

South Dakota Legislative Research Council

Issue Memorandum 97-13

A HISTORY OF SPECIAL APPROPRIATIONS

No money shall be paid out of the treasury except upon appropriation by law and on warrant drawn by the proper officer.

--South Dakota Constitution, Article XII, Section 1

Introduction

The South Dakota Legislature's history of appropriating money is an interesting--and sometimes entertaining--study. While appropriations **product** has evolved considerably over the years, the appropriation **process** has not. Appropriation legislation has evolved in both style and substance, yet the system has changed little, other than occasional refinement. The process used now is very similar to that used over a hundred years ago because the Legislature has always defined and considered two distinct types of appropriation bill, one known as "the general bill" (which becomes when enacted "The General Appropriation Act") and the other type known as the "special" appropriation. A Legislative Research Council document done for the Legislative Article Review Commission, *TRANSFER OF APPROPRIATIONS* (October 1996) gives a history of changes over the years in General Appropriation Acts. This paper portrays the evolution of "special" appropriations.

In their simplest forms, any given general appropriation bill is very easy to distinguish from a special appropriation bill (SAB). First of all, the former is a rather lengthy piece of legislation while the latter is usually just a few paragraphs. This year's General Appropriation Act (GAA), Session Law Chapter 34, is more than 20 pages, although GAAs in the past have been more than double that length. Very few SABs require more than one printed page.

Secondly, the typical GAA is much more vague than the typical SAB. The GAA is "the only bill specifically mentioned in the Constitution," as was once stated on the Senate floor. Article XII, Section 2 of the South Dakota Constitution limits its contents to "appropriations for ordinary expenses of the executive, legislative and judicial departments of the state, the current expenses of state institutions, interest on the public debt, and for common schools." While the GAA appropriates money to just two objects of expenditure, personal services and operating expenses, for each of the hundreds of programs which comprise state government, the typical SAB contains actual text directing who is to spend how much for what specific purpose.¹

Distinctions

The Constitution's Article XII, Section 2

concludes with “All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the Legislature.” Thus, perhaps the most important distinction between the two types of appropriation bill is the votes specified for their passage. The GAA only needs a majority of the members of both houses for passage, but a SAB requires two-thirds of the members of both houses. Consequently, it can be “easier” for the Legislature to appropriate millions of dollars via programs than it might be to appropriate a thousand dollars for a very specific item, project, or purpose. Thus, the very broad-purposed GAA appropriates much more money than the typical SAB, but may not be as hard to enact.

As to their basic purposes, simply put, the GAA is for the operation of state government and SABs are for everything else. While the Legislature has always followed that basic precept, there has been a noticeable shift toward including in the annual GAA items which, perhaps just the year previous, may have been enacted as SABs. Neither the Constitution nor statute define “operation of state government,” and consequently it has been broadened over the years. This has had an effect on the number of special bills.

A History of the Numbers

The most significant and obvious change relative to SABs is how many have been enacted each year. Over the years, the Legislature has generally enacted fewer each year. In a way, the number of enactments has almost come full circle: In 1890 the Legislature enacted just nine SABs, and in 1997 there were 11. Chart 1 depicts the number of SABs enacted by each legislative assembly since South Dakota’s first in 1890.

For whatever reasons, the 1949 assembly

took the trophy for the most SABs enacted with 157. That was 73 percent of that year’s 216 enactments.² The smallest number of SABs enacted was seven in 1891.

Legislative sessions between 1890 and 1961, inclusive, were 60-day, biennial sessions. The Legislature has met annually since 1963. Intuitively, the Legislature’s meeting only every other year is not the only reason for the huge number of SABs in so many sessions prior to 1963, but it is probably the major reason. As many as a third or more of the SABs in those biennial years were to address deficiencies in the previous GAA. Practically every biennial session had to address shortcomings in the previous session’s budget Act, as well as address the new bill (which contradicts the theory of efficiency of biennial budgeting). Attached to the end of this Issue Memorandum are the Session Law index entries for appropriations for a number of significant years.

A History of the Language

Overall, the amounts appropriated in individual SABs for whatever specific purposes have grown, and the language has changed a good deal. The basics of today’s “boilerplate” appropriation bill language were established by 1955, but “whereas” clauses were still used, not necessarily infrequently. Today’s SAB is more than just a modern phrasing of the traditional measure, though. Appropriation bill language has had to keep pace with the changes in governmental accounting practice and law as well as continual modernization of grammar and style.

Yet, the typical SAB has always exhibited certain features. Aside from those features common to all bills (a number, a title, and a body), a SAB specifies an amount, to whom or for what it is appropriated, who is to approve the expenditure, and a timeframe. While the earliest examples of SABs

exhibited differences attributable to their authors, the current model is almost a fill-in-the-blanks instrument by comparison.

Attachment 5 shows a SAB enacted by the First Legislative Assembly (Chapter 13). Attachment 6 shows a SAB passed by the 1997 Legislative Assembly (Chapter 95). Differences between yesteryear's model and the modern are more than cosmetic, but the similarities are strong.

One's attention is first drawn to the 1890 law because it sports a preamble. This was not too uncommon for most of the first half of the state's existence, and occasionally even in the last 20 years or so there have been statements of legislative finding or policy included in SABs. Rarely are the contents of a SAB written into South Dakota Codified Law (SDCL), so some SABs require a repeat of any crucial language every time they are introduced. The student grant programs found in SDCL Chapters 13-55A to G are examples of recurring SABs that rely upon language important enough to incorporate in statute.

Next, there is the differing treatments for the amount of the appropriation. The earlier bill appropriated "a sufficient sum out any money in the State treasury, not otherwise appropriated" for furniture, heating, and lighting for the Capitol. The 1997 law appropriated \$200,000 and specified that it come from the Private Activity Bond Fees Fund. The furniture bill essentially wrote a blank check for unspecified officials to purchase furniture and lighting for the Legislature so long as they presented the vouchers to the State Auditor to issue warrants. Presumably the State Auditor had power to deny payment of what he might have considered improper, but such has to be inferred. In the modern law, the money is appropriated by the Legislature to an agency of government for the purpose stated. The presiding officer of that agency then approves the vouchers, but the warrants are still drawn by the State Auditor. Thus,

there is a much better approval process and better accountability with today's measure.

Finally, modern SABs specify the source of the money to be spent, almost always a specific fund, much more precisely than "any money in the State treasury." Even though most SABs appropriate money from the state's General Fund, it is still specified. Modern bills are also more of a spending *cap* or limit for their particular purpose than a strict mandate that the specified number of dollars be spent, thanks to the commonly used phrase "or so much thereof as may be necessary." The early Legislatures' efforts at appropriation detail usually pertained to the amounts in that they often were to the exact penny and to a specifically named individual or business entity.

Similarities between both eras' bills are that the State Auditor is involved and that there is an effective date for the spending to occur. In these examples, the earlier one would be considered an emergency in that it was to "take effect immediately after its passage and approval." Apparently the Legislature was in dire need of furniture and lighting in 1890. While in those days as well as for the rest of the years of biennial appropriations emergency appropriations were very common, they have become rare in the last decades. Especially during the first quarter of this century, there were reasons stated in the bills as to why the expenditure should occur right away upon the bill's passage. Usual and customary now is for appropriations to become available on July 1, the start of the fiscal year.

An interesting feature of the modern SAB is what is known as the reversion clause. In the example at the end of this paper, that clause is the one which states "Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 1998, shall revert in accordance with §4-8-21." That law specifies that unexpended moneys

revert to their source in four years from the appropriation's effective date, unless the appropriation itself specifically states otherwise. Most SABs in any given year reflect the GAA in that they only put the money out for expenditure for the one fiscal year. Generally, if it is known that a particular project may not be completed within a year, the automatic four-year life of the appropriation may be useful.

The Shift From Special Appropriations to General

As previously shown, the trend shown by the Legislature has been away from the specificity and exactitude of SABs and toward much more vague GAAs. Items that decades ago were considered extraordinary enough to merit SABs are now buried within big numbers within an agency's lines in the GAA. For example, in 1899 the Legislature thought it important enough to specially appropriate money (\$100) for "purchase of the portraits of ex-Governors Arthur C. Mellette and Charles H. Sheldon," but they also precisely identified which portraits they wanted to buy as those "now on exhibition in the upper hall, at the head of the stairway."³ In 1964, the Legislature appropriated \$5,000 for heating system repairs in the Capitol (SL Ch. 199). Such an expense now is tucked away somewhere within a multi-million dollar program called Central Services, which is part of the Bureau of Administration, in the Department of Executive Management.

The excerpt from the 1949 Session Laws Index attached to this paper shows a wide range of appropriation topics that, if they are appropriated at all anymore, are not done through individual appropriations. One will note there were many appropriations to named individuals or entities, especially for tax refunds. Routine appropriations--in most years, not just 1949--also addressed burial of veterans, veterans' and survivors'

benefits, legislative expenses, Capitol grounds repairs or improvements, and furniture. In fact, the Legislature used to routinely appropriate via SABs the funding for State Aid to Education and public welfare, the two most expensive components of GAAs for the past decade.

"Novelty," Unique, or Interesting Appropriations

Any search of previous Legislatures' appropriations easily yields many appropriations for purposes which were probably quite significant at the time, historically important, quaint by today's standards⁴, mystifying because of the lack of historical record, or all of the above. The following are some items of expenditure from sessions past:

- The 1891 Legislature authorized \$500 for furniture, stationery "and other supplies for the legislature that may be required up to and including the last day of [that] session"(SL Ch. 11);
- The 1895 Legislature had to enact an emergency measure to appropriate \$23 for "mileage of members of the House of Representatives of the Fourth [1895's] Session"(SL Ch. 17).
- The 1903 Legislature spent \$5,000 for a silver service for the Battleship South Dakota (SL Ch. 45), \$35,000 for an exhibit at the Louisiana Purchase Expo (SL Ch. 43), \$1,000 "to reimburse Oliver Gibbs for moneys advanced to promote the State exhibit at the Chicago World's Fair (SL Ch. 25), and \$10,000 for an administration building at the State Blind Asylum in Gary (SL Ch. 37);
- The 1911 Legislature remedied a man \$300 "for and on account of hospital and medical fees incurred while being treated, arising from an injury sustained by him in being struck upon the head by the cover of the scuttle of the central building of the northern normal and

industrial school [Northern State University], which injury was caused by the high wind blowing this scuttle from the roof of the building” (SL Ch. 74).

- The 1913 Legislature appropriated all of \$10 to one George Philip “for legal services to the special committee of the senate to investigate double salaries of officials” (SL Ch. 85);
- In 1921 \$300 was appropriated to send a “native granite rock” from South Dakota to Washington, DC, for the Washington Monument (SL Ch. 115);
- The 1925 Legislature appropriated \$275,000 to finish the Cement Plant, buy repair parts, and begin making cement (SL Ch. 58);
- The Legislative Research Council was created in 1951 and funded with a \$25,000 appropriation (SL Ch. 286);
- In 1957 the Legislature spent \$11,000 to repair its furniture (SL Ch. 375) and another \$18,000 for the second year of remodeling the Governor’s suite of offices (SL Ch. 365);
- The federal Post Office building in Pierre was bought in 1966 for \$95,000 (SL Ch. 227) to be renovated and made a state office building;
- The telephone booths for the House and the Senate were built in 1968 for \$10,000 (SL Ch. 250);
- The Legislature decided in 1969 to spend \$6,000 “to hire a duly qualified State Potato Inspector” (SL Ch. 257);
- The Legislature appropriated \$75,000 for the first voting system for the House in 1972 (SL Ch. 290);
- In 1973 there was appropriated \$85,000 for a “statutory retrieval system utilizing electronic data processing equipment”(SL Ch. 345); and
- The 1985 Legislature went to Washington, DC, thanks to a \$95,000 appropriation (SL Ch. 16) to carry the message of the Farm Crisis.

One somewhat infamous legislative practice

in South Dakota even has its genesis in a special appropriation measure, and the controversy surrounding it generated the term “hoghouse.” This colorful term--unique to South Dakota when used in reference to legislating--denotes an amendment to a bill which completely replaces the original contents of the bill with new language, usually requiring a new title, as well. The term was accidentally coined in 1921 by a headline writer for the *DAILY CAPITAL JOURNAL*⁵ when a bill was completely rewritten on the sixtieth legislative day. Despite having already passed and sent to the Governor a bill to appropriate \$29,000 for legislators’ living expenses for that Session, a bill to construct \$10,000 worth of various improvements at what was then known as State College farm was gutted and amended to become a bill to pay the \$29,000 for legislators’ living expenses. There was some controversy, but according to the *CAPITAL CITY JOURNAL* article debate centered on the question of whether the Legislature could vote itself more money rather than on the question of propriety of such amendments.⁶

Most of the state’s institutions’ buildings were the objects of the Legislature’s appropriations toward the end of the 1900s and during the first quarter of the Twentieth Century. Nearly every session until the 1950s, though, spent money to build at least one building somewhere in the state. Also common, though, were appropriations during all those years and on into the 1950s for: investigating committees; burial of soldiers; conveyance of convicts and costs of escaped prisoners; tax refunds to individuals and businesses; and relief of owners of livestock destroyed because of disease.

On the other hand, there were periods of time when the Legislature appropriated money during many consecutive sessions for things that no longer pass political muster. For example, beginning in 1949 and going

until 1963 the Legislature appropriated money for the Indian Scholarships program, “for persons of at least one-fourth Indian blood” to attend state education institutions free of tuition and fees. Between 1927 and continuing into the 1950s there were appropriations, although not necessarily every year, to the Regents for lost tuition because of veteran’s benefits or other programs.

In the late 1950s there were appropriations for scholarships for graduates of the South Dakota School for the Deaf. Students studying dentistry out of state received assistance from legislative appropriations in the 1970s. In the 1970s, hundreds of thousands of dollars were appropriated for weather modification and research and airport construction. For each of the years 1980, 1981, and 1982 the Legislature appropriated money for slots out of state for optometry students. (Today the only higher education students receiving direct assistance while studying out of state are veterinarian students.)

Many of the Legislature’s appropriations obviously have carried very high hopes, lofty intentions, or both, although they may not have been as successful in reaching whatever goals the sponsors had envisioned. In 1953 the Legislature funded what came to be known as “The Little Hoover Committee” with an appropriation of \$20,000. Its charge was a “survey of the state institutions, departments and commissions, to increase the efficiency of South Dakota state government by eliminating duplication, consolidating agencies, and improving management practices” (SL Ch. 370). In 1959 the Legislature appropriated \$40,000 for a Citizens Tax Study Committee (SL Ch. 330). In 1967 the Legislature spent \$25,000 to bid for “the hosting of the National Legislative Conference in South Dakota in either 1969 or 1970” (SL Ch. 296). In 1987 the Legislature appropriated \$900,000 to bid

for the Superconducting Super Collider project (SL Ch. 15).

As an example of how in one year the Legislature’s attentions could swing to drastic extremes, in 1967 the Legislature created the South Dakota Retirement System, the Building Authority, and the Animal Disease Research and Diagnostic Laboratory. On the other hand, it appropriated \$89.28 to a Pierre resident as reimbursement for an uncashed warrant issued as a motor fuel tax refund in 1960 (SL Ch. 306).

Ramifications

Much more so in the past, the Legislature--and governors, apparently--took seriously the Constitution’s concept of “ordinary expenses of state government” in deciding what should be in the GAA and what should not. Even though they may have been a small fraction of the total dollars appropriated in a given year, the Legislature still considered and enacted hundreds of SABs over the years for things that would now be funded through the GAA. For example, in 1941 \$12,750 was appropriated to modernize the elevators in the Capitol (SL Ch. 225). Another separate bill appropriated \$4,900 for a new floor in the House chamber and floor coverings for the House and Senate. In 1947 (SL Ch. 316) the Legislature appropriated \$5,000 “for the purpose of reconditioning and replacing the air circulating and conditioning equipment and system in the Capitol Building.”

Funding of those items through SABs is a far cry from modern practice where the Legislature just appropriates a large amount of money and expenditure authority to the Bureau of Administration. The historical approach would have precluded the transfers of funds by Governor Janklow’s administration during the 1980s when projects such as the construction of a park in what is known as Hilger’s Gulch in Pierre

were done. Even in the just-completed Fiscal Year 1997 there likely will have been rearrangements of funding, just as Fiscal Year 1996 GAA-budgeted funds were used for building projects no one would consider “ordinary expenses of state government.”⁷

Obviously, much of what the Executive Branch does would be considered day-to-day management, even mundane, and therefore well within the category of “ordinary expenses.” There would be no reason, for example, to appropriate normal janitorial or groundskeeping expenses via SAB. However, one should consider whether using funding within the GAA which had actually been appropriated for a certain purpose (such as a Medicaid match) to accomplish an entirely new, and likely, one-time event (such as converting a building on the Capitol grounds to a visitors center) is proper.

The point of this discussion is not so much to condemn the Governor’s transfer authority or use of it as to question the inclusion of so many one-time projects in a bill which only requires a majority of the two houses to pass, and which may be unilaterally and effectively rewritten by the Governor at a later date.⁸ For about three-fourths of the state’s history, the Legislature routinely dispensed with such matters through individual bills, all of which required two-thirds majority votes of both houses.

Perhaps by such inflation and all-inclusiveness of the General Appropriation Bill, the Legislature has voluntarily tipped the balance of power in the appropriations function to the Executive. Clearly, the myriad projects contained within a couple of line items in a nearly \$2 billion dollar bill cannot possibly receive the same degree of attention and scrutiny as individual bills. If the 1997 Session is any example, the Legislature has a hard time even getting a

look at a current and accurate list of just maintenance and repair projects, much less a list for the upcoming budget year.⁹ This forces the Legislature to place a great deal of trust in the Executive with regard to what is going to happen with millions of dollars of construction and maintenance and repair dollars.

Perhaps the Legislature needs to virtually unravel the General Appropriation Act and return much of its parts to individual special appropriation bills. So much of what the Legislature used to pass one item at a time has become all but invisible with the shifting of it into the General Appropriation Act. Definitely, this means more work for the Legislature in that it and its committees will have to keep track of more bills--and take more recorded votes--but that might be a fair price to pay for returning the budget process to effective scrutiny.

Conclusion

The appropriation of money by the Legislature has changed dramatically over time, not so much in process as in product. That is, there is still a majority vote of both houses necessary for passage of a General Appropriation Act and two-thirds majorities of both houses are required for all other appropriations bills. Both types of appropriation bill are almost always referred to the Appropriations Committees, and both types have undergone some evolution over the years since statehood. However, much of the substance in those two types of bills has shifted from the special appropriation bill to the General Appropriation. It may be time for the Legislature to seriously consider the substance matter that it has become a practice to write and pass as one sort of bill or the other, returning some of those items in the General Bill to stand-alone status as special appropriations bills.

¹ Occasionally the General Appropriation Act does contain text. Such “special sections” are usually found at the end of the law and express or address particular matters of legislative intent that directly affect or are affected by the General Appropriation Act. For example, each year the Legislature directs the State Treasurer to transfer a particular amount of money from the Cement Plant Fund to the General Fund.

² Legislative Research Council Staff Memorandum **THE SEVENTY-SECOND LEGISLATURE: A STATISTICAL COMPARISON AND A SUMMARY OF CHANGES TO SOUTH DAKOTA CODIFIED LAWS**, Spring 1997, p. 36.

³ 1899 Session Law, Chapter 29.

⁴ The exactness of amounts and specificity of purposes of so many of these Acts, quite quaint by today’s standard, were also exhibited in territorial days. For example, in 1887 SL Ch. 89 the Territorial Legislature appropriated \$65 “to pay Webb Brothers for chairs purchased for the use of the House, [and \$65] to pay for chairs for the use of the Council Chamber.” The Act’s title stated these chairs were “for the use of ladies visiting the Capitol.”

⁵ “Hog House Bill Vehicle for Law Makers Extra Pay,” *DAILY CAPITAL JOURNAL*, March 5, 1921, Page 2. Senate Bill 342, in its original form, would have appropriated \$10,000 for “buildings and improvements on the [State] college farm to be used for **hog houses**, poultry houses, horse barns, fences, etc.” The bill passed the Senate easily, but died on the House floor a week later, March 4. It was amended that Friday afternoon, however, to become a bill which appropriated \$29,000 “for payment of the expenses of the members of the Legislature while absent from the place of their legal residence in discharge of their duties as members of the Legislature when they live at the State **Capitol** during the regular session of the Legislature, pursuant to an Act of the Legislature at this session, approved the 31st day of January, 1921.” (1921 House Journal, Page 1152) The amended bill was returned to the Senate where there was concurrence to the House amendment. Immediately after the House amended the bill, they recessed, and within an hour the Senate concurred in the amendment and then it, too, recessed (1921 House Journal, p. 1153, and Senate Journal, p. 1088). The bill was thus sent to the Governor. It was delivered “at the hour of 11:50 o’clock p. m.” that final legislative day of the 60-day biennial session along with dozens of other bills (1921 Senate Journal, Page 1116). SL Ch. 50 (H.B. 231) from that same session was almost identical to S.B. 342, but took a quite different path to enactment. Unlike its counterpart, it addressed legislators living “at the State **Capital**,” but declared no emergency. Instead, it declared that the appropriated \$29,000 “shall be available at the close of the present legislative session.” Apparently, the Governor vetoed S.B. 342, the hoghoused bill, as there is no record of it in the Session Laws. It was delivered to him just before sine die adjournment, so there is no veto message in the Journals, nor any message of his having signed it, either. H.B. 231, though, which was delivered to the Governor a week earlier on February 25, became law without his signature because he did not veto it within the time prescribed by the Constitution.

⁶ According to the *CAPITAL CITY JOURNAL*, “it was necessary for Senator [P. P.] Kleinsasser [R-Freeman], the only non-partisan member of the [S]enate to come to [S.B. 342’s] rescue by changing his vote in order that the measure might pass.” The day before, it “was made known to the legislators” that the previous appropriation bill for legislative expenses (H.B. 231), in the Attorney General’s opinion, “would not hold water.” Kleinsasser’s vote change “would...give the Supreme Court a chance to decide the [legislative pay] matter [and his] change was greeted

by great applause in the [S]enate chamber.”

⁷ Governor’s Budget Transfer #JB96052. This budget transfer diverted \$4,771,709 in Fiscal Year 1996 general funds appropriated to the Department of Social Services to 16 projects. Those included: \$2,000,000 for wiring K-12 schools for Internet; \$125,000 to convert a maintenance shop by the Capitol Lake to a visitors center; \$100,000 to create an archive of records and documents on the Indian reservations; and \$500,000 to debug the state’s computers for the feared crisis when the Year 2000 comes.

⁸ 1997 SL Ch. 36 rewrote §4-8A8 to require that budget transfers between departments that are not necessary for an executive reorganization be approved by the Interim Appropriations Committee. As this Act might not withstand a constitutional challenge, however, the Legislature also passed SL Ch. 2, a joint resolution. The resolution puts before the next general electorate the question of whether the Constitution’s Article III should be amended to give the Legislature authority to “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 [the] fiscal year.”

⁹ During the 1997 Session’s budget deliberations on the Fiscal Year 1998 budget, the Appropriations Committee was unable to get an up to date list of maintenance and repair projects for the Fiscal Year 1997, even though Session was occurring, meaning the fiscal year was more than half completed. At one point the Committee thought it was working from an actual list (obtained from one of the agencies by staff) only to hear from the Bureau of Administration that that list was not supposed to have been released as it was being revised. The Committee never did see a list of projects for Fiscal Year 1998.

This issue memorandum was written by Mark Zickrick, Principal 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.
