

South Dakota Legislative Research Council

Issue Memorandum 97-8

BUDGET TRANSFERS

Introduction

The Legislature has occasionally expressed concern over a statute that gives the Executive Branch authority to transfer money appropriated by the General Appropriations Act. Prior to the 1997 Legislative Session, the Legislature had no active role in the budget transfer process. During the 1997 Legislative Session, the South Dakota Legislature passed a bill and a joint resolution that change the budget transfer process. The bill amended an existing budget transfer statute and the joint resolution proposes a constitutional amendment to be voted on at the 1998 general election. This issue memorandum will describe the amended budget transfer statute, explain the proposed constitutional amendment, and discuss some legislative concerns with budget transfers.

Background Information

Before explaining the changes that were made to the existing budget transfer statute, some background information on the appropriation process may be helpful in understanding budget transfer issues. (A complete discussion of the appropriations process may be found in Chapter B of the *Legislator*

Briefing Book that is compiled by the South Dakota Legislative Research Council.)

The Legislature appropriates money for the ordinary expenses of the Executive, Legislative, and Judicial departments of the state through the General Appropriations Act. The General Appropriations Act appropriates money from three funding sources: general funds, federal funds, and other funds. General funds are state revenues from a variety of sources (e.g., sales tax, contractors excise tax, bank franchise tax, etc.) and are deposited in the state general fund. Federal funds are obviously received from the federal government (e.g., Medicaid, highway funds, etc.). Other funds are usually state money, deposited in a separate fund, that have a dedicated or special purpose for which their expenditure is intended (e.g., higher education tuition and fees are dedicated to the Board of Regents). The two objects that the money is appropriated to are called personal services and operating expenses. Personal services are salaries and benefits. Operating expenses include everything else (e.g., travel, equipment purchases, supplies, etc.). The General Appropriations Act also appropriates full time equivalents

(FTE). The following example from the General Appropriations Act is an appropriation to the

Criminal Investigation Program in the Attorney General's Office:

Attorney General -- Criminal Investigation

	General Funds	Federal Funds	Other Funds	Total	FTE
Personal Services	\$1,014,801	\$ 214,898	\$569,979	\$1,799,678	
Operating Expenses	\$ 365,205	\$1,002,705	\$305,999	\$1,673,909	
Total	\$1,380,006	\$1,217,603	\$875,978	\$3,473,587	42.0

When general funds are appropriated, the Legislature gives a state agency cash from the State Treasury. When federal and other funds are appropriated, the Legislature gives a state agency permission to spend that amount of money if the funds become available. This is often referred as to federal or other fund expenditure authority. In the above example, this agency has authority to spend a total of \$1,217,603 of federal funds on personal services and operating expenses. If this agency only received a federal grant for \$700,000, the agency could only spend \$700,000.

When an agency transfers general funds, it transfers cash. When an agency transfers federal or other funds, the agency does not transfer cash. Rather, the agency transfers the authority to spend that amount of money from a funding source labeled federal or other if that money is available. An agency could transfer money between objects (i.e., from personal services to operating expenses), between programs within that agency, or to a completely different agency.

Authority for Transfers

The transfer of appropriated funds is authorized by § 4-8A-8 of the South Dakota Codified Laws. The

statute is reprinted below:

§ 4-8A-8 Moneys appropriated on a program basis by the general appropriation act may be transferred between program accounts within or between programs within departments and bureaus or between departments and bureaus to reflect a reorganization pursuant to Article IV, section 8 of the South Dakota Constitution only at the written request of a governing body, department secretary, or bureau commissioner, or designee, in accordance with procedures established by the Bureau of Finance and Management and only upon written approval of the Bureau of Finance and Management. Transfer of moneys appropriated by the general appropriations act between departments, institutions, and bureaus that is not necessary for a

reorganization pursuant to Article IV, section 8 of the South Dakota Constitution may only occur at the written request of a governing body, department secretary, or bureau commissioner, or designee, only in accordance with procedures established by the Bureau of Finance and Management and only upon approval by the special committee created in this chapter. The Bureau of Finance and Management shall keep a record of all such authorizations of transfers and make them available for public inspection. The bureau shall also submit an informational report detailing all transfers approved to the special legislative committee established in § 4-8A-2.

The Legislature amended this statute during the 1997 legislative session to restrict an agency's ability to transfer money to another agency. Prior to the 1997 amendment, the Legislature had no role in the transfer of appropriated funds. The amended law allows appropriated funds to be transferred from one state government agency to another state government agency if the special committee or interim appropriations committee approves the transfer. The exception written into the law allows appropriated funds to be transferred from one

state agency to another state agency, without legislative approval, if the purpose of the transfer is to reorganize state government.

Proposed Constitutional Amendment

The 1997 Legislature also passed House Joint Resolution (HJR) 1001. This resolution places a proposed amendment to the South Dakota Constitution on the 1998 general election ballot. The proposed amendment reads as follows:

A JOINT
RESOLUTION,
Proposing and
submitting to the
electors at the next
general election an
amendment to Article
III of the Constitution
of the State of South
Dakota, relating to the
authority of a special
interim legislative
committee to approve
the transfer of
appropriated funds. BE
IT RESOLVED BY
THE HOUSE OF
REPRESENTATIVES
OF THE STATE OF
SOUTH DAKOTA,
THE SENATE
CONCURRING
THEREIN:

Section 1. That at the next general election held in the state, the following amendment to Article III of the Constitution of the State of South Dakota, as set forth in

section 2 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state for approval.

Section 2. That Article III of the Constitution of the State of South Dakota be amended by adding thereto a NEW SECTION to read as follows:

§ 33. The Legislature may, by law, empower a committee comprised of members of both houses of the Legislature, acting during recesses or between sessions, to approve or disapprove transfers of appropriated funds during that fiscal year.

If approved by the voters of South Dakota, this amendment would give the Legislature the authority to empower a committee of senators and representatives to approve budget transfers during the fiscal year. The amendment does not *require* that the Legislature empower a committee, rather the amendment gives the Legislature *permission* to empower a committee.

Legislative Concerns

The main legislative concern with budget transfers is that the state budget and public policy can be changed without legislative approval. Many transfers do not

impact public policy. These transfers involve budget adjustments for minor shortfalls. While the amendment to § 4-8A-8 gets the Legislature involved in the transfer process, the Executive Branch still has the ability to change the budget and public policy without legislative approval. For example, an agency could take excess personal service dollars and transfer them to operating expenses without legislative approval. In another example, an agency that has multiple programs could also take money from one program and transfer it to another program within that same agency without legislative approval. This could expand existing programs or even create a new program.

One could say that both of these examples are necessary tools for the Executive Branch to manage state government. Since the General Appropriations Act is passed four months before the fiscal year begins and sixteen months before the fiscal year ends, all funding needs cannot possibly be determined. Therefore, it may be necessary for the Executive Branch to make some adjustments or budget transfers.

The debate over budget transfers centers around two issues. First, when transferring funds, is the Executive Branch simply managing state government or is it changing public policy? Second, when the Legislature wants to be involved in the budget transfer process, do they simply want to determine how state money is appropriated or are they interfering with Executive Branch and its duty to manage state government?

Summary

Prior to the 1997 Legislative Session, the Legislature had no active role in the transfer of appropriated funds. The Legislature passed a bill during the 1997 Session that requires legislative approval for budget transfers between state government agencies. Legislative approval for transfers between agencies is not

necessary if the transfer is for the purpose of government reorganization. The Legislature is now involved in the transfer process; however, because of the limited legislative involvement the Executive Branch still has the ability to change the state budget and public policy without legislative approval.

This issue memorandum was written by David Becker, Senior Fiscal Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
