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Automatic Continuing Appropriations and Government Shutdowns

About this Publication

This publication identifies the major policy elements of an automatic continuing appropriations law and analyzes laws in other states, legislative proposals, and the potential implications of enacting such a law in Minnesota.

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Executive Summary

Government shutdowns negatively impact the state budget and its citizens in both quantifiable and less measurable ways. By design, an automatic continuing appropriations law could prevent or minimize shutdowns by automatically appropriating some level of ongoing funding for state government functions until the legislature and governor agree on a new biennial budget. However, there are other potential implications that policymakers may want to consider.

Since the partial state government shutdown in 2005, Minnesota legislators have authored at least 30 bills that would establish an automatic continuing appropriations mechanism. The bills have at least three key policy elements: funding scope, amount, and duration. Most bills introduced to date would fund existing programs at prior levels, while others would reduce funding or continue only certain state government activities.

At least three states have automatic continuing appropriations laws — Wisconsin, Rhode Island, and North Carolina. The Wisconsin and Rhode Island laws have existed for decades, while North Carolina's was enacted in 2015.

Potential implications of an automatic continuing appropriations law in Minnesota include:

- preventing or minimizing state government shutdowns and associated costs,
- decreasing lawmakers' incentive to enact a balanced budget on time,
- creating an institutional bias for status quo fiscal policy, and
- enacting an unbalanced budget that is not supported by new revenues.

Another significant policy issue concerns the level of funding provided for debt service, school aid payments, and other forecasted, entitlement-type programs. In general, legislation introduced to date either specifically authorizes full funding of these programs or is silent on the issue.

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 ongoing statutory appropriations, most state agencies receive their operating money via direct appropriations that expire at the end of each biennium.[1] Without funding, state government activities cannot continue and are forced to "shut down."

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

In 2005 and 2011, Minnesota lawmakers did not enact a complete budget before the start of the new biennium, resulting in partial government shutdowns.[2] Many activities ceased, although a petitioned Ramsey County District Court ordered 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 state's budget and its citizens in both quantifiable and less measurable ways.[3] The impact to the state budget is the net effect of all shutdown costs incurred, forgone revenue, and money saved. More specifically, direct budgetary impacts include the following:

- Salary and benefit cost savings due to laying off state workers or placing them on unpaid leave, net of any unemployment compensation and severance paid

- Forgone and unrecoverable revenue, including state park user 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 and employees; preparing for the interruption of those services provided directly to citizens, clients, and businesses; and securing state facilities and information systems

- Recovery costs, including reopening state facilities, implementing staff recall procedures, reinstating employee security access, and restarting contracts and projects

- Payments to settle valid claims brought by contractors and vendors due to project delays or other contractual issues

- The cost of convening a special legislative session to pass the remaining budget bills

When combined, these measurable impacts may result in a net cost or savings to the state budget. Data compiled by the executive branch indicate that Minnesota's 2011 shutdown resulted in a net cost to the state budget.[4]

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[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 September 10, 2019, http://www.ncsl.org/research/fiscal-policy/late-state-budgets.aspx.

[4] See Minnesota Management and Budget (MMB), *State Government Shutdown Executive Summary,* October 2011. In this report, MMB tabulated shutdown costs and savings, determined that the immediate costs were offset by compensation savings, but noted that final shutdown recovery costs—particularly for the Minnesota Department of Transportation (MnDOT)—would not be known for up to a year. Subsequently, MnDOT paid

Certain societal and economic costs do not affect the state budget directly and are more difficult to quantify. These impacts may include the following:

- Public anxiety due to uncertainty about the extent of the shutdown and its impact on particular programs and services
- Frustration, inconvenience, and lost private sector income due to the closure of facilities such as state parks and licensing or permitting bureaus, halted construction projects, and unavailable agency contacts and online resources
- Financial and emotional stress for public sector workers, contractors, vendors, and their families
- Erosion of faith in the state, its public officials, and the democratic system of government
- Downgrading of the state's credit rating due to creditor concerns about the state's finances and political process, which may result in tangible future financial costs if lenders require the state to pay a higher rate of interest

Some lawmakers believe state government should not continue to operate unless a new budget is enacted in law. Others find shutdowns unacceptable and believe the state should continue to function fully or to some extent in spite of a political impasse.

Since Minnesota's 2005 partial government shutdown, dozens of legislators have authored bills proposing a continuing appropriation mechanism to prevent or minimize 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 before existing appropriations expire and the new biennium begins.

With an automatic continuing appropriations law in place, 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 certain or all 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, sometimes referred to as a "continuing resolution," is a onetime, temporary law that appropriates funding for a limited time in order to address only the current budget impasse. In contrast, an automatic continuing appropriations law would reside in

approximately $36 million to private road and bridge construction contractors to settle claims related to the 2011 shutdown. It is possible that other state agencies issued payments for shutdown-related claims as well.

[5] See Laws 2005, 1st Spec. Sess. ch. 2 and 2011 Regular Session, House Files 1748 and 1753. For a more recent lights-on example, see 2019 Regular Session, House File 2921.

statute and activate whenever a budget is not in place at the start of a new biennium. No additional legislation would be is necessary.

This publication identifies the key elements of an automatic continuing appropriations law, examines comparable laws in other states, summarizes legislative proposals, and explores potential implications of adding such a feature to Minnesota's 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 for specific purposes (Minn. Stat. § 16A.011, subd. 14a). This legal authority persists even if a new biennial operating 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 direct appropriations in session law. Spending authority under a direct appropriation typically expires at the end of the fiscal year or biennium.

Entitlements: For purposes of this publication, an entitlement is created when a law requires the payment of money or the provision of benefits to all people or units of government that satisfy relevant eligibility requirements. Some entitlements are funded by statutory appropriations, others by direct appropriations. For instance, while property tax refund payments are authorized by a statutory appropriation, the legislature has elected to direct-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. Under current law, spending on entitlement programs depends on the number of eligible recipients (individuals, local units of government, etc.) and the cost of providing payments or services to these recipients. Budget forecasts are used to estimate these variables and predict the corresponding cost of entitlement (or "forecasted") programs. The House Fiscal Analysis Department estimates that forecasted programs accounted for approximately three out of every four dollars of general fund spending during the fiscal years 2018-2019 budget biennium. Approximately half of this entitlement spending was authorized via statutory appropriations (including general education aid), and half via direct appropriations.

It is important to note that this definition of entitlements is broad and includes much more than the programs commonly associated with entitlement spending (e.g., those that provide health care or financial assistance to the infirm or poor). For example, sum-sufficient appropriations to the Department of Natural Resources for firefighting activities and the Minnesota National Guard for emergency flood prevention work are open-ended commitments and treated as entitlement spending for the purposes of this publication.

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 can vary from all activities in effect on June 30th to select programs that lawmakers determine are critical state functions that must continue even in the absence of a new enacted budget.[6] Typically, funding is not authorized for programs 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 is not limited to prior spending levels but can increase or decrease from this base level in order to make payments or provide services to all eligible recipients as required by law.
Current Operating Level	The amount appropriated for a given program is the amount required to maintain the same activity level that existed at the end of the previous fiscal year. As with the Current Rate option, entitlement program funding is not capped and 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 for 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 activities that should continue to receive adequate funding in spite of a budget impasse. These activities are funded by permanent statutory appropriations, rather than biennial session laws. For more on this topic, see the Potential Implications section on page 11.

Method	Funding Level Provided
	70 percent the next month, etc.). As with the Current Rate and Current Operating Level options, entitlement programs are fully funded.
Source: House Research Department, adapted from US GAO, January 1986, Continuing Resolutions and an Assessment of Automatic Funding Approaches, GAO-AFMD-86-16, Report to the Chairman, Committee on Rules, House of Representatives, pp. 34-36 (1986).	

In the GAO's framework, all three options treat appropriations for entitlement programs differently than appropriations for nonentitlement programs. Entitlement program funding is not limited or pegged to prior levels, but could increase or decrease as needed to satisfy the underlying statute.

In the **current rate** method, funding automatically continues at the same level as in 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/forecasted programs is last year's level plus or minus any additional amount that the administering agency anticipates will be necessary in order to provide payments or benefits to all eligible entities.[7]

The current rate approach may be relatively easy for Minnesota state 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 if employee compensation, materials, fuel, and other costs increase from one year to the next.

Under a **current operating level** approach, sufficient funding is automatically appropriated in order to maintain the program service level in effect at the end of the prior fiscal year. This could translate into increased spending if inflation or other factors increase the cost of operating government programs and administering state laws. Under this option, agencies could determine how much additional money is required to maintain current operations, with the legislature losing the ability to modify, approve, or reject requested increases. Alternatively, the automatic continuing appropriations law could explicitly limit or determine these inflationary increases.

In the **restrictive** method, the amount of money appropriated for a given program or activity is less than the amount appropriated for 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 additional legislative direction, it is not clear how state agencies would determine where to make the required reductions. Lacking additional instructions, agencies may continue to spend at unsustainable levels until funds run out or

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

attempt to adjust spending downward following existing statutory accounting procedures.[8] Alternatively, legislators could structure the automatic continuing appropriations law to either specify reduction procedures and priorities or, alternatively, to give executive branch officials discretion to make the necessary reductions.

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 budgetary differences, it could also serve to delay earnest negotiations until the automatic funding extension nears its end. Indefinite funding authority would ease the strain on state agencies, recipients of government funding or services, regulated industries and professions, and others impacted by state government but may also lessen the impetus to pass a new budget in a timely manner.

Policies in Other States

At least three states have laws that fit the definition of automatic continuing appropriations used in this publication—Wisconsin, Rhode Island, and North Carolina. While other states may have statutory procedures that are triggered by the failure to pass a new budget, Wisconsin, Rhode Island, and North Carolina have broad automatic continuing appropriations statutes.[9] Table 2 highlights these laws.

Table 2
Continuing Appropriation Statutes in Other States

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,	R.I Gen. Laws § 35-3-19

[8] See for example, Minn. Stat. § 16A.14.

[9] National Association of State Budget Officers, *Budget Processes in the States,* Table 13, 2015, last accessed September 16, 2019, https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Budget%20Processess/2015_Budget_Processes_-_S.pdf.

State	Description	Citation
	appropriations for bond indebtedness are set as required to make all payments.	
North Carolina	If a fiscal year begins for which the Current Operations Appropriations Act has not been enacted, money is appropriated to state departments, institutions, and agencies at levels not to exceed actual expenditures in the prior fiscal year. However, full and prompt payment of bond principal and interest is required.	N.C. Gen. Stat. § 143C-5-4

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Wisconsin

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 fiscal year 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.[10] 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.

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 five decades, the latest date of budget enactment was November 4, 1971, approximately four months after the new budget period began. In more recent times, the budget in 2007 was not final until October 27 of that year.

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 generally 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 typically 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-

[10] Phone conversation with Bob Lang, Director, Wisconsin Legislative Fiscal Bureau, January 30, 2018.

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

[12] Wis. Stat. § 16.47(2).

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 typically do not 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.

Rhode Island

In **Rhode Island**, although a similar law has been in place since 1935, it is rarely invoked. In 1992 and 1993 lawmakers failed to adopt the annual budget on time and in both instances the new budget was enacted roughly two weeks later. In 2017, the law was invoked on July 1 and prevented a shutdown until lawmakers enacted the new budget in early August.

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]

North Carolina

After a protracted budget battle in 2015, **North Carolina** lawmakers enacted an automatic continuing appropriations law the following year. Prior to 2016, when the budget-making process went into overtime lawmakers would enact continuing resolutions, or temporary "lights-on" budget measures, to fund state government until the main appropriations law—the Current Operations Appropriations Act—was enacted.[14] The automatic continuing appropriations law was invoked for the first time on July 1, 2019, when lawmakers failed to enact a new budget. The law allowed the state's budget director to allocate funding to continue state operations in the new fiscal year. As of the date of publication, North Carolina lawmakers had not enacted a complete budget to supersede the continuing appropriations.

Under North Carolina's law, automatic appropriations cannot exceed prior-year expenditure levels, but the budget director may allocate less money if he or she anticipates that revenues will be insufficient to afford status-quo spending. The law requires the budget director to promptly make principal and interest payments on outstanding bonds, freezes state and public school employee salaries at current levels, and prevents state agencies from filling vacant staff positions if the budget bill passed by one or both bodies of the legislature would eliminate these positions. Entitlement spending for schools, higher education institutions, managed care, and other purposes is pegged at prior levels and does not automatically increase due to increased enrollment or other statutory cost drivers.

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[13] Email response from Sharon Reynolds Ferland, House Fiscal Advisor, State of Rhode Island, January 29, 2018.

[14] Fiscal Research Division. August 15, 2016. "Budget Brief - NC 2016 Legislative Session Budget and Fiscal Policy Highlights." North Carolina General Assembly. Last accessed September 17, 2019, at www.ncleg.net/FiscalResearch/fiscal_briefs/2016_Session_Budget_Fiscal_Briefs/2016_Budget_Brief-klw-2016-08-09_Final.pdf.

Legislative Proposals

Since the 2005 partial state government shutdown, Minnesota legislators have introduced at least 30 different bills proposing automatic continuing appropriations. Members from both political parties have authored bills, either as chief or co-authors. Each bill failed to advance at some stage in the legislative process. For a list and description of the bills, see Appendix A.

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 2019.

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. Subsequent bills take different approaches when defining scope. Some would automatically continue only certain appropriations, such as those that fund state agency operations (as opposed to pass-through grants and aids), state employee compensation, certain state government functions, or only those appropriations that are typically included in a major omnibus budget bill. Some bills specify that statutory appropriations and spending for forecast (entitlement) programs are not capped, while others would suspend many statutory appropriations or are silent on the issue altogether.

Amount

While expressed somewhat differently, many bills propose to continue appropriations at the current rate—i.e., the base level. Others embrace the restrictive method and propose continued funding at some fixed percentage of the base level.

Duration

In general, the bills take one of three approaches to the duration element—automatic appropriations continue indefinitely, for one fiscal year, or for both years of the budget biennium.

Potential Implications

As described 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 budget bills (i.e., the tax bill and the approximately ten major finance bills that collectively fund K-12 education, health and human services, public safety, environment and natural resources, and other areas of the state operating budget[15]).

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. Because automatic continuing appropriations would 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 would continue at base levels unless both houses of the legislature and the governor agree to make 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 provide 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 or others request inflationary adjustments or the creation, elimination, or modification of programs, the legislature reviews and evaluates these requests, and 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

[15] For the list of major finance and revenue bills established by the 91st Minnesota House of Representatives, see Rules of the House, section 4.03, paragraph (d), as adopted by the House of Representatives on January 8, 2019.

governor's veto of budget bills or items and enact 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 that drive continuing 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 by default, the law may benefit the party whose budget priorities most closely align with status quo government.[16] In divided government, a party proposing significant changes to the state's fiscal 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 to agree to a compromise. The ability of each of the three entities to single-handedly derail passage of a new budget 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 during the next election 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 is not 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.

[16] US GAO, *Continuing Resolutions*, p. 43. However, one could argue that because the state cannot deficit spend (unlike the federal government), during a time of deficit an automatic continuing appropriations law that authorizes or directs the executive branch to cut spending to balance the budget would benefit a party whose objective is to reduce government spending. For more, see How to Balance Revenues and Expenditures Without a New Budget.

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 agreement on a new state budget that balances revenues and expenditures. 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.[17] 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 agree to increase or reduce base spending levels, increase or cut taxes, and/or draw from budget reserves so that total biennial spending will not exceed available revenues. With automatic continuing appropriations, base spending levels would continue whether supported by sufficient revenue or not.

If revenue collected in the new biennium is inadequate to pay for continued base spending—and there are no revenue-raising or budget-cutting procedures in place to align spending with revenue in the absence of a new balanced budget—the state could run out of money once budget reserves are exhausted. If revenue exceeds 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 certain mandatory allocations of surplus revenue are complete.[18]

Minnesota lawmakers could allow the automatic continuing appropriations law to continue baseline spending levels even if those levels are not supported by the latest revenue estimates. However, the state constitution severely limits the ability of the state to deficit spend, or borrow money to pay for current operations.[19] 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 revenues are less than the amount anticipated when the biennial budget was

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

[18] See Minn. Stat. § 16A.152, subd. 2.

[19] The constitution does not authorize the state to borrow money to pay for current operations, outside of limited authority for short-term borrowing in anticipation of revenue the state will collect later in the biennium. 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). However the ability to do this is very limited as a practical and legal matter.

enacted. Via the **"unallotment" law**, the legislature empowered the executive branch to unilaterally reduce enacted appropriations under certain conditions in order to realign spending with available revenue. In part, the law provides that:

> "(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."[20]

Under this law, when revenues are less than initially anticipated and the commissioner of management and budget has exhausted the budget reserve, in order to fully erase the deficit the executive branch can effectively reduce enacted appropriations as it sees fit.

It is unclear whether the existing unallotment law would apply to a deficit created by continuing appropriations.[21] However, the unallotment law could be amended to provide explicit authority (under rules the legislature considers appropriate) for executive branch officials to reduce spending to match anticipated revenues in the event of a deficit caused by continuing appropriations.

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. In the case of a projected deficit, 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

[20] 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*, November 2018.

[21] 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 (Minn. 2010). Moreover, the unallotment law is only triggered by a reduction in anticipated revenues, a second prerequisite that would not necessarily be met.

base funding via unallotment. Some may argue that this would constitute an unconstitutional delegation of the legislature's budget-making responsibilities.[22]

In an automatic continuing appropriations law, the legislature could specify that the existing unallotment authority does not apply to a deficit created by automatic continuing appropriations. The lack of a statutory mechanism for balancing revenues and expenditures may retain the pressure currently placed on the legislature and governor to eliminate a projected deficit via enactment of 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 applicable 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 years 2018 and 2019, these programs accounted for roughly three-quarters of all general fund spending.[23] A key element of an automatic continuing appropriations law is whether and how the law funds these entitlement programs.

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

Using the statutory base-budget procedures, the amount of money automatically appropriated for nonentitlement programs would effectively 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 eligibility criteria or other cost drivers 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

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[22] Former Minnesota Supreme Court Justices Alan Page and Paul H. Anderson expressed this concern about the current unallotment law in a concurring opinion in *Brayton v. Pawlenty*. *Id.* at 369.

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

institutions may be higher than the amount spent the year before. If the legislature does not modify minimum prison sentences, adjust parole eligibility, or take other relevant actions when developing the new budget, more money will be required to operate state prisons in the new biennium.

For purposes of exploring the potential impacts 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.[24] Although funding all of state government automatically would be a significant departure from the existing budget process, under current law roughly 43 percent of all general fund spending each year is automatically allocated via statutory appropriations.

Statutory appropriations may authorize the expenditure of a specific amount of money or an open-ended commitment.[25] Open statutory appropriations authorize state agencies to spend an unspecified, sum-sufficient amount in order to perform certain activities or provide payments or benefits to all eligible recipients. The amount appropriated for these programs is whatever amount is required to fully meet the state's obligations established in law. Examples include property tax refunds, principal and interest payments for general obligation bonds, and the single largest area of general funding spending each year—general education aid payments to school districts.[26]

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 affected by an automatic continuing appropriations law unless the legislature specifies otherwise.

A continuing appropriations law that explicitly limits statutory appropriations to prior levels or less could have certain consequences. For example, if the law limits the open statutory

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[24] Although this is the legislature's intent, the 2011 shutdown and associated court proceedings revealed some disagreement about whether the executive branch can 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.

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

[26] See Minn. Stat. §§ 477A.03, 290A.23, 16A.641, subd. 10, and 126C.20, respectively. The appropriation for general education aid payments illustrates the budgeting complexities that an automatic continuing appropriations law ideally would address. Technically, these aid payments to local school districts are authorized by a direct appropriation in each biennial K-12 education budget act. The statutory appropriation, in essence, requires the state to provide additional funding to school districts if the direct appropriation amounts are not sufficient. So that legislators fully understand a proposal's impact and state agencies can properly implement it, automatic continuing appropriation legislation arguably should clearly state whether the amount automatically appropriated for general education aid and other entitlement programs with statutory appropriations is capped at last period's actual spending or allowed to fluctuate to forecast levels.

appropriation for the expenses of Minnesota National Guard personnel ordered into 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, prior funding levels may not be sufficient to provide aid at statutorily required levels in the new fiscal year.

On the other hand, because statutory appropriations make up a significant share of total general fund spending, unbounded statutory spending could decrease lawmakers' incentive to enact a new budget because some entitlement recipients would not face a funding interruption.

If lawmakers intend to cap statutory appropriations, ideally this would be specified in the language of the continuing appropriations law. The legislature could specify how reductions are to be implemented in entitlement programs or give the executive branch authority to make these determinations.

Of note, reducing spending for debt service below the amount necessary to pay all outstanding obligations could have serious consequences for the state's credit rating and trigger a statewide property tax levy.[28] Following Rhode Island and North Carolina's example, Minnesota lawmakers could expressly state in law that payments for debt service are to be made in full and are not limited under the continuing appropriations law.

Direct Appropriations

Some entitlement programs are funded by direct appropriations. While the enabling laws establish eligibility criteria and a duty 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, entitlement programs funded by temporary, direct appropriations made up roughly 38 percent of all general fund spending in the fiscal years 2018-2019 biennium.

As noted above, many of the continuing appropriations bills introduced to date would provide funding for these and other forecasted direct appropriation programs at forecast-adjusted base levels. In practice, this likely means that the amount of money allocated to the Department of Corrections for prisons or to the Department of Human Services for Medical Assistance, for example, 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.

[27] See Minn. Stat. § 192.52.

[28] See Minn. Const. art. XI, § 7 and Minn. Stat. § 16A.641, subd. 11.

Alternatively, the legislature could specify in the law that appropriations for certain entitlement programs are capped at the amount spent in the prior year.[29] 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 or whether administering agencies would ration available funds by modifying eligibility criteria, reducing payment rates, curtailing 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 and balances revenues and expenditures.

[29] However, 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 and/or the supremacy clause of the federal constitution effectively require 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. More recently, the Minnesota Supreme Court has cast doubt on the prospect for court-ordered funding in the event of a future shutdown. *Ninetieth Minn. State Senate v. Dayton,* 903 N.W.2d 609 (Minn. 2017).

Appendix: Bills Introduced in the Legislature

File No.	Description	Scope	Amount	Duration	Authors
2019					
H.F. 1863	Money is appropriated to pay the salary and benefits of state employees if legislation is not enacted by July 1st of an odd-numbered year to fund the regular operations of the agency that employs them.	State employee salary and benefits	Current rate	One fiscal year	Lillie (DFL) and 12 others
2018					
H.F. 3360	If operating money for the judiciary, a constitutional office, executive agency, or the legislature is not appropriated by July 1st of an odd-numbered year, prior appropriations for the entity are reauthorized at 90% of the base funding level. Statutory appropriations and forecasted programs are fully funded and not subject to the 90% limitation.	Operating money	90% of current rate; current rate	One fiscal year	Jessup (GOP) and 15 others
H.F. 3437	Upon proper petition, the Minnesota Supreme Court must order the release of money sufficient to fund specified critical functions of state government if those functions are not funded by law before July 1st of an odd-numbered year. Most statutory appropriations are suspended while court-ordered funding is in effect. Public higher education institutions may continue to operate using tuition, fees, and other revenues available to them.	Specified critical functions	Current rate with certain exceptions	Indefinite with certain exceptions	Knoblach (GOP) and 3 others
H.F. 3891	Upon proper petition, the Minnesota Supreme Court must order the release of money sufficient to fund specified critical functions of state government if those functions are not funded by law before July 1st of an odd-numbered year. Most statutory appropriations are suspended while court-ordered funding is in effect. Public higher education institutions may continue to operate using tuition, fees, and other revenues.	Specified critical functions	Current rate with certain exceptions	Indefinite with certain exceptions	Knoblach (GOP)

File No.	Description	Scope	Amount	Duration	Authors
2017					
H.F. 691/ S.F. 605	If a major appropriations bill is not enacted before July 1st of an odd-numbered year, existing appropriations continue at 95% of the base level in the next fiscal year. Statutory appropriations and forecast programs are fully funded and not subject to the 95% limitation.	Major appropriations bills	95% of current rate; current rate	One fiscal year	Anderson, S (GOP)
2015					
H.F. 20	If a major appropriations bill is not enacted before July 1st of an odd-numbered year, existing appropriations continue at the base level in the next fiscal year. Statutory appropriations and forecast programs are fully funded.	Major appropriations bills	Current rate	One fiscal year	Kahn (DFL) and 3 others
2013					
H.F. 1184/ S.F. 1589	If a major appropriations bill is not enacted before July 1st of an odd-numbered year, existing appropriations continue at the base level in the next fiscal year. Statutory appropriations and forecast programs are fully funded.	Major appropriations bills	Current rate	One fiscal year	Murphy, M. (DFL)
H.F. 1291/ S.F. 1464	If a major appropriations bill is not enacted before July 1st of an odd-numbered year, existing appropriations continue at the base level in the next fiscal year.	Major appropriations bills	Current rate	One fiscal year	Kahn (DFL) and 7 others
2012					
H.F. 568	If a major appropriations bill is not enacted before July 1st of an odd-numbered year, existing appropriations continue at the base level in the next fiscal year.	Major appropriations bills	Current rate	One fiscal year	Kahn (DFL) and 17 others

File No.	Description	Scope	Amount	Duration	Authors
S.F. 1537	A direct appropriation remains in effect in subsequent fiscal years unless amended, superseded, or eliminated by law before July 1st of an odd-numbered year (constitutional amendment).	Direct appropriations	Current rate	Indefinite	Gazelka (GOP) and 2 others
H.F. 1764/ S.F. 1478	A direct appropriation remains in effect in subsequent fiscal years unless amended, superseded, or eliminated by law before July 1st of an odd-numbered year.	Direct appropriations	Current rate	Indefinite	Lohmer (GOP) and 6 others
H.F. 1811	Unless otherwise provided by law, each entity in the executive, legislative, and judicial branches and the programs administered by the entity are funded at 90% of the base funding level beginning July 1st of each odd-numbered year.	Direct appropriations; statutory general fund appropriations	90% of current rate	Biennium	Gruenhagen and Kieffer (GOP)
H.F. 1834/ S.F. 2153	Funding necessary to continue an agency's revenue-generating programs is appropriated in the event of a state government shutdown, as defined.	Revenue-generating programs	Current rate	During shutdown	Scott (GOP) and 2 others
S.F. 1946	If an appropriation required to fund any state government operation is not enacted by July 1st of an odd-numbered year, funding continues at 80%.	State government operations	80% of current rate	Biennium	Nelson (GOP) and 4 others
H.F. 2088/ S.F. 1935	If a major appropriations bill is not enacted before July 1st of an odd-numbered year, existing appropriations pertaining to that bill continue at the base level. Continuing appropriations are not triggered by a governor's veto of an item of appropriation. The commissioner of management and budget must determine in the February forecast each odd-numbered year whether continuing appropriations would result in a general fund budget deficit in the next biennium. If continuing appropriations take effect and a deficit results, the commissioner must erase the deficit with a combination of uniform income tax increases and spending reductions.	Major appropriations bills	Current rate	Biennium	Winkler (DFL) and 20 others

File No.	Description	Scope	Amount	Duration	Authors
H.F. 568	If a major appropriations bill is not enacted before July 1st of an odd-numbered year, existing appropriations pertaining to that bill continue at the base level in the next fiscal year.	Major appropriations bills	Current rate	One fiscal year	Kahn (DFL) and 17 others
2009					
H.F. 692	An existing appropriation continues at the base level in future fiscal years unless a law is enacted to eliminate or amend the appropriation.	Major finance or revenue bills	Current rate	Indefinite	Kahn (DFL) and four others
2007					
H.F. 7	If a major appropriations bill is not enacted by July 1st of an odd-numbered year, existing appropriations pertaining to that bill are in effect again at the base level in the next fiscal year.	Major appropriations bills	Current rate	One fiscal year	Loeffler (DFL) and 35 others
H.F. 42/ S.F. 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) and five others
H.F. 66	An existing appropriation in a major finance or revenue bill continues at the base level in future fiscal years unless a law is enacted to eliminate or amend the appropriation.	Major finance or revenue bills	Current rate	Indefinite	Kahn (DFL) and seven others
H.F. 68/ S.F. 88	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 appropriation bills to fund state agencies	Current rate	One fiscal year	Solberg (DFL) and six others
H.F. 94	An existing appropriation continues at the base level in future fiscal years unless a law is enacted to eliminate or amend the appropriation.	Major finance or revenue bills	Current rate	Indefinite	Bigham (DFL) and two others

File No.	Description	Scope	Amount	Duration	Authors
	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.				
2006					
H.F. 2617/ S.F. 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) and eight others
H.F. 2639	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) and seven others
H.F. 2777/ S.F. 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) and 34 others
H.F. 2840/ S.F. 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) and 13 others
H.F. 2956/ S.F. 2722	If no biennial direct appropriations for a state agency are enacted before July 1st of an odd-numbered year, amounts sufficient to continue agency operations in the next fiscal year are appropriated. The base for onetime appropriations is zero.	State agency operations	Current rate	One fiscal year	Solberg (DFL)
H.F. 3453/ S.F. 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)

File No.	Description	Scope	Amount	Duration	Authors
2005, 1st SS					
H.F. 133	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)
H.F. 135/ S.F. 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) and six others
Note: this table does not include bills proposing to automatically fund only one entity (e.g., the Minnesota Racing Commission) or allocate funding from a single dedicated fund (e.g, the Trunk Highway Fund).					

House Research Department