State Budget Processes & Spending Federal Funds

October 6, 2022

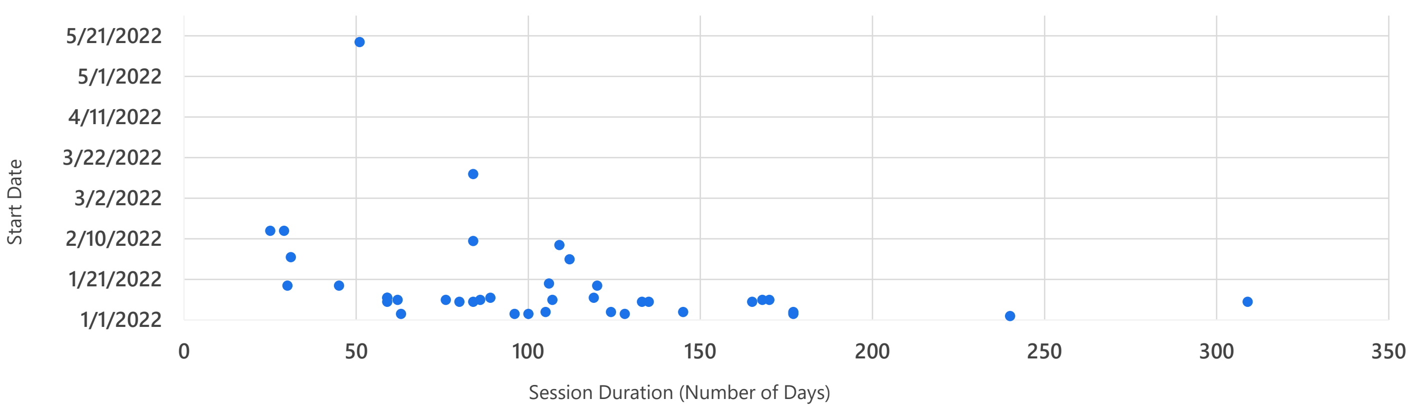
Introduction

The federal government relies on states and territories to administer a variety of programs for which it provides some funding. States, meanwhile, count on federal funds to help support numerous programs that are important to their residents. For this fiscal relationship to work optimally, each level of government must have a sound understanding of how the other budgets for and spends money. The recent influx of federal funds to states for pandemic-related aid, infrastructure, and other purposes, allowing varying degrees of discretion to state policymakers regarding fund uses, has made this need for understanding all the more apparent. The following explainer outlines several key aspects of state legislative and budget processes, how they vary, and especially how they interact with federal funds.

Legislative Session Calendar

Most state and territory legislatures meet annually during a designated period of time, with the start date (and often, the duration) established by each state's constitution or in statute.[1] In the vast majority of states, legislatures convene in regular session sometime in early-mid January. The date of adjournment tends to vary more widely, with most states ending regular session sometime between March and June. The length of session for some states varies depending on whether it is an even or odd calendar year, especially for those states that budget on a biennial basis. In some states, the legislature meets throughout the year, while in a few states, the legislature meets only once every two years. **Figure 1** shows the distribution of regular session start dates (on the y-axis) and corresponding duration of session (on the x-axis), only displaying sessions for 39 states and territories with defined start and end dates. In

Figure 1. Legislative Session Calendar, 2022*



** This chart only displays data for legislatures in 39 states and territories that met in session with a defined start and end date in 2022. In addition, legislatures in 11 states and territories met throughout the year while legislatures in four states that hold biennial sessions did not meet in 2022.*

Source: National Conference of State Legislatures (NCSL), "2022 Legislative Session Calendar" (updated August 17, 2022), https://www.ncsl.org/Portals/1/Documents/NCSL/2022_session_calendar1.pdf.

2022, legislatures in 11 states and territories met throughout the year. Meanwhile, four states (Montana, Nevada, North Dakota and Texas) only meet in regular session every other year, and did not meet in 2022 as they were in the middle of their biennial (two-year) budget cycle. The median duration among regular sessions with defined start and end dates in 2022 was 100 days.[2]

Occasionally, some states will, as needed, hold a special session outside of their regular meeting period to address a specific subject that cannot wait until the next regular session for consideration. States make limited use of special sessions for a variety of reasons, including cost. In most states, the governor or legislature may call a special session, while in 14 states, only the governor can call a special session.[3]

Given that accepting federal funds, as well as allocating them to specific uses when states have some discretion in this area, will often require some legislative action, the federal government should bear states' legislative session calendars in mind when issuing grant program guidance and setting recipient deadlines.

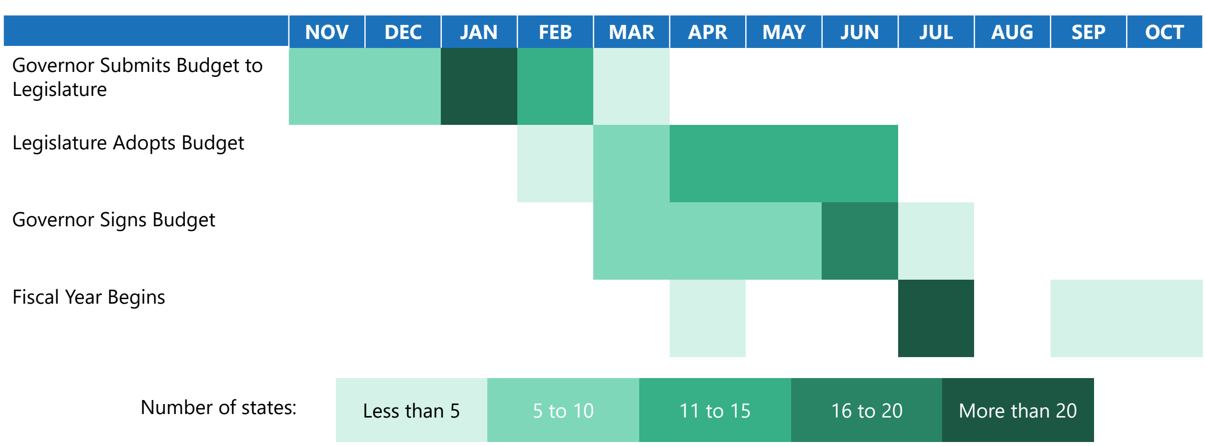
State Budget Calendar

The timeline of a state's budget development and adoption cycle is closely tied to its legislative session calendar. Approving the state budget for the upcoming budget cycle – as well as sometimes revising or adjusting spending levels for the current budget cycle as needed – is among the most important tasks before state lawmakers during session. Most commonly, the governor's budget recommendation serves as the starting point for legislative deliberations and eventual adoption of the budget. **If federal funds for some programs are in question or if funding levels are uncertain at the time the governor's budget is prepared for release, this can complicate state budgeting and planning processes.**

In most states, the governor submits the budget proposal to the legislature in late fall or early winter, with the deadline determined either by statutory or constitutional provision. While governors' budget deadlines range from as early as November 1st to as late as March, January and February are the most common months for introducing the governor's budget. This is because in many states, the deadline to submit the governor's budget is directly linked to the legislative session start date (e.g., the governor's budget may be due a specific number of days prior to or after the legislature convenes). In states with shorter legislative sessions, the legislature may adopt the budget as early as February, while in states with lengthier sessions or full-time legislatures, budget adoption by the legislature may occur later in the spring and closer to the start of the next fiscal year, which begins on July 1 for 46 states. New York begins its fiscal year on April 1, Texas on September 1, and Alabama and Michigan on October 1. The District of Columbia also begins its fiscal year on October 1, which aligns with the federal fiscal year calendar, in part because of the District's unique relationship with the federal government.

Key budget calendar milestones and the distribution of states commonly reaching these milestones by month is displayed in **Figure 2.**

Figure 2. Timing of Key Budget Milestones



Source: NASBO, Budget Processes in the States (2021)

While most states follow the same budget calendar each year (or each budget cycle), some states' calendars vary depending on the year. States that perform biennial budgeting but routinely pass a supplemental or revised budget prior to the second year of the biennium (see discussion below) may meet for a shorter session in the middle of their biennial budget cycle. Even some states that budget on an annual basis have some variation year-to-year in their budget calendar. In 24 states, the budget proposal submission deadline is extended for new governors entering their first term.

Annual v. Biennial Budgeting

Thirty states reported using an annual budget cycle and 20 states reported following a biennial budget cycle. However, in practice, a number of states use a combination of annual and biennial budgeting. In states that perform annual budgeting, there are cases when the governor will still release detailed spending recommendations for two fiscal years. Among the 20 states that said they prepare a biennial budget, many explained that they have a thorough supplemental budget process for the second year of the biennial budget. In Arkansas, counted among the states that budget on a biennial basis, budget recommendations for most agencies are presented to the legislature on a biennial basis, but appropriation bills are only valid for one year, requiring the legislature to meet in a limited fiscal session mid-biennium to consider budgets for the largest state agencies for the second year of the biennium and pass pre-filed budgets for the other agencies. Among the biennial states, 17 enact the two-year budget in odd calendar years (the first fiscal year of biennium is even), while Kentucky, Virginia and Wyoming enact their biennial budget in even calendar years (the first fiscal year of biennium is odd).

Appropriating Federal Funds

In NASBO's 2021 edition of Budget Processes in the States, 43 states reported that some or all federal funds are appropriated by the state legislature. There are often various nuances around how states authorize the expenditure of federal grant funds that vary across states, as described in state-provided footnotes included in that report. In California, certain federal funds are appropriated while others are allocated directly to local agencies. In Indiana, only federal funds for transportation are subject to the state budget appropriation process. In Minnesota, federal funds are appropriated through general statutory provisions and presented in the governor's biennial budget, not as direct appropriations in budget bills. In New Mexico, the state does not officially appropriate federal funds, but reports them in the budget act as part of an agency's budget.

It is also important to understand how various budgeting laws and procedures used by states interact with how they authorize the spending of federal funds in appropriation bills. For example, if a state receives a federal grant with spending authority covering multiple state fiscal years, the state may appropriate a portion of the grant in each fiscal year covered to align spending authority in the year expenditures will occur.

Spending Unanticipated Federal Funds

As just discussed, in most states, at least a portion of federal funds are subject to legislative appropriation. So what happens when a state receives an unexpected federal grant to spend in a fiscal year after the budget has already been adopted? Since most states only have part-time legislatures, it is often not practical or feasible for state lawmakers to sign off on these unanticipated federal dollars. **For this reason, in most states, the executive branch has at least some authority to spend unanticipated federal funds without legislative approval. How this authority is granted varies by state, and in most states, there are some restrictions or caveats associated with spending unanticipated funds.** In some states, there is standard language included in statute or appropriation bills permitting state agencies to spend unanticipated federal grants. In other states, the governor can only spend beyond what is appropriated in emergency or natural disaster situations. In some cases, the executive branch is required to report plans to spend unanticipated federal funds to the legislature, which may in turn have a period to comment on these plans before funds are able to be tapped. In some states, when the legislature is not in session, there is a process by which unanticipated federal funds may be approved by a special legislative or joint branch committee that meets regularly outside of regular session.[4]

The timing, amount and nature of the unanticipated funding can also impact the requirements and procedures a state must follow to authorize the use of funds. For example, in some states, the executive branch has the authority to spend unanticipated federal funds only if they are received directly by state agencies, while funds deposited into the state's general fund must be authorized through an appropriation bill. In at least one state, unanticipated federal funds may be expended for no more than 12 months until approved by the legislature. In a few states, only unexpected funding increases for existing programs may be authorized outside of regular session, while new programs must be considered by the full legislature when in session. In several states, the procedures for spending unanticipated federal funds vary depending on the amount, with grants above a certain threshold requiring more steps to authorize their expenditure.[5]

Federal Funds with Matching or Maintenance of Effort Requirements

Many states face legal hurdles and other challenges when receiving unanticipated federal funds outside of regular session. Even more problematic is when accepting these funds also requires the state to provide for matching funds from its own revenue sources for particular programs or when the state must certify that it will maintain state funds at a certain level in a future fiscal year. In cases where state general fund dollars are involved, spending decisions must be approved by the legislature as part of the state's normal or supplemental budget process. **For this reason, any federal grant programs with matching or maintenance of effort requirements should, whenever possible, provide a long enough timeframe before any formal action is required of state recipients to allow for state lawmakers to consider these requirements during regular session as part of the state's budget process.**

Recent Changes to State Processes in Response to Pandemic

While most states may have some ability to spend unanticipated federal funds without action by the full legislature, this ability is typically restricted to certain circumstances and types of funding. Historically, unanticipated federal funds has usually been directed to states for specific, narrowly defined purposes – such as a competitive grant award for a particular program – with little discretion given to the state on how those funds were to be used. This was not the case in spring 2020, when under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, states received $150 billion in Coronavirus Relief Funds (CRF) and were given considerable discretion in how to use these funds. At that time, early in the COVID-19 pandemic, many state legislatures were not in session, whether due to their normal legislative and budget calendars or due to adjourning early for public health reasons. This led to a series of questions and some conflicts around which branch of government had the primary authority to decide how to spend those unanticipated dollars. The urgency of the COVID-19 crisis and a fast-approaching deadline to expend the funds put pressure on states to resolve these conflicts quickly.

In response to the CRF experience, legislatures in some states took action to alter their budget processes and procedures for handling unanticipated federal funds to clarify any legal uncertainties as well as ensure that they would have more power and oversight regarding allocating federal funds in the future. According to the National Conference of State Legislatures (NCSL), Connecticut, Indiana, Kentucky, and Oklahoma were among the states that passed legislation to curtail the governor's ability to spend federal funds without legislative approval. In Connecticut and Kentucky, the legislative language specifically prohibited spending or allocating Coronavirus State and Local Fiscal Recovery Funds without legislative approval. In Indiana, the legislature expanded its authority to call a special session during an emergency as well as its authority to spend unanticipated funds when the legislature is in session. In Oklahoma, the legislature prohibited the executive branch from spending any federal funds "in a manner that will or that will be likely to increase the demand for state-appropriated funds or any other state funds" without legislative authorization.[6] Such changes could make it even more complicated for some states to authorize expenditures from unanticipated federal funds in the future.

Conclusion

States and territories vary in their legislative session and budget calendars, how they appropriate and spend federal funds, and how they handle unanticipated federal funding – especially outside of legislative session. While the executive branch in most states, has at least some authority to spend unanticipated federal funds without legislative approval, there are typically restrictions or caveats associated with this authority. These restrictions have become increasingly common as more state legislatures took steps to curtail executive authority in response to experiences with federal COVID-19 aid. Accepting federal funds, as well as allocating them to specific uses when states have some discretion, will often require legislative action. This is especially true for any federal grant programs with state matching or maintenance of effort requirements, which may require budget adjustments for state funds. For all these reasons, the federal government should bear states' legislative session calendars in mind when establishing funding levels, issuing grant program guidance and setting recipient deadlines. This will help states and territories in their planning and budgeting processes and better position them to meet goals for federally-funded programs.

For more state-by-state comparative information and details on budget processes, see NASBO's *Budget Processes in the States report*.

If you would like additional information, please contact Kathryn Vesey White at kwhite@nasbo.org or 202-624-5949.

Endnotes

[1] National Conference of State Legislatures (NCSL), "Special Sessions" (April 7, 2021), https://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx.

[2] NCSL, "2022 Legislative Session Calendar" (updated August 17, 2022), https://www.ncsl.org/Portals/1/Documents/NCSL/2022_session_calendar1.pdf.

[3] NCSL, "Special Sessions" (April 7, 2021), https://www.ncsl.org/research/about-state-legislatures/special-sessions472.aspx.

[4] NASBO, *Budget Processes in the States* (2021).

[5] Ibid.

[6] NCSL, "The Great Debate: Who Has the Authority to Spend Federal Stimulus Funds?" (May 27, 2021), https://www.ncsl.org/research/fiscal-policy/the-great-debate-who-has-the-authority-to-spend-federal-stimulus-funds.aspx.