

Statutory Appropriations Guidelines

Adopted by the Legislative Commission on Planning and Fiscal Policy 12/5/2002

Appropriation definitions and use of the terminology should be standardized. The following definitions are commonly used in the Governor's Biennial Budget documents and current accounting practices.

A. "**Statutory Appropriation**" refers to the authority to spend resources that is codified in state statute, rather than session laws. This means the expenditure authority is ongoing and not dependent on the passage of an appropriations bill each biennium. Typically, statutory appropriations are made in dedicated receipt activities, but are also applicable to situations where state resources are perpetually made available for spending. Statutory appropriations are displayed in the Governor's biennial budget as " Statutory Appropriations" and are generally based on anticipated receipts within an agency's budget. These codified appropriations are processed in the accounting system annually based on agency estimates -- without legislative action.

Statutory Appropriations generally should not be established in the general fund, and all current statutory appropriations in the general fund should be reviewed for possible change to a different fund.

B. "**Direct Appropriation**" is an appropriation made in biennial or annual budget bills and is for a limited period of time, usually within the biennium.

C. "**Open Appropriation**" refers to the authority to spend an unspecified amount of resources to meet a program's objective or a constitutional requirement. These resources are typically made available when an agency provides a forecast of the estimated need. These open appropriations are reported in the Governor's biennial budget as " Open Appropriations". Approval of the funding is made using agency estimates and documentation that establishes the funds in the accounting system. Rather than canceling at year-end, any excess dollars are processed as a reduction in the appropriation amount, rather than a cancellation.

D. "**Standing Appropriation**" is the authority to spend a pre-determined dollar annual amount for an activity for a specific period of time or indefinitely. (Example: MS 240A.08 Appropriation...."\$750,000 is appropriated annually from the general fund to the Minnesota amateur sports commission for the purpose of....."

Background

A search of statutes indicates that there are nearly 350 citations of statutory appropriations in current law. In FY 2002, nearly \$9.7 billion was spent through statutory appropriations. Many of these expenditures, such as pension accounts, have very legitimate rationale for being statutory appropriations. Of the funds reported by the Department of Finance in the Consolidated Funds Statement, about \$5.8 billion or 33 percent of the total spending reported in that statement was in statutory appropriations.

Rationale for Standing Appropriations

A direct appropriation requires an affirmative and periodic act by the legislature. Statutory appropriations are very different. While the initial act establishing a statutory appropriation (usually every two years) requires affirmative action, the appropriation remains in effect until the legislature either decides to change the original law or until a sunset takes effect. This difference has a significant bearing on the way statutory appropriations are treated in the budget process. Statutory appropriations are often assumed as given. As a result, some statutory appropriations, especially those with a dedicated revenue source, receive very little legislative oversight or scrutiny.

The rationale underlying legislative decisions to make an appropriation statutory in the first instance vary. Reasons include:

A. To prioritize programs in the appropriation process. A statutory appropriation places the receiving program first in line to use available resources. This implies that the program is considered so important that the legislature treats its funding as nearly automatic. A good example of this rationale is the statutory appropriation for debt service on state bonds. A reduction in a statutory appropriation requires an enactment of legislation. On the other hand, direct appropriations require enactment of legislation for the appropriation to occur.

B. To assure certainty to the recipients of the resources. Programs funded by statutory appropriation are more certain of receiving an appropriation than programs funded through direct appropriations. This result is a function of the budget process. While statutory appropriations can be changed by the legislature, because they do not require affirmative action they are not as integral a part of the policy tradeoffs that characterize direct appropriations.

C. To prevent something else less desirable from occurring. Constitutional or federal requirements may cause an undesirable action to occur without a statutory appropriation. For example, the state constitution requires a statewide property tax levy to be imposed to cover state bond debt service if appropriated funds are inadequate. While a direct appropriation could be used to fund the debt service, the actual needs are uncertain at the time of the appropriation process. A statutory appropriation makes a statewide property tax much less likely to occur.

D. To cover the operating costs related to large fixed expenditures of recipients. Some statutory appropriations are related to large capital expenditures made by recipients. One example is the statutory appropriation for a subsidy for ethanol plants. Without some security of resources of more than two years in advance these projects might not be undertaken.

E. To match erratic revenues with spending. Many statutory appropriations simply make available for spending revenue from fees raised for a certain purpose. If the fees are erratic or there is difficulty forecasting the amount in order to make a direct appropriation, a statutory appropriation may be used to match needed expenditures to revenues.

F. To match appropriations with needs. Some programs serve clients where demand is hard to forecast. Rather than make a direct appropriation and deal with deficiencies as they occur a statutory appropriation is used to cover any shortfall. Many tax aids and credits work this way.

G. To respond to uncontrollable resources. Federal funds must be spent according to the requirements of federal law. The legislature or the executive branch may have very little discretion. A statutory appropriation makes this money available for the purpose specified in federal law.

Criteria for Open or Standing Appropriation Standards

Each of these reasons has been used to justify placing statutory appropriations into law. But there are no standards to use to determine when the reason is appropriate. For example, under letter A, how important does a program need to be to funded with a statutory appropriation? What guidelines should legislators use to make that judgment? Under letter B, how much uncertainty must exist to justify use of a statutory appropriation rather than a direct appropriation. Under letter E, how erratic do receipts need to be? Under letter F, why not use the deficiency approach for any shortfalls in a direct appropriation? Under letter G, direct appropriations of federal funds would allow legislators to more closely align appropriations for state and federal programs.

Why are standards or guidelines important? The reason is discussed throughout the rationale above. Statutory appropriations are automatic, do not require an affirmative act by the legislature, and place some programs ahead of others in the budget process. The reasons why an appropriation was made statutory at one point in time may no longer be valid. These facts may distort the policy debate when the legislature is determining budget priorities.

Improved reporting and review should be developed for oversight and control of statutory appropriations.

A separate well-defined executive-legislative branch process should be established to identify and report based on current information resources that meets appropriately defined needs. The basic operating activity of each statutory appropriation is captured in the accounting system. Joint agreement is needed to identify sufficient information necessary for legislative oversight and control and to improve in formation access. Better and timely information will provide legislators and legislative staff with the opportunity to review the activities associated with statutory appropriations.

- A. A review of statutory appropriations should be conducted within the respective legislative committees. A schedule for reviewing statutory appropriation should be determined by the respective committees over a 4 - 8 year period. As an alternative, the review schedule could include a stratified schedule where statutory appropriations are reviewed every 2, 4, 6, or 8 years based on size.
- B. Additionally, an annual review should be conducted be conducted on all accounts carrying substantial balances between fiscal years at year-end.
- C. If a review suggests that a statutory appropriation is no longer necessary or desired, the activity should be funded with a direct appropriation

Specific Recommendations

1. Statutory appropriations should be established when:

- A. The activities funded by the appropriation are outside of the scope of normal agency operations and would be discontinued if the dedicated revenues were no longer available.
- B. Constitutional requirements would trigger automatic state obligations or levy new taxes.
- C. Revenues and expenditures are difficult to predict and appropriate directly.
- D. Legal or regulatory requirements prohibit the co-mingling of funds.

2. Statutory appropriations should be subjected to legislative reviews through:

- A. Systematic analysis of all newly created statutory appropriations after 4 years.
- B. Periodic and systematic analysis of each statutory appropriation at least once every eight years.
- C. Alternatively, placing a sunset date in the statutory appropriation.

3. Control and oversight of statutory appropriations should be performed by:

- A. Establishing standards for annual and interim reporting of statutory appropriation activity.
- B. Training legislative staff in proper use of system information and tools to access the information.
- C. Provide increased access to necessary statutory appropriation information by modifying current or developing new budget reporting.

4. Minnesota Statutes, section 3.23 should be modified to conform with current day, commonplace usage and definitions, limiting the term “standing” to specific class of appropriations defined above.

3.23 Appropriations.

A ~~standing~~ statutory appropriation, within the meaning of this section and section 3.24, is one which sets apart a specified or unspecified and open amount of public money or funds of the state general fund for expenditure for a purpose and makes the amount, or part of it, available for use continuously and ~~at a time more distant than~~ for a period of time beyond the end of the second fiscal year after the session of the legislature at which the appropriation is made.

Every appropriation stated to be “annual appropriation.” “payable annually,” “appropriated annually,” or “annually appropriated,” and every appropriation described by equivalent terms or language is a ~~standing~~ statutory appropriation as defined by this section.

5. Consideration should be given to limiting the broad statutory appropriation authority in Minnesota Statutes, section 4.07, Subdivision 3, regarding the appropriation of federal funds.