

Legislative Fiscal Office

Ken Rocco
Legislative Fiscal Officer

Daron Hill
Deputy Legislative Fiscal Officer



900 Court Street NE
H-178 State Capitol
Salem, Oregon 97301
503-986-1828

Budget Information Brief / 2007-4

Nonlimited Authority

Within Oregon Revised Statute (ORS) is established 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 limitation, is for a specific amount. Other 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. Under very narrow circumstances, the Legislature can also approve continuously appropriated account expenditures as Nonlimited, which do not have a legally established expenditure limitation. The purpose of this budget brief is to discuss the nature of Nonlimited funds and provide examples from the budget.

Criteria for Nonlimited Funds

Nonlimited expenditures are expenditures for legislatively defined purposes but which are generally outside an agency's control. ORS does not provide a definition of Nonlimited authority,^{i,ii} however, there are essentially four identifiable criteria for the establishment and existence of Nonlimited authority:

- (1) ORS must provide the authority for an agency to expend funds for a specific purpose. Such legal authority is typically granted as part of a continuously appropriated account.
- (2) Nonlimited authority must include a "stable" revenue source that is available when expenditures occur.
- (3) Nonlimited authority is for expenditures that can fluctuate based on variables outside of the control of an agency.
- (4) Nonlimited authority is for routine and administrative expenditures rather than one-time or extraordinary expenses that occur relatively infrequently.

Although only the first criterion is legally required, all four of these criteria should co-exist simultaneously for a continuously appropriated account to be classified as Nonlimited.

Delegation of Legislative Authority

The modification of a Nonlimited expenditure authority is one of a limited number of instances when the Legislature delegates its authority for modifying budgets to another branch of government. Unless modified by legislative action, this delegation is limited to the two-year period the Oregon Laws are in effect. Subsequent Legislatures have the opportunity to review this grant of authority each biennium as it considers an agency's appropriation measure. The only practical limitation or restriction on a grant of Nonlimited authority is the amount of revenue available for expenditure.

ⁱ The exception is ORS 286.063(3), which relates to the expenditure limits for repaying or refinancing of the state's debt service obligations.

ⁱⁱ In addition, there are currently no Executive Branch Oregon Administrative Rules related to Nonlimited funds.

Legal Establishment of Nonlimited Funds

Nonlimited authority is established in Oregon Law as part of an agency's appropriation or budget measure. Therefore, only the Legislature, rather than the Emergency Board, has the ability to establish Nonlimited authority. The following example is language from section 2, Chapter 216, 2007 Laws (HB 5040) for the Public Employees Retirement System:

For the biennium beginning July 1, 2007, expenditures by the Public Employees Retirement System for refunds, retirement benefits, deferred compensation and individual account program payments, health insurance premiums, health insurance premium subsidies, third party administrator costs for health and individual account programs and Public Employee Benefit Equalization Fund payments are not limited.

What makes Nonlimited authority unique compared to accounts limited by an expenditure limitation is that the Legislature provides in law only the legal authority for Nonlimited expenditures, but does not legally specify an amount. A budget report for a measure with Nonlimited authority, however, does quantify the (initial) amount of Nonlimited expenditure authority anticipated by an agency. This amount is detailed by fund type, which is exclusively limited to Other and Federal Funds. A budget report, as a summary of the Joint Committee on Ways and Means actions, has no legal authority unto itself.

Budgeting of Nonlimited Authority and Administrative Adjustment of Nonlimited Amounts

Nonlimited funds are budgeted and expended in similar fashion as limited funds. The Joint Committee on Ways and Means reviews existing Nonlimited expenditure authority as part of the Governor's budget request. Policy packages, or budget enhancement requests, are used by agencies to request new Nonlimited authority.

Once the Legislature approves Nonlimited expenditure authority for an agency, the Executive, Judicial, or Legislative Branch assumes administrative control for adjusting the level of a Nonlimited fund's expenditures. Adjustments are made administratively by the Department of Administrative Services for the Executive Branch agencies through the allotment system. The state's budget and accounting systems differentiate the budget and actual expenditures for limited and Nonlimited funds.

Nonlimited Funds Share of the State Budget and Examples

Nonlimited funds are a material part of the state's budget. The 2007-09 legislatively adopted budget includes \$13.8 billion in Nonlimited Other Funds expenditures and \$1.5 billion in Nonlimited Federal Funds expenditures, with a combined total of \$15.3 billion. This amount is 32% of the \$48 billion total funds state budget. As Nonlimited funds, they have the propensity to become an even larger share of the state's budget as Nonlimited expenditures are increased administratively throughout the biennium.

During the 2007 legislative session, there were 25 appropriation measures which established Nonlimited expenditure authority. This authority was granted for 82 distinct legal purposes. Notable examples include: payments for public employee retirement benefits; federal food stamps; unemployment insurance claims; workers' compensation wage claims; student assistance scholarships; housing and veteran loans; debt service; and liquor purchases. Over \$13 billion, or 85%, of Nonlimited expenditures are isolated in five agency budgets.ⁱⁱⁱ

Conclusion

Beginning with the 2001 legislative session, when there was a concerted effort to reduce Nonlimited authority, the Legislature has taken an increasingly conservative policy stance when reviewing the need to continue existing Nonlimited authority or reviewing requests related to the establishment of new Nonlimited authority. The necessity of Nonlimited authority is in question as the legislative preference in recent biennia has been to retain, rather than delegate, its budget authority by limiting expenditures through the appropriation process.

For additional information, contact: Ken Rocco, 503-986-1844

ⁱⁱⁱ Public Employees Retirement System (\$6.3 billion); Department of Higher Education (\$2.2 billion); Employment Department (\$1.4 billion); Housing and Community Services Department (\$1.9 billion); and Department of Human Services (\$1.1 billion).