

# Legislative Fiscal Office

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## Budget Information Brief / 2020-1

### Unscheduled and Scheduled Budget Authority

The purpose of this budget information brief is to discuss the unscheduling of budget authority, which is defined as withholding expenditure authority, through an administrative process, for a portion of an agency's authorized budget. Unscheduling is a tool used in the budgeting process when the provision of expenditure authority is provided either by an appropriation or expenditure limitation and there is uncertainty regarding either the planned use or receipt of the revenue for the expenditure.

#### Legally Authorized Spending Limits

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 state government begins on July 1<sup>st</sup> of each odd-numbered year and extends to June 30<sup>th</sup> of the following odd-numbered year. In agency budget bills, policy bills with a budgetary impact, or an omnibus budget bill, the Legislature can appropriate General Fund; allocate Lottery and certain Other Funds; establish Lottery, Other, and Federal Funds expenditure limitations; and provide authority for Nonlimited Other and Federal Funds expenditure limitation. The establishment of Other and Federal Funds expenditure limitation caps how much Other and Federal Funds revenue may be spent by an agency; without the limitation there is no limit on how much of the Other and Federal Funds revenue the agency may spend. In certain cases, such as Unemployment Insurance payments, the Legislature has determined that a limitation is not needed and provides the agency with Nonlimited expenditure authority for that specific fund or program, but still requires reporting on the amount of these Nonlimited expenditures.

The Emergency Board exercises powers during the interim between sessions of the Legislative Assembly, including allocating funds appropriated to the Emergency Board; increasing Other and Federal Funds expenditure limitations; establishing or revising budgets for new activities; authorizing transfers within agency budgets; creating or adjusting state agency positions and full-time equivalents; and reviewing federal grant applications.<sup>1</sup>

The budget passed by the Legislature at the conclusion of the odd-numbered year session (long session) is known as the legislatively *adopted* budget. Budgetary actions or adjustments to a legislatively adopted budget may occur during the following times: 1) the regular session in even numbered years (short session); 2) special session, if convened; 3) Emergency Board

<sup>1</sup> For more detail, see Budget Information Brief 2017-2, Legislative Session and Interim Budget Authorities. <https://www.oregonlegislature.gov/lfo/Documents/2017-2%20Legislative%20Budget%20Authorities.pdf>

meetings; 4) the regular session in odd numbered years (long session); and 5) select Executive Branch administrative actions. The budget that is the result of these changes is known as the legislatively *approved* budget or what may otherwise be referred to as the *authorized* budget.

### **Allotment Authority and Scheduled Budget Authorization (ORS 291.232)**

For the authorized budget of any agency subject to statutory allotment authority to be expended, three criteria must concurrently be met:

- Authorized budget in Oregon Law;
- Cash revenues or General Fund appropriation must be available; and
- Approved agency allotment plan exists.

Absent these criteria, a state agency will be unable to expend funds. Agencies falling outside the statutory allotment authority only must meet the first two criteria.<sup>2</sup>

The Department of Administrative Services (DAS) is responsible for working with agencies to allot authorized budgets across the eight quarters of the biennium (for those agencies subject to allotment authority). An allotment plan is the anticipated spending plan for a state agency; only funds included on an allotment plan may be spent. An agency's authorized budget is automatically available for allotment unless otherwise excluded. Under an approved allotment plan, the authorized budget of an agency is deemed *scheduled* and available to be spent.

The allotment of funds serves several purposes: 1) prohibits an agency from expending its entire budget prior to the end of the biennium to prevent the over-expenditure of funds; 2) provides a mechanism for the State Treasurer to estimate the timing of cash flow requirements of state government; and 3) allows for the monitoring of actual expenditures compared to what was anticipated. Such safeguards do not exist for agencies not subject to the statutory allotment authority.

The allotment statute, and associated administrative rule, gives the Governor the authority to reduce allotments by across-the-board reductions for those agencies subject to allotment authority, if forecasted General and Lottery Fund revenues are less than authorized budgets. The delegation of such administrative authority is deemed necessary until the Legislature can meet, either in regular session or special session, to adjust revenues and/or expenditures of the state.

### **Authority for Uncheduling**

By long-standing agreement with the Legislature, funds can be uncheduled by DAS upon request. There is no formal legal authority, administrative rule, or policy for the uncheduling of funds; however, the authority to unchedule funds arises from statutory allotment authority discussed above. Uncheduling budget authority is an administrative construct used to facilitate the conduct of state government. Given that uncheduling is rooted in statutory allotment authority, it does not apply to the Legislative Branch, Judicial Branch, State Treasurer, Secretary of State, semi-independent agencies, public corporations, or public universities. The only exception is if state funds pass through an agency that is subject to allotment authority.

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<sup>2</sup> Legislative branch agencies, Judicial branch agencies, the State Treasurer, Secretary of State, semi-independent agencies, Lottery Commission, public corporations, and public universities are exempt from allotment authorities.

The consequence of ignoring a Legislative or Emergency Board request to unschedule funds, which has happened on occasion, compromises the underlying trust between the branches of government and can result in the Legislature or Emergency Board's return to withholding budget authority until certain conditions are met and requiring agencies to return to the Legislature or Emergency Board for such authority.

### **Unsheduling Authorized Budget and Alternatives to Unsheduling**

The unsheduling of funds is the administrative withholding of allotment authority for a portion of an agency's legally authorized budget. The duration of the unsheduling of funds expires with the close of the biennium for which the funding was authorized. Unsheduling is initiated by one of the following actions:

- Voluntary agreement between the Legislature or Emergency Board and DAS; or
- Independent action of the Executive Branch.

Unsheduling only relates to expenditure or legal budget authority and not revenues or allocation authority. Unsheduling can be applied to General Fund and Lottery, Other, and Federal Funds expenditure limitations, and may be applied to Limited as well as Nonlimited expenditure limitations. The unsheduling of funds may impact the filling of authorized positions as the underlying funding to pay the cost of such positions would be unavailable.

Unsheduling may occur due to many different issues, but the primary reason centers around uncertainty, including: 1) the amount of budget authority required versus actual costs; 2) the timing of expenditures; 3) the agency's ability to execute or implement the budget; and 4) additional planning details that are needed for the implementation of new programs or activities.

Generally, a request by the Legislature to unshedule a portion of an authorized budget is undertaken at the time a budget action is considered. The Legislature or Emergency Board may also retroactively request that funds be unsheduled based on mounting uncertainty regarding an agency's implementation of a previously authorized or approved budget. While DAS has the administrative authority to unshedule funds absent Legislative or Emergency Board direction, such authority is seldom used. In addition, the use of unsheduling is, generally, narrowly focused on discrete budget decisions of the Legislature or Emergency Board. For example, the Legislature has never chosen to request that DAS unshedule an entire agency budget.

The use of unsheduling is deemed an inappropriate tool for unresolved policy issues or disagreement between the Executive and the Legislative branches of government. The reason is that the Executive Branch, within its authority, may simply choose to ignore any request to unshedule funds or may reschedule funds without notice to or discussion with the Legislature.

The legislative alternative to a request to unshedule funds is to defer approval of a budget request. It should be noted that the underlying need for unsheduling has been diminished with voter approval of annual regular sessions as the Legislature, coupled with quarterly Emergency Board meetings, now has more opportunities to provide scheduled funds. For an agency to avoid the possibility of funds being unsheduled, the agency could, as practicably as possible, time its budget requests to align with legislative and Emergency Board schedules, proactively reducing the risk of funds being unsheduled.

## **Mechanism for Unsheduling and Scheduling Funds that had been Unsheduled**

There are three mechanisms to direct the unsheduling of funds: 1) a request in a legislative measure's budget report for a measure becoming law; 2) a request in an approved Emergency Board action; and 3) under the general authority or direction of DAS. Any legislatively requested unsheduling is not subject to the Governor's line-item veto authority, as the direction to unshedule funds resides outside the language of a legislative measure and also could otherwise be ignored by the Governor.

A budget report provides detail on legislative action and intent for a budget bill or a policy bill with a budgetary impact. Budget reports are only prepared during a legislative session and may include instructions to an agency, budget notes, and/or requests to unshedule funds from allotment for those agencies subject to the Governor's allotment authority. The Emergency Board can also request that funds be unsheduled or scheduled. Approved Emergency Board actions are certified with the Secretary of State, which becomes the legal authority by which agency budgets are adjusted during the interim.

Since the Legislature or Emergency Board has already approved the underlying budget authority, the scheduling of funding that had been unsheduled can occur once any criteria to schedule the funds has been met and an agency submits a revised quarterly allotment plan. The scheduling of funds is undertaken through an administrative process that occurs between the agency, the DAS Chief Financial Office, and the Legislative Fiscal Office.

### **Legislative Language for Unsheduling**

Unsheduling language that is included in the legislative record should meet the following criteria: 1) a specific statement regarding the expectation that funds will be unsheduled; 2) a specific dollar amount, by fund type, to be unsheduled; 3) identification of the agency, program, and/or activity; 4) the terms and conditions for the scheduling of the funding; and 5) what entity is to ascertain if the terms and conditions for scheduling the funds have been met. Generally, the language will include the following clause: "...with the understanding that the Department of Administrative Services will unshedule the funds."

### **Conclusion**

The process for the unsheduling of funds offers a unique example of a long-standing administrative and informal agreement that exists between the Executive and Legislative Branches. While the underlying utility of unsheduling has diminished with annual regular sessions of the Legislature and routine quarterly meetings of the Emergency Board, which offer more opportunities to provide funds, the unsheduling and scheduling mechanism remains a useful and necessary tool for the conduct of the business of the State of Oregon.