A little-used tool in the toolbox

Governor can use unallotment to balance state's budget if legislators do not

By Brenda van Dyck

Confronted with a projected $935 million biennial budget deficit projected from the February Economic Forecast, legislative leaders and the governor are trying to work out a budget solution. But the governor doesn't have to wait for the Legislature to solve the deficit; he can use a little-used tool called unallotment to balance the budget.

The state constitution requires that the budget be balanced at the end of the fiscal biennium. In the last 30 years, governors have only unallotted three times: Gov. Al Quie unallotted $195.1 million in 1980, Gov. Rudy Perpich unallotted $109.8 million in 1986, and most recently, Gov. Tim Pawlenty unallotted $281 million in 2003.

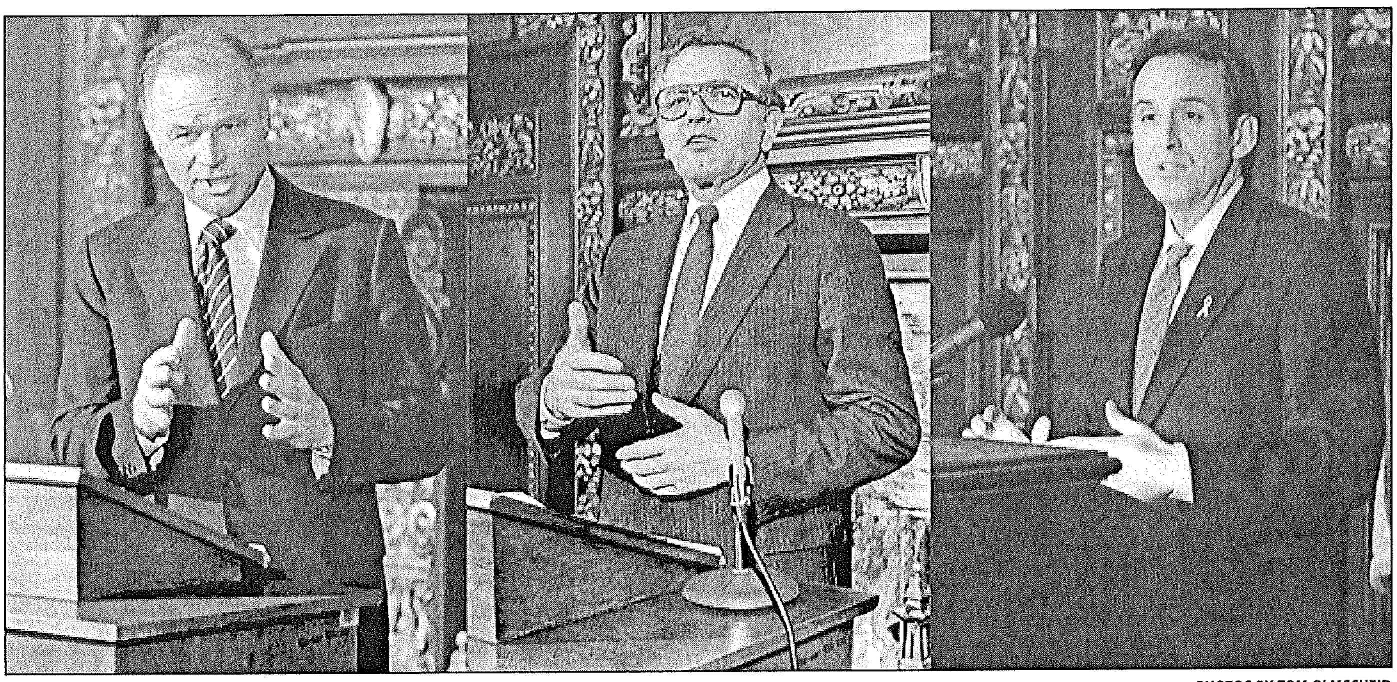
"In recent history, the unallotments occurred when there was a budget deficit in the biennium for which appropriations had already been made and the Legislature and governor could not reach an agreement on how to make reductions," said Bill Marx, House chief fiscal analyst.

Pre-unallotment planning

Before unallotment can occur, the finance commissioner must determine that receipts in the General Fund will be less than anticipated and that revenues will be less than what is needed for the rest of the biennium.

Although the law doesn't specify how the commissioner determines there will be a budget deficit, recent commissioners have generally used the revenue forecasts the Department of Finance issues in November and February. "It would have to be a forecast that it's based on because that's where all the numbers come together," said Marx.

The commissioner implements the unallotments, but the action must first be approved by the governor and the commissioner must consult with the Legislative Advisory Commission, which is made up of six



PHOTOS BY TOM OLMSCHEID

Although a tool not commonly used to balance the state's budget, three governors in recent history have unallotted: Gov. Al Quie, *left*, cut $195.1 million in 1980; Gov. Rudy Perpich, *center*, trimmed $109.89 million in 1986; and Gov. Tim Pawlenty, *right*, unalloted $281 million in 2003.

high-ranking legislators. The LAC has no power to stop the unallotment; but it must be notified 15 days before the action occurs.

Timing of unallotments

The law doesn't address when unallotment can occur.

"It's been common practice to wait for the Legislature to act before unalloting," said Mark Shepard, legislative analyst in the nonpartisan House Research Department. "That's the way the executive branch acknowledges that this is an extraordinary power."

But a governor can't wait too long to unallot. "The reason the governor would have to do it early in a fiscal year is that the money would be spent if he waited until June 29," Shepard said. June 30 is the end of the state's fiscal year. When Pawlenty unallotted $281 million in 2003, he did so nearly five months before the end of the fiscal year.

"The timing is more of an issue if you're cutting appropriations in a biennium when there is time to absorb it," Marx said. For instance, he notes that if an agency's allotment is reduced, it may have to layoff employees and pay severance. The state's current biennium ends June 30, 2009.

Court challenges

Some unallotments have faced controversy, and even court challenges.

A national economic crisis filtered down to Minnesota in the late-1970s and early-1980s, creating budget headaches for state leaders. After the Department of Finance forecasted a $198.8 million shortfall for the 1980-81 biennium, Quie unallotted $195.1 million in August 1980, including an $89.5 million cut to district aids. State agencies were cut by $49.4 million, higher education institutions by $35 million, and local government aid by $20.9 million. At the time, Quie said that he had three options to deal with the deficit: call the Legislature into special session to raise taxes, restrain state spending and hope for an upturn in the economy, or unallot.

Shortly after Quie unallotted, the Minnesota Federation of Teachers challenged the constitutionality of the school aid cuts in Ramsey County District Court. In February 1981, the Legislature restored the $89.5 million in school cuts and removed the governor's future authority to unallot aid to schools.

Two weeks after the governor signed the bill into law, the court ruled that the governor had acted within his power in cutting school aids. Later that year, in a third special session, the law to limit the governor's unallotment power was repealed.

Pawlenty's 2003 unallotment of $49 million from the Minnesota Minerals 21st Century Fund resulted in a lawsuit brought by Iron Range legislators and others. They challenged the constitutionality of the cut on grounds of separation of powers. The Minnesota Court of Appeals upheld the governor's action in 2004, and the Minnesota Supreme Court denied a review of the case.

Tool in negotiation

While unallotments might be the tool of last resort, sometimes legislators have relied on the governor to use his unallotment power.

In 1986, the state faced a $734 million budget deficit. In an unprecedented move, the House adjourned in late-March without a budget agreement in place. Three days later the Senate adjourned.

The budget issues were partially resolved in a one-day special session in early-April, but a $109.8 million budget shortfall remained. Budget negotiators left this amount for Perpich to unallot. Nearly half of the gubernatorial cuts were to state agencies ($50.8 million); the largest cut to a single agency was $20 million to the Department of Energy and Economic Development. Health and human services also took a substantial cut of $42.6 million.

Facing an expected deficit in 1993, Gov. Arne Carlson sought a provision that would enable him to cut spending if revenues dropped. He wanted to be able to unallot before the state spent all its budget reserves. As part of a budget deal, the governor was given limited authority to trim spending. The Legislature passed a law stipulating that the governor could cut 1 percent of the total state budget if the budget reserve fell below $400 million. One percent of the budget amounted to about $165 million. As it turned out, when the November forecast was released, the state actually had a surplus, so there was no need to unallot.

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Unallotment law

The unallotment law has been on the books since 1939. It was part of a major government reorganization that created the Department of Administration. That act, called the Government Reorganization Act of 1939, brought the state national recognition partly because it created a state business manager in the commissioner of administration.

In Gov. Harold Stassen's 1939 budget address, he advocated for simplifying state government and implementing a central system of managing the budget. Stassen proposed abolishing what was known as "The Big Three," a three-member commission representing all aspects of administration and finance, taxes and social welfare, and transferring their duties to four new state departments: Administration, Public Examiner, Social Security and Taxation. "With your cooperation in working out and placing into effect a sound, businesslike plan of the administration by grouping together related functions under single administrative heads, we can provide for the direct responsibility and efficient action that is so obviously needed in the state government today," Stassen said.

Stassen also saw the need for the state government to be able to unallot. "It should also be mandatory to reduce allotments if revenues decrease and to make regular reports to the public of the condition of the state finances," he said. He saw this as a way that the state could avoid recurring deficits.

There were no changes to the unallotment law until 1973, when the Department of Finance was created and the unallotment duties were transferred to the commissioner of finance.

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