or issue these payments.

[24] Minn. Stat. § 16A.011, subd. 14a.

meet the state's obligations established in law. Examples include biannual aid payments to local governments, property tax refunds, interest and principal payments for general obligation bonds, and the single largest spending item in the state budget—general education aid to school districts.[25]

Because the Minnesota Legislature intends statutory appropriations to continue even in the absence of a new budget, it is arguable that statutory spending in Minnesota would not be subject to an automatic continuing appropriations law unless the legislature specifies otherwise. Appropriations for local government aid, payments to local school districts, etc., would not be limited to some derivation of base levels.[26] In practice, the laws in Wisconsin and Rhode Island do not cap statutory appropriations at prior levels.

A continuing appropriations law that limits statutory appropriations to prior levels or less could have certain consequences. For example, if the law limited the open appropriation for the expenses of Minnesota military forces ordered into a state active service to the amount spent the prior fiscal year, that amount may be insufficient if a significant flood event, civil unrest, or other emergency causes the governor to call on additional soldiers or to lengthen their service time relative to the prior fiscal year.[27] Similarly, if more children enroll in public K-12 schools than in the prior period, prior funding levels may not be sufficient to provide aid at required levels in the new fiscal year.

On the other hand, because statutory appropriations make up roughly half of all general fund spending, unbounded statutory spending could decrease lawmakers' incentive to enact a new budget because entitlement recipients would not be immediately impacted by a funding interruption.

If lawmakers intend to cap general fund spending for programs funded by statutory appropriations, they would likely need to specify this in the continuing appropriations law. As part of a cap, the legislature could specify how savings are to be implemented in entitlement programs if needed. Developing rules of these types (e.g., specifying contingent reductions in reimbursement rates, changes in eligibility rules) may be difficult to reach agreement on politically and may be difficult to implement practically. Moreover, reducing spending for debt service below the amount necessary to pay the outstanding obligations could have serious consequences for the state's credit rating and its ability to borrow funds at reasonable rates. Following Rhode Island's example, Minnesota lawmakers could expressly state in law that

[25] Minn. Stat. §§ 477A.03, 290A.23, 16A.641, subd. 10, and 126C.20, respectively.

[26] The appropriation for general education program aid illustrates the budget complexities that an automatic continuing appropriations law ideally would address. Technically, these aid payments to local school districts are funded by a direct appropriation in each biennial budget. The statutory appropriation, in essence, effectively requires the state to provide additional funding to school districts if the forecasted direct appropriation amounts are not sufficient. So that legislators understand the law's impact and state agencies can properly implement it, the automatic continuing appropriation law should clearly state whether the amount automatically appropriated for general education program aid and other entitlement programs with statutory appropriations is equal to last period's actual spending or the new forecasted levels.

[27] Minn. Stat. § 192.52.

statutory appropriations for debt service are sum-sufficient and not affected by the continuing appropriations law.

**Direct Appropriations**

Some entitlement programs are funded by direct appropriations. While the enabling laws establish eligibility criteria and a legal obligation to provide payment or benefits to anyone who satisfies these criteria, the legislature must pass a budget to fund these programs anew each biennium. Many of these programs are in the human services budget area, including Medical Assistance (Medicaid) and the Minnesota Family Investment Program (income assistance). Collectively, these programs made up roughly one-quarter of all general fund spending in fiscal year 2010.

As noted above, most of the continuing appropriations bills introduced to date would provide funding for these and other forecasted direct appropriation programs at base levels. In practice, this likely means that the amount of money allocated to the Department of Public Safety for corrections institutions or to the Department of Human Services for Medical Assistance would match the amount of forecasted need for the new biennium. This automatic spending could be higher or lower than the amount spent in prior periods, but in general costs in these areas are trending upward significantly.

Alternatively, the legislature could specify in the law that appropriations for certain direct-appropriation entitlement programs are capped at the amount spent in the prior year.[28] This would halt any automatic growth of state spending in these forecasted areas. However, as noted in the *How to Balance Revenues and Expenditures Without a New Budget* section above, if the budget stalemate persists and prior year funding is not sufficient to make payments or provide benefits to all eligible parties in the new biennium, without explicit authority it is not clear how administering agencies could legally ration available funds by modifying eligibility criteria, stopping enrollment, or other methods. Of course the legislature and governor could avoid this dilemma by promptly enacting a new budget that supersedes continuing appropriations levels, balances revenues and expenditures, and directs state agencies where to make any required cuts.

*For more information about state spending, visit the government finance area of our website, www.house.mn/hrd/hrd.htm.*

[28] The extent of the legislature's authority in this area is not clear. In the context of the 2011 partial government shutdown, the Ramsey County District Court ruled that the state constitution or the supremacy clause of the federal constitution effectively requires the state to fund certain programs and activities, including the judicial branch and certain federal-state human services entitlement programs that are funded at the state level with direct appropriations. Second Judicial District, State of Minnesota. *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota.* Court File No. 62-CV-11-5203.

# Appendix A

**Recent Legislative Proposals**

| File No. | Description | Scope | Amount | Duration | House Authors |
|---|---|---|---|---|---|
| **2011** | | | | | |
| HF 568/no Senate companion | An existing appropriation continues at the base level for one fiscal year. Applies only to major appropriations bills that the legislature may designate by joint resolution. Several base funding level adjustments and exceptions are required. | Major appropriations bills | Current rate | One fiscal year | Kahn, DFL (lead), and 17 others |
| **2009** | | | | | |
| HF 692/no Senate companion | An existing appropriation continues at the base level in future fiscal years unless a law is enacted to eliminate or amend the appropriation. Applies only to major finance or revenue bills designated by the legislature via joint resolution or as defined in the bill. Several base funding level adjustments and exceptions are required. | Major finance or revenue bills | Current rate | Indefinite | Kahn, DFL (lead), and four others |
| **2007** | | | | | |
| HF 7, 1E/no Senate companion | If a major appropriations bill is not enacted, existing appropriations pertaining to that bill continue at the base level in future fiscal years unless a law is enacted to eliminate or amend the appropriation. The legislature may designate major appropriations bills via joint resolution. Several base funding level adjustments and exceptions are required. | Major appropriations bills | Current rate | One fiscal year | Loeffler, DFL (lead), and 35 others |
| HF 42/SF 46 | If a major appropriation bill to fund a state agency is not enacted, amounts sufficient to continue operation of that agency and the programs administered by that agency at the base level for the next fiscal year are appropriated. The base for onetime appropriations is zero. | Major appropriations bills to fund state agencies | Current rate | One fiscal year | Rukavina, DFL (lead), and five others |
| HF 66/no Senate companion | An existing appropriation continues at the base level in future fiscal years unless a law is enacted to eliminate or amend the appropriation. Applies only to appropriations in a major finance or revenue bill, as specified in the bill or established by joint resolution. Several base funding level | Major finance or revenue bills | Current rate | Indefinite | Kahn, DFL (lead), and seven others |

| File No. | Description | Scope | Amount | Duration | House Authors |
|---|---|---|---|---|---|
| | adjustments and exceptions are required. | | | | |
| HF 68/SF 88 | As part of a larger budget process bill, the automatic appropriations provision would continue appropriations to a state agency without a new budget at the base amount sufficient to continue operations of the agency and the programs administered by the agency at the base level through the next fiscal year. The base for onetime appropriations is zero. | Major appropriations bills to fund state agencies | Current rate | One fiscal year | Solberg, DFL (lead), and six others |
| HF 94/no Senate companion | An existing appropriation continues at the base level in future fiscal years unless a law is enacted to eliminate or amend the appropriation. Applies only to appropriations in major finance or revenue bills, as specified in the bill or established by joint resolution. Several base funding level adjustments and exceptions are required. | Major finance or revenue bills | Current rate | Indefinite | Bigham, DFL (lead), and two others |
| **2006** | | | | | |
| HF 2617/SF 3043 | An existing appropriation continues at the same level in future fiscal years unless a law is enacted to eliminate or amend the appropriation. | All appropriations | Current rate | Indefinite | Davids, GOP (lead), and eight others |
| HF 2639/no Senate companion | An existing appropriation continues at the base level in future fiscal years unless a law is enacted to eliminate or amend the appropriation. | All appropriations | Current rate | Indefinite | Kahn, DFL (lead), and seven others |
| HF 2777/SF 2459 | An appropriation for the current biennium continues at the level authorized on the final day of the current biennium until amended or eliminated by law. | All appropriations | Current rate | Indefinite | Scalze, DFL (lead), and 34 others |
| HF 2840/SF 2650 | An existing appropriation continues at the base level in future fiscal years unless a law is enacted to eliminate or amend the appropriation. Applies only to appropriations in major finance or revenue bill, as specified in the bill or established by joint resolution. Several base funding level adjustments and exceptions are required. | Major budget or revenue bills | Current rate | Indefinite | Tingelstad, GOP (lead), and 13 others |
| HF 2956/SF 2722 | As part of a larger budget process bill, the automatic appropriations provision would continue appropriations to a state agency at the base amount sufficient to continue operations of the agency and the programs administered by the agency through the next fiscal year. The base for | State agency operations | Current rate | One fiscal year | Solberg, DFL |

| File No. | Description | Scope | Amount | Duration | House Authors |
|---|---|---|---|---|---|
| | onetime appropriations is zero. | | | | |
| HF 3453/SF 2420 | An existing direct appropriation continues at the same level in future fiscal years unless a law is enacted to eliminate, supersede, or amend the appropriation. | Direct appropriations | Current rate | Indefinite | Goodwin, DFL |
| **2005, 1st SS** | | | | | |
| HF 133/no Senate companion | An existing appropriation continues at the same level in future fiscal years unless a law is enacted to eliminate or amend the appropriation. | All appropriations | Current rate | Indefinite | Davids, GOP |
| HF 135/SF 101 | An existing appropriation continues at the same level in future fiscal years unless a law is enacted to eliminate or amend the appropriation. | All appropriations | Current rate | Indefinite | Kahn, DFL (lead), and six others |

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