Legislative History of Unallotment Power

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I. Spending Control at Statehood

The Minnesota Constitution of 1857 provided for six executive officers: a governor, lieutenant governor, secretary of state, auditor, treasurer, and attorney general.[1] The auditor performed the budget, pre-audit, and bookkeeping functions now performed by the Commissioner of Finance. The first Legislature made the auditor responsible for issuing warrants authorizing the payment of money out of the treasury as directed by law,[2] required the auditor to keep books listing the warrants,[3] required the auditor to submit an annual report to the Legislature showing the receipts and disbursements for the previous year and the unexpended balance of each appropriation,[4] and required the auditor to submit his books for inspection by the Legislature or any legislative committee whenever required.[5] The auditor had no express authority to stop issuing warrants when treasury receipts were running less than anticipated, nor to stop redeeming warrants when the treasury was bare, but that authority must have been implied, because the state was on a cash accounting system and could not spend money it did not have.

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[1] MINN. CONST. art. 5, § 1 (1857).

[2] That all accounts and claims against the State, which shall be by law directed to be paid out of the treasury of the State, shall be presented to the Auditor, who shall examine and adjust the same, and shall issue bills or warrants, payable at the State Treasury, for the sums which shall be found due from the State, specifying in each bill the date of its issue, and the name of the person to whom payable. Act of July 23, 1858, ch. 65, § 4, 1858 Minn. Gen. Laws 150, 151.

[3] The Auditor shall enter, in progressive order, in a book or books to be by him provided for that purpose, the number of each bill or warrant by him issued, the amount thereof, the date of its issue, and the name of the person to whom issued. *Id.*, § 8, 1858 Minn. Gen. Laws at 151.

[4] The Auditor shall annually make out an accurate statement of the receipts and disbursements of the treasury for the preceding year, ending on the last day of the month previous to the one during which the Legislature shall commence its annual sessions; also of the unexpended balances (if any there be) of the several appropriations, the amount remaining in the treasury, the amount of bills or warrants issued and not redeemed (if any there be) and shall report the same to each branch of the Legislature, on the third day of its session, together with such remarks, on the finances of the State, as he shall deem proper for the consideration of the Legislature. *Id.*, § 11, 1858 Minn. Gen. Laws at 151.

[5] That whenever required, the Auditor shall on requirement submit his books, accounts and vouchers to the inspection of the Legislature, or any Committee thereof appointed for that purpose. *Id.*, § 12, 1858 Minn. Gen. Laws at 152.

II. Commission of Administration and Finance - 1925

In 1925, the Legislature created a Department of Administration and Finance[6] under the control of the Commission on Administration and Finance, which consisted of a Comptroller, a Commissioner of the Budget, and a Commissioner of Purchases,[7] all appointed by the Governor for six-year terms, but subject to removal at any time without cause.[8] It had essentially all the powers now assigned to the Commissioner of Management and Budget and the Commissioner of Administration, including personnel powers, plus the post-audit and program evaluation powers of the Legislative Auditor.[9] The State Auditor continued to issue warrants and approve them for payment, but subject to review and reversal by the Comptroller.[10]

The law prohibited a state officer or agency from spending any part of an appropriation until an estimate of the amount needed for each quarter of the fiscal year had been submitted to and approved by the Commission of Administration and Finance.[11] For the first time, the Commission was given explicit authority to "modify or amend" an estimate it had previously approved.[12]

III. Reorganization Act of 1939

Following the recession of 1937, caused by the federal government attempting to balance the budget by raising taxes and cutting spending before the economy had recovered from the Great Depression, Governor Harold Stassen in 1939 faced a budget deficit for the coming biennium of about ten percent of state spending.[13] He proposed to eliminate it by cutting spending almost four percent and increasing revenue by over six percent.[14] This meant spending $3 million less in the next biennium than the $82 million spent in the last biennium.[15] His spending cuts included $600,000 from eliminating the three-headed Department of Administration and Finance and replacing it with

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[6] Act of Apr. 25, 1925, ch. 426, art. I, § 1, 1925 Minn. Laws 756.

[7] *Id.*, art. III, § 1, 1925 Minn. Laws at 757.

[8] *Id.*, art. III, § 2.

[9] *See id.*, art. III, §§ 3-6, 1925 Minn. Laws at 757-60.

[10] *Id.*, art. III, § 11, 1925 Minn. Laws at 763.

[11] Act of Apr. 25, 1925, ch. 426, art. III, § 5, 1925 Minn. Laws 756, 759.

[12] *Id.*

[13] *Budget Message of Governor Harold E. Stassen Delivered to a Joint Session of the Senate and House of Representatives at 12:00 O'Clock Noon on February 1st, 1939*, Table B.

[14] *Id.*

[15] *Budget Message* at 3.

a single Commissioner of Administration and Accounting, "with definite quarterly allotment control and the encumbering of accounts for all liabilities when they occur, [to] avoid the recurring deficits which we have experienced."[16] He added that, "It should also be mandatory to reduce allotments if revenues decrease . . . .[17]

Laws 1939, chapter 431, transferred the budgetary and purchasing functions of the Department of Administration and Finance to a single Commissioner of Administration[18] and gave its post-audit functions to a new Department of Public Examiner.[19] A separate bill, Laws 1939, chapter 441, gave its personnel functions to a new Department of Civil Service. As the Governor had proposed, the Commissioner of Administration was given authority to reduce allotments to prevent a deficit:

> In case the commissioner shall discover at any time that the probable receipts from taxes or other sources for any appropriation, fund, or item will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, he shall, with the approval of the governor, and after notice to the agency concerned, reduce the amount allotted or to be allotted so as to prevent a deficit. In like manner he shall reduce the amount allotted or to be allotted to any agency by the amount of any saving which can be effected upon previous estimates through a reduction in prices or other cause.[20]

The allotment and encumbrance system did "not apply to appropriations for the courts or the legislature, nor to payment of unemployment compensation."[21]

A diligent search of records since 1939 by the Legislative Reference Library has not yet discovered any evidence that this unallotment authority (as distinguished from the normal modification of spending plans from time to time) was used before 1980.

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[16] *Budget Message* at 3, 6.

[17] *Id.*

[18] Act of Apr. 22, 1939, ch. 431, Art. II, 1939 Minn. Laws 908, 909.

[19] Id., Art. IV, 1939 Minn. Laws at 926.

[20] *Id.*, Art. II, § 16(f), 1939 Minn. Laws at 919, codified as amended at Minn. Stat. § 16A.152, subd. 4.

[21] Id., Art. II, § 16(b), 1939 Minn. Laws at 917, codified as amended at Minn. Stat. § 16A.14, subd. 2a..

IV. Department of Finance - 1973

In 1973, Governor Wendell R. Anderson proposed creation of a new Department of Finance. Laws 1973, chapter 492, transferred the duties of the Commissioner of Administration relating to the budget and the controller functions of the State Auditor to the Commissioner of Finance.[22] The requirement that allotment periods be quarterly was stricken, and the fiscal year ending June 30 was substituted.[23] Agencies were required to submit a spending plan for the fiscal year to the Commissioner of Administration, who was authorized to approve or amend it after consulting with the Commissioner of Finance.[24]

The authority of the Commissioner of Administration to reduce allotments to prevent a deficit was amended to add the Commissioner of Finance to the process. The Commissioner of Finance notified the Commissioner of Administration of the deficit, then the Commissioner of Administration was required to obtain the approval of the Governor and notify the agency concerned, and then request the Commissioner of Finance to reduce the allotment to prevent a deficit.[25] This circular procedure was stricken in 1978.[26]

V. Budget Troubles of 1980-83

Al Quie campaigned for governor in 1978 on a slogan that, (paraphrasing) "If I can't cut taxes by ten percent and still make government run better, I won't make excuses, I just won't run again." He defeated Rudy Perpich for re-election and pushed his tax cut through the 1979 Legislature. By 1980, the economy was in recession and revenues were falling. In August 1980, Governor Quie became the first governor currently known to have used the 1939 allotment reduction authority enacted under Governor Stassen. He approved the recommendations of Commissioner of Finance Wayne S. Burggraaff on his own, without first calling a special session or engaging in formal discussions with legislators, because, as he said, "I wanted to save Republican legislators from the pain of making the cuts or raising taxes."[27] He reduced allotments by $195.1 million,

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[22] Act of May 21, 1973, ch. 492, §§ 1-4, 1973 Minn. Laws 1081, 1082-83.

[23] *Id.*, § 19, 1973 Minn. Laws at 1093, codified as amended at Minn. Stat. § 16A.14, subd. 1.

[24] *Id.*, §§ 20-22, 1973 Minn. Laws at 1093-94, codified as amended at Minn. Stat. § 16A.14, subds. 3-5.

[25] *Id.*, § 23, 1973 Minn. Laws at 1094, codified as amended at Minn. Stat. § 16A.152, subd. 4.

[26] Act of Apr. 5, 1978, ch. 793, § 47, 1978 Minn. Laws 1179, 1195, codified as amended at Minn. Stat. § 16A.152, subd. 4(b).

[27] Telephone conversation with Robbie La Fleur, Director of the Legislative Reference Library, June 3, 2009.

including $89.5 million in aids to school districts, $35 million in aid to higher education, $20.9 million in aid to local governments, and $49.4 million to state agencies.[28]

Shortly after the new Legislature convened in 1981, the members showed their outrage at the Governor's action by removing the authority to reduce allotments of aid to school districts,[29] and requiring that the amounts not paid because of the unallotment in 1980 be paid to school districts no later than August 1, 1981, from revenue received in fiscal year 1982.[30] The Attorney General's Office advised Commisioner Burggraaff that the use of a later biennium's revenue to pay an earlier biennium's obligations was something that could not be done by executive action alone; it required a specific authorization by the Legislature.[31]

In 1981, the Legislature acted to reduce the need for allotment reductions by prolonging the time a deficit might persist before it must be dealt with. The 1973 Legislature had changed the period that had to be balanced from a fiscal quarter to a fiscal year.[32] The First Special Session in June 1981 changed it from each fiscal year to the biennium.[33] This gave the State longer to recover from the fiscal problem it was facing at the time, but it also enabled the Legislature and the Governor to avoid dealing with future fiscal problems until they got really, really big.

As the budget troubles continued, the Second Special Session in July 1981 attempted to forestall the need for allotment reductions by creating a budget reserve. It was to be financed by a transfer from the general fund surplus (the unrestricted balance) at the end of each biennium, if the surplus exceeded $25 million, with the amount of the transfer capped at $100 million.[34] Thereafter, one-half of the remainder of the unrestricted balance would be transferred until the balance in the budget reserve equaled 2.5 percent of appropriations from the general fund for the current

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[28] *At Issue: A little-used tool in the toolbox*, Brenda van Dyck, House Research Department, May 2, 2008.

[29] Act of Feb. 13, 1981, ch. 1, § 2, 1981 Minn. Laws 1, 2.

[30] *Id.*, § 1, 1981 Minn. Laws 1.

[31] *Constitutional and Statutory Considerations Regarding a State Deficiency*, memo from Mike Miles, Asst. Atty. Gen., to Wayne S. Burggraaff, Comm'r of Finance, 2 (Apr. 15, 1981).

[32] Act of May 21, 1973, ch. 492, § 19, 1973 Minn. Laws 1081, 1093.

[33] Act of June 6, 1981, 1st Spec. Sess. ch. 5, § 1, 1981 Minn. Laws 2582, codified as amended at Minn. Stat. § 16A.152, subd. 4(a).

[34] Act of July 2, 1981, 2nd Spec. Sess. ch. 1, § 2, 1981 Minn. Laws at 2587, codified as amended at Minn. Stat. § 16A.152, subds. 1a-2.

biennium.[35] The budget reserve would be available to replace lost revenue, but only after the Commissioner of Finance had consulted with the Legislative Advisory Commission about its use.[36]

Rather than showing a surplus that would allow the funding of the new budget reserve, the November 1981 forecast showed a deficit. The Commissioner of Finance withheld the November and December payments of aid to local governments.[37]

The 1981 Third Special Session in December responded by mandating that the withheld amounts be paid to local governments by February 26, 1982,[38] and authorizing a local government to borrow money in anticipation of receiving the state aid,[39] an authority that school districts had been given in 1963.[40] Unlike the school district authority, the local government borrowing authority was not codified as permanent law.[41]

Unhappy as the Legislature was about the delay in payments at the end of 1980 and 1981, the Third Special Session, which continued in parallel with the regular session into January 1982, found it necessary to specifically authorize the Commissioner of Education to suspend payments to school districts in December 1981 and January 1982,[42] have the payments made by the Commissioner of Finance by June 30, 1982,[43] reduce payments to school districts by $160.9 million for fiscal year 1983,[44] and reinstate the authority to unallot aid to school districts.[45]

So the Legislature would be better informed in the future, the 1981 Third Special Session added a requirement that the Commissioner of Finance notify the Senate and House committees on

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[35] *Id.*

[36] *Id.*, § 3, codified as amended at Minn. Stat. § 16A.152, subd. 4(a).

[37] *See* letter from Acting Comm'r of Finance Val Vikmanis to Speaker of the House Harry A. Sieben, Jr., Jan. 5, 1982.

[38] Act of Dec. 31, 1981, 3rd Spec. Sess. ch. 1, art. 1, §§ 6-7, 1982 Minn. Laws 5, 8-9.

[39] *Id.* § 8.

[40] *See* Act of Apr. 26, 1963, ch. 371, 1963 Minn. Laws 516, codified as amended at Minn. Stat. §§ 126C.50-56.

[41] *See* Act of Dec. 31, 1981, 3rd Spec. Sess. ch. 1, art. 1, § 8, 1982 Minn. Laws 5, 9.

[42] Act of Jan. 15, 1982, 3d Spec. Sess. ch. 2, art. 2, § 13, 1982 Minn. Laws 16, 75.

[43] *Id.*, § 15, 1982 Minn. Laws at 76.

[44] *Id.*, § 2, 1982 Minn. Laws at 69.

[45] *Id.*, § 3, 1982 Minn. Laws at 72, codified as amended at Minn. Stat. § 16A.152, subd. 4(b).

Finance, Appropriations, and Taxes within 15 days after an allotment had been reduced or a payment delayed.[46]

The budget troubles of 1980-83 caused Governor Al Quie to announce that he would not run again. Rudy Perpich was elected to his first full term as governor in November 1982.

The 1983 Legislature changed the relationship between the budget reserve and allotment reductions. As enacted in the 1981 Second Special Session, the Commissioner of Finance had a choice of methods to eliminate a deficit: either transfer money from the budget reserve (after consulting with the Legislative Advisory Commission) or reduce allotments, or any combination of the two.[47] The 1983 Legislature changed that to give primacy to using the budget reserve: it required the Commissioner of Finance to first transfer money from the budget reserve (with the approval of the Governor and after consultation with the Legislative Advisory Commission) and then (with the approval of the Governor and after consultation with the Legislative Advisory Commission) reduce allotments.[48]

The statute is silent on what happens if the Governor refuses to approve the use of the budget reserve. If so, presumably the Commissioner would have to reduce allotments. This makes sense, since a prudent fiscal manager would save the budget reserve for use late in a biennium, when it is too late to stop spending money that has already left the treasury or to collect new revenue before the biennium ends.

The 1983 amendments also authorized the Commissioner of Finance to "consider other sources of revenue available to recipients of state appropriations and apply allotment reductions based on all sources of revenue available."[49] The purpose of this was to justify larger cuts to higher education systems, school districts, and local governments than to state agencies, since state agencies did not have the ability to increase tuition or property taxes to make up for the reduced allotments of state appropriations.

Finally, the 1983 amendments authorized the Commissioner of Finance to "delay payment of an amount up to 15 percent of an appropriation due to a special taxing district or a system of higher education in that entity's fiscal year for up to 60 days after the start of its next fiscal year."[50]

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[46] *Id.*, § 1, 1982 Minn. Laws at 6, codified as amended at Minn. Stat. § 16A.152, subd. 6.

[47] Act of July 2, 1981, 2nd Spec. Sess, ch. 1, § 3, 1981 Minn. Laws 2587, 2588, codified as amended at Minn. Stat. § 16A.152, subd. 4(a)-(b).

[48] Act of June 14, 1983, ch. 342, art. 18, § 1, 1983 Minn. Laws 2168, 2354, codified as amended at Minn. Stat. § 16A.152, subd. 4(a)-(b).

[49] *Id.*, codified as amended at Minn. Stat. § 16A.152, subd. 4(d).

[50] *Id.*, § 3, 1983 Minn. Laws at 2355, codified as amended at Minn. Stat. § 16A.152, subd. 7.

This was a way to ease the State's cash flow problems temporarily without necessarily having to reduce the allotment. If it proved necessary, the delayed amount was subject to allotment reduction.[51]

VI. Revisor's Bill of 1984

Laws 1984, chapter 628, article 2, was a Revisor's Bill that rewrote and improved the style of Minnesota Statutes, chapter 16A, including the language on allotment reductions, without intending to change its meaning.[52]

VII. Budget Troubles of 1985-87

In the 1984 election, Republicans, led by Speaker David Jennings, campaigned on the promise of a $1 billion tax cut and took control of the House of Representatives.

The 1985 regular session ended without enacting the necessary budget bills. The last of them was enacted at a special session that ended June 21, 1985.

The 1985 First Special Session sorted the allotment reduction authority by fund, making the use of the budget reserve a tool only for balancing the general fund (as it was always assumed to be).[53] The same law changed the name of the budget reserve account to the budget reserve and cash flow account, to reflect the fact that not all the money in the budget reserve could be used to avoid the need for allotment reductions—some was needed to make payments in months when cash was low.[54] It provided for the budget reserve and cash flow account to be replenished later in a biennium, after having been drawn down because of a revenue shortfall, if the Commissioner of Finance determined "that there will probably be a positive undesignated balance in the general fund at the end of the biennium."[55]

The 1985 First Special Session also authorized the Commissioner of Finance to order the Commissioner of Revenue to delay the payment of property tax reduction aids and local government

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[51] *Id.*

[52] Act of May 2, 1984, ch. 628, art. 2, 1984 Minn. Laws 1576, 1601.

[53] Act of June 28, 1985, 1st Spec. Sess. ch. 14, art. 18, § 1, 1985 Minn. Laws 2302, 2622, codified as amended at Minn. Stat. § 16A.152, subd. 4(a)-(c).

[54] Act of June 28, 1985, 1st Spec. Sess. ch. 14, art. 18, § 2, 1985 Minn. Laws 2302, 2623, codified as amended at Minn. Stat. § 16A.152, subd. 2.

[55] *Id.*

aids from November 15 to December 15 if necessary to avoid the State having to borrow for its own cash flow.[56] That authority was repealed in 1986.[57]

The budget enacted at the 1985 First Special Session did not remain in balance for long. By the 1986 regular session, the State faced a $734 million general fund budget deficit.[58] Speaker Jennings led the House to adjourn sine die in mid-March without the concurrence of the Senate and without having balanced the budget. A one-day special session in April produced a bill that addressed the tax issues[59] and made cuts to K-12 education[60] and higher education[61] but did not incorporate the cuts to state agencies that were pending in a conference committee, leaving a budget gap of $109.8 million.[62] Governor Perpich closed that gap by reducing allotments to state agencies by $43.9 million[63] and to the Department of Human Services by $42.6 million,[64] generally in accordance with the Senate position in conference committee. In addition, he canceled $.5 million from appropriations made in prior fiscal years, returned to the general fund $9.5 million that had been transferred to other funds in prior fiscal years, and canceled $.2 million in appropriations from prior years that had been carried forward into fiscal year 1986, for a total reduction from prior years of $10.1 million.[65]

The 1986 First Special Session changed the terms used to describe the use of the budget reserve. Instead of saying that amounts were transferred from the budget reserve and cash flow account to the general fund, it said that the amount in the budget reserve and cash flow account was

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[56] Act of June 28, 1985, 1st Spec. Sess. ch. 14, art. 18, § 3, 1985 Minn. Laws 2302, 2623.

[57] *See* Act of Apr. 9, 1986, 1st Spec. Sess. ch. 1, art.5, § 12(b), 1986 Minn. Laws 1109, 1191.

[58] *At Issue: A little-used tool in the toolbox*, Brenda van Dyck, House Research Department, May 2, 2008.

[59] Act of Apr. 9, 1986, 1st Spec. Sess. ch. 1, arts. 1-8, 1986 Minn. Laws 1109, 1111-1230.

[60] *Id.*, art. 9, 1986 Minn. Laws at 1230.

[61] *Id.*, art. 10, 1986 Minn. Laws at 1256.

[62] *At Issue: A little-used tool in the toolbox*, Brenda van Dyck, House Research Department, May 2, 2008.

[63] *1986 and 1987 General Budget Reduction Summary, General Fund*, Dept. of Finance, memo from Comm'r Jay Kiedrowski to Rep. Gaylin Den Ouden, Oct. 30, 1986.

[64] Van Dyck.

[65] *F.Y. 1986-1987 Unallotment Process*, memo from Richard D. Hoeft to J. Michael Miles, Asst. Atty. Gen., Sep. 22, 1986.

reduced.[66] This was to reflect the fact that the account was already in the general fund; it was just being used to restrict part of the balance in the general fund so that it would not be spent until necessary.

In May 1986, Governor Perpich sought advice from Commissioner of Finance Jay Kiedrowski on whether his unallotments could be restored. The commissioner told him "there is no precedent on restoration of unallotments" and that any positive balance shown in a new forecast would be allocated by statute to specific purposes, such as restoring the budget reserve.[67] He summarized his advice as follows:

> 1. Unallotments may be adjusted *within* an agency *anytime without* LAC consultation;
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> 2. Unallotments may be adjusted among agencies *only before the next forecast with* LAC consultation provided the overall reductions remain the same; and
>
> 3. Unallotments may not otherwise be restored without changing current statute.[68]

The 1987 Legislature explicitly authorized the Commissioner of Finance to make the reductions to "unexpended allotments of any prior appropriation or transfer" that Commissioner Kiedrowski had made in 1986.[69] It also authorized the commissioner, "[n]otwithstanding any other law to the contrary . . . to defer or suspend prior statutorily created obligations which would prevent effecting such reductions."[70] This was intended to clarify that, just because a statutory formula said, for example, that a school district was entitled to be paid aid of so many dollars per student, that did not mean the aid allotment could not be reduced.

VIII. Separation of Cash Flow Account from Budget Reserve - 1995

The last significant change related to the authority to reduce allotments was made by the 1995 Legislature at it First Special Session. It separated the budget reserve and cash flow account into two

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[66] Act of Apr. 9, 1986, 1st Spec. Sess. ch. 1, art. 5, §§ 1-2, 1986 Minn. Laws 1109, 1184.

[67] Memo from Comm'r Jay Kiedrowski to Gov. Rudy Perpich, May 2, 1986.

[68] *Id.* (Emphasis in original.) This is a narrower authority to restore unallotments than asserted by Commissioner Vikmanis, who did not mention any limit on restoration. *See* letter from Acting Comm'r of Finance Val Vikmanis to Speaker of the House Harry A. Sieben, Jr., Jan. 5, 1982, 1 ¶ 1.

[69] Act of May 28, 1987, ch. 268, art. 18, subd. 1(b), 1987 Minn. Laws 1039, 1404.

[70] *Id.*

separate accounts, so that the amount set aside for cash flow is not available to reduce a deficit in the general fund.[71]

IX. Budget Troubles of 2003

In the fall of 2001, even before the November forecast was released, Governor Jesse Ventura's Commissioner of Finance, Pam Wheelock, announced that the general fund faced a serious deficit for the biennium ending June 30, 2003. The governor proposed a combination of spending cuts and tax increases to balance the budget. Legislative leaders, including both Senate Majority Leader Roger Moe, who was seeking the Democratic nomination for governor, and House Majority Leader Tim Pawlenty, who was seeking the Republican nomination for governor, preferred to balance the budget by making one-time transfers of money from other funds to the general fund and by excluding inflation from the spending side of the forecast. The plan of the leaders was enacted by overriding two of Governor Ventura's vetoes during the 2002 regular session.[72]

Tim Pawlenty defeated Roger Moe in the 2002 governor's race, and took office in January 2003 facing a deficit of $355.5 million for the biennium ending June 30, 2003.[73] After a conference committee failed to reach agreement on a bill to balance the budget, Finance Commissioner Dan McElroy, with the approval of Governor Pawlenty, drew down $23.9 million from the budget reserve and reduced allotments of prior appropriations and transfers by $273.4 million.[74] The Commissioner also persuaded the Legislature and the courts to voluntarily cancel $8.2 million of their appropriations, and the Commissioner of Revenue delayed payment of $50 million of refunds of sales taxes on capital equipment.[75] Those four actions, taken together, balanced the 2003 budget.

$49 million of the unallotments was a transfer back of a prior year appropriation to the 21st Century Minerals Fund. That unallotment was upheld by the Minnesota Court of Appeals.[76]

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[71] Act of June 8, 1995, 1st Spec. Sess. ch. 3, art. 14, §§ 1-3.

[72] Act of Feb. 28, 2002, ch. 220, 2002 Minn. Laws 3, 151; Act of May 18, 2002, ch. 374, 2002 Minn. Laws 904, 961.

[73] *Notice of Reductions Pursuant to M.S. 16A.152, Subd. 4*, Comm'r of Finance Dan McElroy to LAC members, Feb. 24, 2003.

[74] *Id.*

[75] *Id.*; letter from Comm'r Dan McElroy to Speaker of the House Steve Sviggum, Feb. 12, 2003; *FY 2003 Reductions Under M.S. 16A.152, Subdivision 4, General Fund*, Dept. of Finance, Feb. 7, 2003.

[76] *Rukavina v. Pawlenty*, No. A03-1709, 684 N.W.2d 525 (Minn. App. 2004), *review denied* (Minn. 2004).

X. Budget Troubles of 2004

In February 2004, Commissioner of Finance Peggy Ingison forecast a general fund deficit of \$159.5 million for the biennium ending June 30, 2005.[77] The 2004 regular session provided for an automatic buyback of shifts in aid to school districts when revenue became available in the future, up to 90 percent of entitlements.[78] But when it adjourned without balancing the budget, Governor Pawlenty took "executive action" to do so. His action included reducing the transfer of revenue from the general fund to the health care access fund by \$110 million, reducing the sale of state bonds to save \$27 million in debt service, generating \$7.9 million in additional revenue from tax compliance activities, and imposing a three percent reduction in state executive agency operating budgets to cancel \$16.6 million.[79] The commissioner and the governor did not seek the advice of the Legislative Advisory Commission or characterize the executive actions as allotment reductions under § 16A.152, subd. 4. They did not require, but requested, the Secretary of State, Attorney General, and State Auditor to make the same three percent reduction to their operating budgets as mandated for executive branch agencies.[80]

XI. Budget Troubles of 2005

The State faced serious budget problems again in 2005. By the end of the regular session, only three of seven omnibus appropriation bills had been enacted.[81] State government suffered a partial shutdown before a temporary appropriation bill was enacted July 9, 2005.[82] The remaining bills were enacted by July 14, 2005.[83] No allotment reductions were necessary.

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[77] *General Fund Balance Analysis, February 2004 Forecast*, Dept. of Finance, Feb. 27, 2004.

[78] Act of May 29, 2004, ch. 272, art. 3, § 1, 2004 Minn. Laws 1111, 1149.

[79] *Implementing FY 2005 Operating Budget Reductions*, memo from Budget Dir. Jim Schowalter to Commissioners and Agency Heads, May 27, 2004; *General Fund Balance Analysis, Governor's Executive Actions*, Dept. of Finance, June 14, 2004.

[80] *Requested FY 2005 Budget Reductions*, memo from Comm'r Peggy Ingison to Mary Kiffmeyer, Mike Hatch, and Patricia Anderson, May 27, 2004.

[81] Act of May 26, 2005, ch. 107, 2005 Minn. Laws 619 (higher education); Act of June 2, 2005, ch. 136, 2005 Minn. Laws 901 (public safety); Act of June 3, 2005, ch. 156, 2005 Minn. Laws 1628 (state government).

[82] 1st Spec. Sess. ch. 2, 2005 Minn. Laws 2273.

[83] Act of June 30, 2005, 1st Spec. Sess. ch. 1, 2005 Minn. Laws 1983 (environment and natural resources); Act of July 14, 2005, 1st Spec. Sess. ch. 4, 2005 Minn. Laws 2454 (health and human services); Act of July 14, 2005, 1st Spec. Sess. ch. 5, 2005 Minn. Laws 2790 (education); Act of July 14, 2005, 1st Spec. Sess. ch. 6, 2005 Minn. Laws 2941 (transportation).

XII. Budget Troubles of 2008-09

The November 2008 forecast projected a deficit in the year ending June 30, 2009, of $426.3 million.[84] Commissioner of Finance Tom Hanson, with the approval of the governor, released $154.9 million from the budget reserve and reduced allotments of prior appropriations and transfers by $229.2 million on December 22, 2008.[85] Additional reductions of agency allotments in the amount of $40 million, and voluntary reductions by the Legislature of $2.2 million, were made as of February 26, 2009, thus balancing the budget for that biennium.[86]

During the 2009 regular session, Governor Pawlenty eventually signed all the omnibus appropriation bills, with assorted item vetoes, but on May 14, 2009, he announced that he would veto the omnibus tax bill that raised about $1 billion in revenue and shifted payments to school districts by almost $1.8 billion to bring the budget into balance.[87] Rather, he said he would balance the budget by reducing allotments. On May 21, 2009, he made good on his veto threat.[88] On June 16, 2009, he announced allotment reductions and administrative actions of $2.7 billion for the biennium beginning July 1.[89]

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[84] *Notice of Reductions Pursuant to M.S. 16A.152, Subd. 4*, Comm'r of Finance Tom Hanson to LAC members, Dec. 22, 2008.

[85] *Id.*

[86] *Final Report of FY 2009 Allotment Reductions*, Comm'r of Finance Tom Hanson to LAC members, Feb. 26, 2009.

[87] 2009 H.F. No. 2323, ch. 179.

[88] Message from Gov. Pawlenty to Speaker Kelliher, May 21, 2009.

[89] *Proposed Unallotments & Administrative Actions*, Dept. of Finance, June 16, 2009.

16A.152 BUDGET RESERVE AND CASH FLOW ACCOUNTS.

Subdivision 1. **Cash flow account established**. A cash flow account is created in the general fund in the state treasury. Amounts in the cash flow account shall remain in the account until drawn down and used to meet cash flow deficiencies resulting from uneven distribution of revenue collections and required expenditures during a fiscal year.

Subd. 1a. **Budget reserve**. A budget reserve account is created in the general fund in the state treasury. The commissioner of finance shall transfer to the budget reserve account on July 1 of each odd-numbered year any amounts specifically appropriated by law to the budget reserve.

Subd. 1b. **Budget reserve increase**. On July 1, 2003, the commissioner of finance shall transfer $300,000,000 to the budget reserve account in the general fund. On July 1, 2004, the commissioner of finance shall transfer $296,000,000 to the budget reserve account in the general fund. The amounts necessary for this purpose are appropriated from the general fund.

Subd. 2. **Additional revenues; priority**. (a) If on the basis of a forecast of general fund revenues and expenditures, the commissioner of finance determines that there will be a positive unrestricted budgetary general fund balance at the close of the biennium, the commissioner of finance must allocate money to the following accounts and purposes in priority order:

(1) the cash flow account established in subdivision 1 until that account reaches $350,000,000;

(2) the budget reserve account established in subdivision 1a until that account reaches $653,000,000;

(3) the amount necessary to increase the aid payment schedule for school district aids and credits payments in section 127A.45 to not more than 90 percent rounded to the nearest tenth of a percent without exceeding the amount available and with any remaining funds deposited in the budget reserve; and

(4) the amount necessary to restore all or a portion of the net aid reductions under section 127A.441 and to reduce the property tax revenue recognition shift under section 123B.75, subdivision 5, paragraph (b), and Laws 2003, First Special Session chapter 9,article 5, section 34, as amended by Laws 2003, First Special Session chapter 23, section 20, by the same amount.

(b) The amounts necessary to meet the requirements of this section are appropriated from the general fund within two weeks after the forecast is released or, in the case of transfers under paragraph (a), clauses (3) and (4), as necessary to meet the appropriations schedules otherwise established in statute.

(c) To the extent that a positive unrestricted budgetary general fund balance is projected, appropriations under this section must be made before section 16A.1522 takes effect.

(d) The commissioner of finance shall certify the total dollar amount of the reductions under paragraph (a), clauses (3) and (4), to the commissioner of education. The commissioner of education shall increase the aid payment percentage and reduce the property tax shift percentage by these amounts and apply those reductions to the current fiscal year and thereafter.

Subd. 3. **Use**. The use of the budget reserve should be governed by principles based on the full economic cycle rather than the budget cycle. The budget reserve may be used when a negative budgetary balance is projected and when objective measures, such as reduced growth in total wages, retail sales, or employment, reflect downturns in the state's economy.

Subd. 4. **Reduction**. (a) If the commissioner determines that probable receipts for the general fund will be less than anticipated, and that the amount available for the remainder of the biennium will be less than needed, the commissioner shall, with the approval of the governor, and after consulting the Legislative Advisory Commission, reduce the amount in the budget reserve account as needed to balance expenditures with revenue.

(b) An additional deficit shall, with the approval of the governor, and after consulting the legislative advisory commission, be made up by reducing unexpended allotments of any prior appropriation or transfer. Notwithstanding any other law to the contrary, the commissioner is empowered to defer or suspend prior statutorily created obligations which would prevent effecting such reductions.

(c) If the commissioner determines that probable receipts for any other fund, appropriation, or item will be less than anticipated, and that the amount available for the remainder of the term of the appropriation or for any allotment period will be less than needed, the commissioner shall notify the agency concerned and then reduce the amount allotted or to be allotted so as to prevent a deficit.

(d) In reducing allotments, the commissioner may consider other sources of revenue available to recipients of state appropriations and may apply allotment reductions based on all sources of revenue available.

(e) In like manner, the commissioner shall reduce allotments to an agency by the amount of any saving that can be made over previous spending plans through a reduction in prices or other cause.

Subd.5. **Restoration**. The restoration of the budget reserve should be governed by principles based on the full economic cycle rather than the budget cycle. Restoration of the budget reserve should occur when objective measures, such as increased growth in total wages, retail sales, or employment, reflect upturns in the state's economy. The budget reserve should be restored before new or increased spending commitments are made.

Subd. 6. **Notice to committees**. The commissioner shall notify the committees on finance and taxes and tax laws of the senate and the committees on ways and means and taxes of the house of representatives of a reduction in an allotment under this section. The notice must be in writing and delivered within 15 days of the commissioner's act. The notice must specify:

(1) the amount of the reduction in the allotment;

(2) the agency and programs affected;

(3) the amount of any payment withheld; and

(4) any additional information the commissioner determines is appropriate.

Subd. 7. **Delay; reduction**. The commissioner may delay paying up to 15 percent of an appropriation to a special taxing district or a system of higher education in that entity's fiscal year for up to 60 days after the start of its next fiscal year. The delayed amount is subject to allotment reduction under subdivision 4.

History: *1973 c 492 s 23; 1978 c 793 s 47; 1981 c 1 s 2; 1Sp1981 c 5 s 1; 2Sp1981 c 1 s 3; 3Sp1981 c 1 art 1 s 1; 3Sp1981 c 2 art 2 s 3; 1983 c 342 art 18 s 1-3; 1984 c 502 art 1 s 1; 1984 c 628 art 2 s 1; 1Sp1985 c 14 art 18 s 1,2,4; 1Sp1986 c 1 art 5 s 1-3; 1987 c 268 art 18 s 1-3; 1988 c 690 art 2 s 1; 1988 c 719 art 13 s 1,2; 1989 c 329 art 1 s 1; 1Sp1989 c 1 art 15 s 1,2; 1990 c 604 art 10 s 4; 1991 c 291 art 21 s 2; 1992 c 511 art 9 s 1; 1993 c 192 s 58-63,111; 1993 c 375 art 17 s 1,2; 1994 c 632 art 5 s 1; 1994 c 647 art 1 s 1; 1995 c 264 art 6 s 1; 1Sp1995 c 3 art 14 s 1-3; 1996 c 461 s 1; 1996 c 471 art 10 s 1; 1997 c 231 art 9 s 1; 1998 c 389 art 9 s 1; 1Sp2001 c 5 art 20 s 2,3; 1Sp2001 c 10 art 2 s 24; 2002 c 220 art 13 s 3-5; 2002 c 377 art 12 s 1; 1Sp2003 c 21 art 11 s 2-4; 2004 c 272 art 3 s 1; 2005 c 156 art 2 s 16; 2007 c 146 art 1 s 1*