Budget CONNECTion$

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What Is the Extent of the Governor's Authority to Cut Funds Appropriated by the General Assembly?

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To address Connecticut's budget deficit in FY 03, the Governor in November 2002 made $56.21 million in allotment reductions, and another $23 million in allotment reductions in January 2003. In addition, on January 24, 2003, the Governor announced $17 million in "forced lapses" to various budget accounts (which ultimately were rescinded as part of PA 03-2), and the Office of Policy and Management "held back" millions more. The Office of Policy and Management also refused to release appropriated funding in the form of grants to municipalities across the state. This report addresses the authority the Governor has to make budget cuts that exceed his statutory budget modification authority, whether they be called "forced lapses," "holdbacks" or simply non-payments. It includes a description of the relevant statutes as well as pertinent case law in the area.

I. A Bit of Context

Connecticut operates on a biennial budget. In odd-numbered years, the Governor presents a proposed budget to the General Assembly. In even-numbered years, the Governor presents revisions to the second year of this two-year budget. The General Assembly reviews the proposed budget, makes such revisions as it determines are appropriate, and approves it as revised. Absent a veto by the Governor, the approved budget bill becomes law, and specifies how much funding is to be appropriated to the various budget account's in each state agency's budget.

However, before agencies are able to spend the funds that are appropriated to them, they must submit to the Governor, through the Office of Policy and Management, at least 20 days before the fiscal year begins (on July 1), a "requisition for the allotment of the amount necessary to carry out the purposes of such appropriations during each quarter" of the upcoming fiscal year. Conn. Gen. Stat. §4-85(a).[2] State law (as discussed more fully below) dictates that the Governor "shall approve" these agency requisitions (Conn. Gen. Stat. §4-85(a)), subject to the provisions of Conn. Gen. State §4-85(b) that specifies when, and under what conditions, the Governor is authorized to reduce the allotment of funds that the General Assembly has appropriated to the various state agencies. Further, Conn. Gen. Stat. §4-89 specifies how unexpended balances at the close of a fiscal year – "lapses" – are to be managed.

For fiscal year 2003, in light of the state deficit, Governor Rowland effectively reduced agency allotments through three different mechanisms. First, the Governor exercised his authority under Conn. Gen. State §4-85(b) (his ongoing budget modification authority) and Section 52 of PA 02-1 (MSS)(his temporary, "extraordinary" budget modification authority) to reduce agency allotments in November 2002 in the amount of $56.2 million and in January 2003 for an additional $16.2 million.

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[1] This paper was prepared under the supervision of Shelley Geballe, JD, MPH, and Ellen Scalettar, JD, and revised in May, 2004.

[2] "An appropriation is a statute passed by the legislature to authorize expenditures, while an allotment is the action by which the executive branch sets aside funds sufficient to cover a portion of the expenditure authorized by the appropriations act." AAUP v. Governor, 200 Conn. 386, 392 (Conn. 1986).

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Second, the Governor directed in January 2003 that there be an additional $23.3 million in "forced lapses." Finally, Governor Rowland directed an additional $47.6 million in "OPM holdbacks."

II. Allotment Reductions

A. The Law

Ongoing budget modification authority. The Governor's affirmative duty to approve requisitions (C.G.S. §4-85(a)) is qualified by Connecticut General Statutes §4-85(b), which gives the Governor the authority to reduce allotments (including both "allotment requisition[s]" and "allotment[s] in force") to the various agencies under certain specific conditions. To reduce allotments, the Governor must be able to show either that there has been a "change in circumstances since the budget was adopted" that justifies a modification in funding or that "estimated budget resources during the fiscal year will be insufficient to finance all appropriations in full." It is not enough, however, for the Governor to show that financial circumstances have changed. Rather, Conn. Gen. Stat. §4-85 contains a number of specific conditions that the Governor must fulfill in order for the allotment modifications to be valid:

- The Governor must file a report with the Finance, Revenue and Bonding and the Appropriations Committees, in which the Governor describes the necessity for the allotment reductions. C.G.S. §4-85 (b).
- The Governor may not reduce the total appropriation of any fund by more than 3% or any individual budgeted appropriation by more than 5%.[3]
- If the Governor proposes a reduction greater than the allowed percentage, the Governor "may request that the Finance Advisory Committee approve any such reduction." C.G.S. §4-85 (c).
- Under no circumstances may the Governor take action that would reduce total appropriations by more than 5% without the approval of the General Assembly. C.G.S. §4-85 (c).
- The statute explicitly states that the Governor does not have authority to reduce allotments concerning aid to municipalities. §4-85 (e).

Temporary, extraordinary budget modification authority. Section 52 of PA 02-1 (May Special Session, MSS), as amended by Section 90 of PA 02-7 (MSS), expanded Governor Rowland's reduction authority beyond the authority given him by Conn. Gen. Stat. §4-85. For SFY 03, the Governor was authorized, on or after October 1, 2002, to reduce allotments by up to $35 million above C.G.S. §4-85 limits "to the extent the Governor deems necessary" to avoid a deficit. The Governor was required to file a report with the Appropriations and Finance Committees if he intended to make these additional cuts, but approval of the Finance Advisory Committee was not required. This section prohibited the Governor from making any of these supplemental cuts by reducing appropriated funding to towns for education cost sharing, town aid road, and payment in lieu of taxes for colleges and hospitals and state-owned property. The budget implementer bill further required that if municipal aid was reduced pursuant to this expanded power to reduce allotments, that the aid "be proportionately reduced to remain within the revised allotments." (HB 6004, section 96).

[3] There is an exception to this limitation in time of war, invasion or natural disaster. C.G.S. §4-85 (b).

Taking this expanded temporary authority together with the Governor's §4-85 authority, the total reduction in allotments that the Governor was authorized make for SFY 03 could not be more than 8%, and the total reduction to any specific appropriation no more than 10%.[4]

B. What This Means

C.G.S. §4-85 means that the Governor cannot act unilaterally and determine what funding an agency will receive. State aid to municipalities and agencies is a matter for the legislature to decide, not the Governor.[5] However, faced with a projected deficit, the Governor has the authority to modify the amount of funding allotted to various budget accounts to a sum that is less than the amount the legislature appropriated subject to the limitations mentioned above. In addition, the Governor *must* submit a plan to reduce spending when the Comptroller projects a deficit greater than 1% of the total of General Fund appropriations. This plan must be submitted to the Appropriations and Finance Committees within 30 days of the Comptroller's statement of projected deficit. C.G.S. §4-85 (b).

There has yet to be a legal challenge in a situation in which the Governor has attempted to reduce allotments by more than the 3% or 5% allowed under the statute. However, the fact that such allotment reductions have not been challenged in the past does not mean the reductions are valid.

The few challenges that *have* been brought to the statute itself have argued that the Governor *should not have any authority at all* to modify allotments once appropriations are approved by the legislature. The courts have disagreed with the challengers and have upheld the statute. However, from these challenges it is apparent that the explicit statutory limitations on the Governor's authority are the key reason why the statute was determined to be constitutional in the first place. That is, Connecticut courts have upheld the Governor's authority under §4-85 because the statute contains definite restrictions to this authority.

The most important case in this area is AAUP v. Governor.[6] In this case, the Supreme Court of Connecticut held that plaintiffs, who represented unionized professors at the University of Connecticut, could not successfully challenge the Governor's action to reduce budgetary allotments to the University of Connecticut and other state universities on the basis that such action would confer upon the Governor legislative authority in violation of the separation of powers under the Connecticut constitution. Instead, the Court upheld §4-85, stating that the statute was valid because (a) it did not give the Governor legislative authority to appropriate funds; and, (b) although it conferred certain powers to the Governor to modify the allotments of appropriated funds, such authority was valid because it was not unrestricted. In other words, one of the main reasons that the statute was constitutional was that it contained certain "definite restrictions" on the Governor's ability to reduce allotments. The fact that the statute capped the Governor's authority at 3% of total appropriations to any fund and 5% of any appropriation was important to the court.

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[4] See footnote 2.

[5] "The power to legislate, which our constitution has committed solely to the General Assembly, necessarily includes the power to appropriate funds to finance the operation of the state and its programs." City of Bridgeport v. Agostinelli 163 Conn. 537, 544 (Conn. 1972).

[6] 200 Conn. 386 (Conn. 1986).

AAUP v. Governor upholds Conn. Gen. Stat. §4-85. In an earlier case, the Connecticut Supreme Court distinguished between state funding of agencies and state funding of towns and municipalities. In City of Bridgeport v. Agostinelli,[7] the court agreed with the plaintiff cities and towns that Conn. Gen. Stat. §4-85 did not give the Governor the authority to reduce appropriations that the General Assembly had made to local governments for educational purposes. The court held that the Governor's authority under §4-85 only extended to "appropriations for the administration, operation and maintenance of a 'budgeted state agency'."[8] The court further found that a municipality or town did not fall under the definition of a "budgeted state agency,"[9] and, thus, the Governor could not modify the allotments appropriated to the plaintiff towns. As noted above, Conn. Gen. Stat. §4-85 (e) specifically states that §4-85 does not authorize the Governor to "reduce allotment requisitions or allotments in force concerning aid to municipalities."

Taken together, AAUP and Agostinelli, recognize that while the Governor has some authority to reduce allotments under §4-85, such authority must be specifically limited to be valid and is in fact limited to "budgeted state agencies" and to 3% of the total appropriations of any fund and 5% of any individual appropriation.

III. **"Forced Lapses"**

Connecticut also has a statute that governs what occurs to appropriated monies that are not spent by the budgeted agencies by the end of the fiscal year. Under Conn. Gen. Stat. §4-89, any unexpended balance of appropriations made by the General Assembly at the end of the allotted time period shall lapse into the fund from which it was originally appropriated (i.e., unspent funds in the DCF budget would lapse into the General Fund). While the majority of budget bills that appropriate funds for specific fiscal years contain an ending date, occasionally the General Assembly will not specify such an ending date. In such circumstances, the unexpended balance will lapse as of June 30th on the fourth year after the appropriation was made, provided that the purpose for which the appropriation was made has been met. It is important to note that the statute only refers to what happens when an agency does not spend its appropriated funding. The statute does not confer authority to the Governor to mandate that an agency not spend its appropriated funding ("forced lapse"). However, this is exactly what the Governor tried to do in his proposal to modify the budget through forced lapses.

The practical effect of a forced lapse (or a "holdback" or nonpayment) is, at a minimum, the same as that of an allotment reduction. In both situations, the Governor is preventing funds appropriated for a particular purpose by the General Assembly from being spent for that purpose. While this has not been litigated, it is likely under the earlier precedent cited that the limits of §4-85 would apply regardless of what the reduction is called: a "forced lapse", a "holdback," a non-payment, or an "allotment reduction" - because all these actions have the same effect.

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[7] 163 Conn. 537 (Conn. 1972).

[8] *Id.* at 549.

[9] Budgeted state agency includes "(a) [E]very department, board, council, commission, institution or other agency of the executive department of the state government ... ; (b) every court, council, division and other agency of the judicial branch of the state government ...; (c) every full-time permanent department or agency of the legislative branch of the state government; and (d) every public and private institution, organization, association or other agency receiving financial aid from the state." *Id.*

Thus it could be argued that the Governor may reduce allotments to an agency by a certain percentage, and whether the reduction is called an allotment reduction or anything else would not matter. If this is the case, then the Governor would exceed his authority under §4-85 when the total reduction from his proposed allotment reductions, forced lapses and other actions is greater than the amount allowed under the Governor's general allotment reduction authority (e.g. 3% of appropriations of any one fund or 5% of any individual appropriation) and any expanded temporary allotment reduction authority (e.g. as was specifically authorized for fiscal year 03).

Alternatively, "forced lapses," holdbacks or non-payments may exceed the governor's authority regardless of their amount because they constitute a more extreme interference with legislative authority than do allotment reductions. This interpretation is supported by the analysis of the governor's allotment reduction authority in AAUP v. Governor. The court specifically found that:

> A reduction of an allotment is not a refusal to assent to an appropriations bill. Neither does the reduction delete or destroy the validity, legality, or effectiveness of the underlying appropriations act which authorized the expenditure, or indicate a disapproval of the appropriations act. In fact, the entire appropriations act remains effective and the expenditure can later be restored.[10]

It is not clear that a forced lapse, holdback or non-payment would meet this these requirements. If not, they might well be deemed an unconstitutional partial veto.[11]

[10] Id. at 393.
[11] Id.