South Dakota Legislative Research Council

Issue Memorandum 94-12

A DESCRIPTION OF THE SOUTH DAKOTA LEGISLATURE'S APPROPRIATIONS PROCESS

Introduction

Had an issue memorandum been written on this subject a few years ago, its contents would be quite different. The reason for this is that many procedures surrounding the Legislature's appropriations process are not etched into the stone of the Constitution or statute. The framers of the Constitution and legislative actions have addressed the Legislature's appropriations process, but, deliberately or not, have not been specific on all the issues surrounding the Legislature's appropriations process.

The Constitution

Article XII, Section 2, states:

> The general appropriation bill shall embrace nothing but 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. 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.

In addition, both Article XI, Section 9, and Article XII, Section 1, require that any money paid from the state treasury requires a legislative appropriation.

The framers of the Constitution apparently envisioned a system by which a single piece of legislation referred to as the general appropriation bill would appropriate money for the on-going expenses and operation of state government, and additional projects or expenses could be funded by individual pieces of legislation (commonly referred to as special bills).

Article XII, Section 2, speaks to "[T]he" general appropriation bill. The singular adjective "The" implies that the framers of the Constitution saw the end product of legislative deliberations on the budget as a single piece of legislation. The Constitution is silent as to the process by which "[T]he" general appropriation bill is constructed. This is left to statute and legislative custom. Before leaving the discussion on the Constitution and the legislative appropriations process, mention needs to be made of the provision of Article XI, Section 9, which required that ". . . no warrant shall be drawn upon the state treasurer except in pursuance of an appropriation for the specific purpose first made."

Statute

SDCL 4-7 (known as the "Budget Act") generally prescribes the format and time frame by which the Governor submits his budget to the Legislature. As with the Constitution, SDCL 4-7 is silent as to the process by which the general appropriation bill is created, with one exception. That exception is a subtle reference in SDCL 4-7-17, which reads:

The bureau of finance and management, at the direction and under the control of the Governor, and subject to the provisions of this chapter, shall provide such assistance as the Legislature may request and be available to assist its appropriations committees with any needed information or material.

The reference to the Legislature's "appropriations committees" is significant because it refers to "committees," which is plural. This statute, written in 1963, contemplates two appropriations committees, obviously one House Committee and one Senate Committee.

The Role of the Governor and the Executive Branch

The state budget has its origins in the Governor's recommended budget. The Governor's budget is delivered to the Legislature in early December. It contains the Governor's recommendations for all agency budgets (which form the basis for the general appropriation bill) and the Governor's recommendation for special bills. This budget is for the following fiscal year (e.g., the Governor's budget delivered to the Legislature in December 1994 will be the basis for the Fiscal Year 1996 (FY1996) state budget). The process starts in August, with each state agency assessing its budgetary needs for the next fiscal year. Internal agency budget hearings will refine the initial budgetary assessment and will result in the agency's official budget request. In early to mid-September, the agency budget requests are submitted to the Bureau of Finance and Management (BFM), which is also referred to as the Governor's Budget Office. After the budget request is submitted to BFM, the BFM budget analysts review the budget requests and make recommendations to the Commissioner of BFM, also referred to as the State Budget Officer. At this point the Commissioner of BFM, along with the budget analysts, shape the state budget from the agency budget requests and the available revenues. This recommendation, after some consultation with the agency heads, is delivered to the Governor. The Governor then makes the final decision on the budget based upon the Governor's agenda, the BFM recommendation, and meetings with BFM and the agency heads. This final decision is usually completed shortly before Thanksgiving. The statutory (SDCL 4-7-9) deadline for the Governor to submit his budget to the Legislature is the first Tuesday after the first Monday in December. (For the upcoming FY1996 budget this day is December 6, 1994.)

The Evolution of the Legislature's Appropriations Process

While the executive branch process in preparing the budget is largely unchanged over the past twenty years, the Legislature's Appropriations process has changed during that time.

Going back to 1976, the Senate and House Appropriations Committees generally functioned as a single committee. For the purpose of constructing the general appropriation bill, the Senate and House Appropriations Committees (11 members each at that time--the number has been reduced to nine members) merged and split into two subcommittees (Subcommittee 1 and Subcommittee 2), each responsible for approximately one-half of the state agencies. Each subcommittee, one chaired by the Senate Appropriations chair and one chaired by theHouse Appropriations Chair, would hold agency budget hearings. Once the subcommittees completed their hearings, they would make decisions on the level of funding for each agency. Once these decisions were made the two committees would merge and consider each other's decisions as a single committee. The result was the basis for the general appropriation bill. Custom was (and still is) that the general appropriation bill was to be a Senate Bill on even-numbered years and a House Bill on odd-numbered years.

Special appropriation bills and other legislation referred to either Appropriations Committee were heard by both committees merged into a single committee referred to as the Joint Appropriations Committee. The following are some of the unique rules under which the Joint Appropriations Committee operated.

1. A two-thirds majority was required for a "Do Pass" on a bill containing an appropriation;

2. A two-thirds majority was required to remove any bill from the table;

3. If a special appropriation bill received a "Do Pass" and passed the first house and was later referred to appropriations by the second house without amendment, the bill would be given an automatic "Do Pass" to the floor of the second house.

This manner of treating individual pieces of legislation referred to Appropriations had the unusual aspect of Senators voting on sending bills to the House floor and vice versa.

The first significant change to this process occurred during the 1989 Legislative Session. The process for special appropriation bills was changed to the current practice of the appropriations committee of each house holding a hearing on each bill in its possession. The two-thirds vote in committee on a special bill was eliminated. The result is that since 1989 special appropriation bills and any other bill or resolution referred to either the Senate or House Appropriations Committee are treated exactly the same, with respect to process, as any other bill in the Legislature.

The second major evolutionary change occurred during the 1993 Session. The 1992 general election set the stage for this. Up until the 1993 Legislative Session the Republican party held a majority of seats in both the Senate and House. Consequently, the chairs of the two Appropriations Committees were of the Republican party. As a result, there was agreement between the two Appropriations chairs on the Subcommittee 1 and Subcommittee 2 method of agency budget hearings and construction of the general appropriation bill.

The 1992 general election gave the Democratic party the majority of seats in the Senate, while the Republican party held a majority in the House. The two Appropriations chairs could not agree on how to structure a subcommittee method to construct the general appropriation bill. The result was that the Senate and House worked independently. The Senate and House Appropriations Committees each held a complete set of agency budget hearings, and each had made decisions by which to construct a general appropriation bill. In both the 1993 and 1994 Legislative Sessions each Appropriations Committee had a general appropriation bill ready to be prepared. At that stage in the process, both chairs met with the Governor to resolve differences in the two versions. In each case this happened, and a single general appropriation bill was introduced, a House Bill in 1993, and a Senate

Bill in 1994.

Some Technical Aspects of the General Appropriation Bill

The general appropriation bill appropriates by three fund sources: general funds, federal funds, and other funds. "General funds" are monies collected by the state from a number of taxes and fees. Federal and other funds in the general appropriation bill set a level of expenditure for those funds. It is probably best to think of the appropriation of federal and other funds as permission given to the agency to spend the funds up to a certain level so long as the agency receives the funds.

"Federal funds" are monies received from the federal government to carry out a federal mandate or program. Many federal funds require a match from the state. For example, in the Department of Social Services, expenditures under the Medicaid program are 68.43% federal funds and a "match" of 31.57% state general funds. These match rates will vary between programs and may vary over time within a single program.

There are two types of funds that are classified as "other funds." The first type of other funds are dedicated funds. These are fees or taxes dedicated to some specific purpose. For example, gasoline tax revenue is dedicated to the Department of Transportation for building and maintaining highways; revenue from hunting licenses is dedicated to the Department of Game, Fish and Parks for a variety of purposes.

A second type of other fund is what could be called internal enterprise funds. These funds are involved when one state agency pays another state agency for services provided. For example, the Legislative Research Council (LRC) has general funds appropriated to it for its operation. The LRC pays the state computer center for computer time and printing to generate legislative documents. Once the bills have been paid and the computer center's account credited, the computer center pays its personnel and bills from those funds. The Legislature has given permission, through the appropriation of other funds, for the computer center to use the funds from the LRC to pay its bills and personnel.

Again, it is best to draw the following distinction between general funds and federal/other funds. When general funds are appropriated, the Legislature is granting an agency tax dollars from the state general fund. When federal or other funds are appropriated, the Legislature is giving its permission to spend the funds as they may become available to an agency. In some cases the Legislature gives permission to spend more federal or other funds than an agency ultimately receives.

The funding by funding source (general, federal, and other) is broken into two objects: personal services and operating expenses. Personal services includes employee salaries and benefits. Operating expenses is everything else (e.g., gasoline, furniture, welfare payments). However, the general appropriation bill does not separate the appropriation for higher education or the LRC into personal services and operating expenses. Also found in the general appropriation bill is an "FTE" level. FTE is defined as a full-time equivalent which equals 2,080 hours of work per year. Thus, the FTE level in the general bill sets the size of the state government work force.

One common misconception is that the general appropriation bill appropriates money for state government purposes for travel, contractual services, etc. There is no specific appropriation for those items. Authority for spending money on travel, contractual services, etc., is included in the operating expenses appropriation.

The Governor has line-item veto power over funds appropriated in the general appropriation bill (or any other bill appropriating money). Line-item veto power means that the Governor may veto various portions of an appropriation bill, leaving the rest of the bill as it stands. The authority for the line-item veto is found in Article IV, Section 4, of the state Constitution which states, in part:

The Governor may strike any items of any bill passed by the Legislature making appropriations. The procedure for reconsidering items struck by the Governor shall be the same as is prescribed for the passage of bills over the executive veto. All items not struck shall become law as provided herein.

Funds appropriated in the general appropriation bill are appropriated for one year and if unspent (with three exceptions), those funds revert to the general fund to be appropriated by the next Legislature. The exceptions to the one-year reversion rule are: 1) funds may be carried over into the next fiscal year if they have been legally obligated for some expenditure; 2) funds specifically appropriated for maintenance and repair, by statute, revert at the end of two years; and 3) SDCL 4-7-33 authorizes fifty percent of agency savings due to management practices to be continuously appropriated for expenditures that enhance productivity or to make employee cash payments for various innovations.

Construction of the General Appropriation Bill

The Governor's recommended budget is used as a baseline from which the general appropriation bill is constructed. The Senate and House Committees will start with the Governor's recommended budget and to that budget they may: increase or decrease the funding and FTE levels in the various programs; change the funding sources (e.g., reduce general funds and increase other funds)in the various programs; create new programs; or eliminate existing programs. Note: During the 1992 and 1993 Legislative Sessions the previous year's budget was used as the baseline from which to budget.

Some Unexplored Areas and Unresolved Issues

As alluded to earlier, some parts of the process are governed by custom and tradition. One of these is the notion of a single general appropriation bill. As was evidenced in the 1993 and 1994 sessions, both the Senate and House were on the way to introducing a general appropriation bill. To carry this further an individual legislator could introduce a general appropriation bill. Only common sense dictates that the Legislature should consider one general appropriation act. However, nothing in law defines how the Legislature goes about considering the general appropriation bill, only the implication in Article XII, Section 2 of the Constitution that the end product of the process is a single piece of legislation known as the general appropriation bill.

Also, sponsorship of the general appropriation bill is not defined. In recent years the general appropriation bill has been sponsored by the Joint Committee on Appropriations, individual appropriations committee members, and the Senate and House Committees on Appropriations.

Another part of the process that is governed by custom and tradition is the setting of a general fund revenue estimate. There is no provision for adoption of an official revenue estimate. Custom and tradition hold that the revenue estimate is that upon which both Senate and House Committees can agree.

The Uniqueness of the General Appropriation Bill

One feature that sets apart the general appropriation bill apart from other pieces of legislation is the fact that it is constructed through the course of the legislative session. The Senate and House Appropriations Committees take testimony and deliberate a bill which is not yet created. As a result, a printed general appropriation bill is not available until late in the legislative session. This has led to the criticism that non-Appropriations legislators do not see the bill until they are asked to vote on it. However, the reality of the situation is that the Governor's recommended budget, which offers the baseline, is delivered in December, usually a full month before the start of the legislative session, and changes to the baseline can be monitored as the legislative session progresses.

The Interim Appropriations Committee

Chapter 4-8A creates the Interim Appropriations Committee. This committee is comprised of the Senate and House standing appropriations committees. The committee exists only when the Legislature is not in session. The Interim Appropriations Committee traditionally has had two main functions. One is to release money to state agencies from the general contingency fund. This function is moot because for the past two legislative sessions, no money has been appropriated into the general contingency fund. Second is to grant expenditure or FTE authority beyond that which is appropriated in the general appropriation bill.

Summary

The Legislature's appropriations process has evolved over the years and will most likely continue to change in the future. The process has remained flexible so that it may accommodate changes in the Legislative institution. However, the flexibility in the system also creates an element of uncertainty of exactly how the system is to operate.

This isuue memorandum was written by Dale Bertsch, Chief Analyst for Fiscal Research and Budget Analysis 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.