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Continuing Resolution Process

The recent Congressional passage of a continuing resolution to keep the federal government open which ended the first of two federal government shutdowns in less than one month's time raises the question about Oregon's continuing expenditure process and what differences exist between the state and federal processes.

Continuing Resolution

The regular order of legislative business is to pass legislation authorizing the expenditure of funds for the operation of government in advance of the next budget period, which for the federal government is the federal fiscal year beginning October 1st of each year. The Oregon budget period begins on July 1st of each odd-numbered year and extends to June 30th of the following odd-numbered year.

While the regular order is the preferred course of action for legislative bodies to set legal expenditure limits, there are legitimate reasons why this may not occur prior to the start of the next budget period. Delay may be due to many different issues, including: unresolved policy issues; disagreement on budget priorities, especially reductions; disagreement between the executive and the legislative branches on priorities and funding levels hindering a measure being signed into law by the executive branch; or natural disasters or other unforeseen emergencies that could interrupt the regular order of business.

The budget process, at both the federal and state levels of government, have a mechanism to account for budget approval extending into the next fiscal period. A Continuing Resolution (CR), or for the state a Continuing Expenditure, provide for the short-term continuation of funding at the same level as existed in the previous fiscal period. (In Oregon, the Continuing Expenditure is called a CR and this brief will refer to it as such.) A CR is a ***temporary*** extension for a defined period of time sufficient to allow a legislative body to deal with exigencies and return to the regular order of business, and is needed in order to ensure the continued and uninterrupted functioning of government. Given the limited timeframe, and the complexity of negotiating certain budget issues, legislative extensions of CRs may become necessary, especially for the federal government.

A CR is like any other measure enacted by the Legislature, which requires passage by both chambers and the signature of the Governor for the measure to become law. The Executive can veto a CR, but the Legislature has the option to vote to override a veto.

The CR law itself is overridden by the enactment and signing into law of an appropriation measure(s). Of important note is that a CR is not an amount that is in addition to an appropriation measure. An agency that has had to rely on a CR reverts to the funding approved in the appropriation measure once signed into law. In other words, any CR funding is assumed to be part of the legislatively adopted budget for the agency rather than an increase to said budget.

If Congress or the Legislature fail to enact legislation for the appropriation of funds necessary to operate government, or a CR is not enacted, a partial shutdown of non-essential government services may occur, which is discussed in more detail below.

Federal Government Continuing Resolution

While a discussion of the federal budget process is beyond the scope of this brief, there are key elements of the federal process that merit discussion as they relate to the CR process. The U.S. Congress typically enacts only twelve standard appropriation bills for the entire federal government. If Congress fails to enact legislation and appropriate funds, then funding is unavailable for non-essential services. To avoid a government shutdown, which has happened 20 times between 1976 and February of 2018 for short periods of time, the federal government routinely operates outside this process by enacting or extending CRs. For the federal government, a CR has become a common budgeting practice.

Oregon State Government Continuing Resolution

Oregon's Legislature routinely enacts a single CR bill at the end of each long regular session. The bill provides for continuing expenditure authority for agencies without legislatively approved budgets as of July 1st of any odd-numbered year. Oregon's CR process, however, is markedly different from the federal process in the following ways.

Under Article IX, Section 2 of the Oregon Constitution, the Legislature is required to enact a balanced budget, which is not the case for the federal government. This is important in that prolonged use of a CR, as is often the case for the federal government, may not produce a balanced budget.

The Oregon Legislature employs a joint budget process under which the House and the Senate jointly consider and pass budget legislation to their respective chambers. This bicameral approach commonly resolves budget disagreements, on an agency-by-agency basis leading to a balanced budget. Unlike the U.S. Congress, and more specifically the U.S. Senate, the passage of a CR in Oregon requires only a simple majority of both chambers rather than a supermajority of either chamber.

The Oregon Legislature also enacts individual appropriation, or budget, measures for each agency throughout the duration of the odd-numbered year session. If an agency's budget measure is approved, and signed into Oregon Law by the Governor, then such an agency is no longer subject to a CR; the CR only applies to agencies currently without enacted budgets. This significantly reduces the universe of agencies subject to a CR. Again, any amount spent under a CR does count toward the agency's adopted budget, once approved. An additional distinction is that Oregon's budget measures by constitutional requirement are 'single issue' and contain no policy provisions.

Oregon’s statutory framework also plays an important role. Most accounts and funds that are established in statute are specifically categorized as “continuously appropriated.” Oregon Revised Statutes establish a number of statutory accounts (or funds) related to the funding of state government. The revenue to support these funds can be General, Lottery, Other, or Federal Funds. A General Fund appropriation, or a Lottery Funds allocation, is for a specific amount. Other Funds and Federal Funds are almost exclusively associated with continuously appropriated accounts. Continuously appropriated accounts have a self-supporting revenue source and can be expended up to the amount of available revenue unless the Legislature establishes an expenditure limitation. The Legislature’s historic practice has been to limit expenditures to a set amount through an appropriation measure (known as expenditure limitation); however, if there is no measure limiting expenditures, agencies may spend up to the cash resources in the account (or fund), thereby allowing for continued operations.

The “continuously appropriated” language is frequently misinterpreted by even those most familiar with the state’s budget process. Many incorrectly assume that the term “continuously appropriated” means that such funds have “Nonlimited” expenditure authority. Under very narrow circumstances, the Legislature approves continuously appropriated account expenditures as Nonlimited, which means that they do not have a legally established expenditure limitation (see *Nonlimited Authority, LFO Budget Information Brief 2007-4*). Therefore, continuously appropriated applies only when the Legislature fails to enact a measure limiting the amount of funds to be expended, which is categorically different from Nonlimited expenditure authority.

Oregon’s CR is a budget bill and, as such, is subject to the Governor’s line-item veto authority; however, a CR does not appropriate funds, which limits the effectiveness of the Governor’s line-item veto authority. A CR only authorizes the continued expenditure of previously authorized funding from the prior biennium. In this respect, a CR is a unique budget bill. Of course, the Governor can veto the entire bill which could lead to a partial state government shutdown or action by the Legislature to override the veto and continue operations through the CR.

A CR measure is introduced by the Joint Committee on Ways and Means, and must pass through the legislative process and be signed into law by July 1st of an odd-numbered year. This timing is critical. If a CR fails to be enacted, from any time after July 1st until a CR is signed into law, or an agency budget measure is signed into law, there could be a period where an ***individual*** agency has no legal authority to expend funds and therefore must cease operations for all but essential personnel. Again, agencies with enacted budget bills do not need the CR; it is only needed for agencies without enacted budget bills.

The duration of Oregon’s CR is typically through the first quarter of the biennium, or more specifically September 15th of any odd-numbered year. This timeframe is viewed as sufficient for agency budget measures to be enacted into law and signed by the Governor. Seldom in Oregon history, especially after the introduction of the even-numbered year regular session, has Oregon’s Legislature met beyond mid-July of odd-numbered years. A CR would not typically be considered during Oregon’s even-numbered year session as agencies would presumably be operating under legally approved biennial budgets.

Oregon's CR is typically based on the prior biennium's legislatively approved budget and the 8th or final quarterly agency "allotment plan." The Department of Administrative Services (DAS) is responsible for allotting authorized budgets across the eight quarters of the biennium for those agencies subject to allotment authority, which are all agencies other than those in the Judicial Branch, the Treasurer of State, the Secretary of State, and the Legislative Branch. This action results in an anticipated spending plan for state agencies; only funds included on this allotment plan may be spent by agencies. While generally sufficient to sustain the CR process into the first quarter of the next biennium, there can be instances where 8th quarter allotment plans are insufficient, based on the timing of certain expenditures of certain agencies. For example, an early start to Oregon's wildland fire season could mean that the CR allotment-based funding is inadequate. DAS and the Legislative Fiscal Office work closely when drafting the final version of the CR to account for such situations and to ensure agencies without appropriation measures have sufficient temporary funding to operate.

Conclusion

The federal government and Oregon state government Continuing Resolution processes are very different from one another and produce significantly different results. While both are a common feature of the budget process, and are necessary to those processes, the federal CR process is used in lieu of the appropriation process and has, on occasion when agreement on a CR has not been reached, resulted in the shutdown of the federal government. Oregon's CR process has many ancillary safeguards that have to-date successfully avoided a state government shutdown.

Recent Oregon Continuing Resolutions

Chapter 493, 2017 Laws (SB 5544)
Chapter 599, 2015 Laws (HB 5046)
Chapter 542, 2013 Laws (SB 5504)
Chapter 522, 2011 Laws (HB 5054)
Chapter 637, 2009 Laws (SB 5553)
Chapter 738, 2007 Laws (SB 5548)
Chapter 344, 2005 Laws (SB 5625)