



South Dakota Legislative Research Council

Issue Memorandum 95-31

CONTINUOUS APPROPRIATIONS

Over the years, the South Dakota Legislature has adopted and fortified a process whereby millions of dollars are spent each year by state agencies without actual appropriations by the Legislature. This “auto-pilot” system of spending state money happens despite what some consider a constitutional prohibition of such practice. Article XII, §2 of the South Dakota Constitution states that, except for what is specifically covered by the General Appropriation Act, all “appropriations shall be made by separate bills, each embracing but one object, and [enacted by] a two-thirds vote of all the members of each branch of the Legislature.”

When it passes the General Appropriation Act in a given year, the Legislature definitely addresses the bulk of state government expenditures with a majority vote of both houses. The grand total of expenditures authorized by the Act for state fiscal year 1996 is nearly \$1.8 billion. Special appropriations, those that require individual bills and two-thirds majority votes for each, add another \$77 million to state government’s expenditures.

In most instances, no employee, officer, or entity of state government may spend state money without specific, legislative authority, vis á vis an appropriation. In the case of the Board of Regents and its Tuition and Fees Fund (§13-53-15),

however, the agency may spend as much money as it can raise and as soon as it can raise it. The same is true for the Game, Fish, and Parks Fund (§41-2-35) administered by the Department of Game, Fish, and Parks. The former example gives the Board of Regents license to gather and spend nearly \$30 million each year, based on current tuition and fees rates and student enrollment figures. The latter disposes of almost \$18 million in revenue from fees, permits, and licenses which come under the purview of the Department of Game, Fish, and Parks.

The type of appropriation authority known as a continuous appropriation allows an agency, such as the Board of Regents or the Department of Game, Fish, and Parks, to accomplish its fiscal objectives relatively unfettered by the Legislature. There is a similar type of appropriation, in some respects, known as an *annual* appropriation. The differences between a *continuous* appropriation and an *annual* appropriation are subtle. The former refers to, basically, blank check appropriation authority for an agency, albeit with statutory restrictions. The latter refers to a statutory specification of an amount each year to be spent from a particular fund for a particular purpose. (See LRC ISSUE MEMORANDUMS 94-19 and 94-27 for discussions of annual appropriations, in particular those from the Capital Construction Fund.)

Of the more than 525 separate funds and accounts in the South Dakota state government accounting system fewer than 50 funds are continuously appropriated. These funds are created in and dedicated by statutes to particular agencies for specific purposes and generally have very specific and limited sources of revenue. While it takes an act of the Legislature to create a new, continuous appropriation, it is interesting to note that no actual definition of a continuous appropriation exists in statute, yet it is a commonly-used tool. It is also worth noting that statute and the South Dakota Constitution do not specify whether it takes a simple or two thirds majority to create a continuous appropriation.

The continuous appropriation has been used for many years. The Game, Fish, and Parks Fund is probably the oldest continuously appropriated fund, dating back to 1927. This fund is unique in the elegance of its design, in that its authorizing law consists of just one sentence: “All moneys in the [D]epartment of [G]ame, [F]ish, and [P]arks fund are hereby annually appropriated to be used with any moneys otherwise appropriated to pay the necessary expenses of effectuating the purposes of this title.”

Much more common in code, however, is language such as these first two sentences from the statute creating the Bison Operating Special Revenue Fund” (§1-6-23.1):

There is hereby created within the state treasury a special revenue fund known as the bison operating

special revenue fund, into which shall be deposited all royalty proceeds from the sale of South Dakota bison bullion and other bison products authorized by chapter 1-6. All moneys in the fund created by this section are continuously appropriated for the purposes specified in this section.. .

The rest of the statute deals with disbursements from the fund, executive branch accountability for it via an informational report, and eligible expenses for use of money from the fund, common features for statutes creating other continuous appropriations, regardless of their size. While the Game, Fish, and Parks Fund and the Tuition and Fees Fund comprise many millions of dollars, the bison fund has probably seen much less than \$10,000 in any given year since its inception in 1988.¹

The Tuition and Fees Fund and the Game, Fish, and Parks Fund are definitely the premier continuously appropriated funds in the state accounting system, as no others approach them in terms of the amounts eligible for expenditure. Other funds continuously appropriated, for example, are those specific to the various professional and regulatory boards and commissions, or funds dedicated to maintenance and repair of state facilities. In many, if not most, of these funds, the entities in charge must furnish to the Legislature informational reports on an annual basis detailing revenues and expenditures.

Technically, the Legislature could seize

control of any of these funds through repeal or revision of the appropriate statutes. In practice, however, this does not happen. In the past 15 years or so, the Legislature has rewritten only the Tuition and Fees Fund, and it was changed back to its original concept in 1994². Attempts to bring the Game, Fish, and Parks Fund under direct legislative budgetary control have met committee rooms packed by opponents and dozens of angry letters to the editors. The last attempt, in 1984, did not make it out of committee.

As for the question of whether there has been any sort of trend by the Legislature to switch state government finance to auto-pilot by way of enacting new continuous appropriations, the table at the end of this paper indicates that as many as one-third of all continuous appropriations were created during the early 1990s. Between the years 1927 and 1968 the Game, Fish, and Parks Fund stood as the sole example, then the Legislature began to enact at least one, on average, every year.

Arguments can be made either way as to the virtues and utility of continuous appropriations. On one hand, a well-drawn continuous appropriation can to some extent “de-politicize” funding for something, e.g., wildlife funding with the Game, Fish, and Parks Fund, by removing it from the annual arena of session and

budget discussions. On the other hand, once enacted, a continuous appropriation may take on a life of its own such that it can be very hard to limit--not to mention repeal.

Hence, the Legislature’s right to control funding or expenditures in an area is greatly restricted. While a continuous appropriation can bestow great autonomy to an agency, e.g., the Board of Regents’ Tuition and Fees Fund, the very nature of a continuous appropriation necessitates after-the-fact accountability. While designating something as a continuing appropriation can allow the Legislature to focus on other topics in subsequent years, continuous appropriations can also be a smoke-and-mirrors tool, in that they can be used to disguise general fund expenditures, or make legislative appropriations appear smaller than actual expenditures in a given fiscal year.

So, while continuing appropriations have their pluses and minuses, they have a strong precedent, and will probably be used for many more years to come. Any serious attempt to eliminate the concept of continuing appropriations from the state’s way of spending money would, although there is definitely a finite list, entail a great amount of work and debate to be successful.

YEAR	ENACTMENTS
1927	1(Game, Fish, and Parks Fund)
1968	1(Bd. of Hearing Aid Dispensers account)
1975	1(Bd. of Social Work Examiners account)
1976	1(Bd. of Examiners of Psychologists account)
1977	1(Tuition and Fees Fund)
1978	1(Bd. of Medical and Osteopathic Examiners Fund)
1979	2(Bd. of Podiatry Examiners account, Bd. of Barber Examiners account)
1981	1(Railroad Trust Fund)
1982	1(Special Revenue Fund for Reclamation)
1984	2(Bd. of Accountancy account, special revolving fund for soybean checkoff fees)
1986	1(Public Entity Pool for Liability Fund)
1987	1(Lottery Operating Fund)
1988	9(Farm Mediation Operating Fund, Financing Statement Filing Fee Fund, Bison Operating Special Revenue Fund, Local Government Services Operating Fund, BIT computer equipment renewal and replacement fund, Energy Conservation Loan Special Revenue Fund, Regulated Substance Response Fund, Petroleum Release Compensation Fund, corn checkoff fees revolving fund)

1989	2(Automated Library System Fund, SD Gaming Commission Fund)
1990	1(Bd. of Counselor Examiners account)
1991	1(Local Government Transportation Technology Transfer Special Revenue Fund)
1992	4(County Legal Expense Relief Fund, Pesticide Recycling and Disposal Fund, Dredge Wear Element Replacement Fund, Environmental Impact Statement fees)
1993	8(Fund for Certification of Interpreters for the Deaf, interest owed to the Youth-At-Risk Trust Fund from the Capital Construction Fund, Unclaimed Property Trust Fund, Ethanol Fuel Fund, Mining Inventory Fund, Public and Special Transportation Assistance Fund, wheat checkoff special revenue fund, Subsequent Injury Fund)
1994	6(State Facility Revolving Fund, Cigarette Stamp Purchasing Fund, Pipeline Safety account, Department of Labor Special Revenue Fund, certified savings from state employee and management practices, PUC rate case filing deposits)
1995	1(annual percentage increase in state aid to education)

Footnotes:

¹This source of revenue, the proceeds from the sale of South Dakota Bison bullion, had a great deal to do with the building of the Cultural Heritage Center. Revenue from Bison bullion has never been anywhere near sufficient to pay the \$565,000 annual bond payment for the Center. Governors Janklow, Miller, and Mickelson all recommended general fund dollars for this item, and the Legislature has appropriated the amounts accordingly.

²In 1983 the Legislature repealed the Tuition and Fees Fund and enacted a law that sent tuition and fees to the General Fund. The Legislature recreated the Tuition and Fees Fund and continuously appropriated it in 1994.

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.
