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Beware the budget footnote

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We are all aware of the troubling financial road Wyoming is facing. Perhaps too well aware. With the budget session starting February 8, 2016, sometime around the Holidays we began hearing from distressed elected officials and listening to reports of gloomy budget hearings.

This is not political posturing or the creation of a fictional crisis. Every citizen of Wyoming and every governmental agency head, from the state to cities, towns and counties will feel this impact. School children (no coal bonus payments) to oil field workers (low oil and gas prices) will feel this one before it's over. Even engineers, landmen and executives will experience the pain of the extractive industries' particular brand of "trickle-up" economics.

While history tells us we can never know how long it will last, there's certainly no indication it will end soon. But this brief piece is not about budget priorities or whether to dip into the Rainy Day Fund. It's to highlight a powerful but commonly overlooked tool used by the legislature to micromanage the use of funds – something we could see a lot of during the session. It's an unusual animal that lives in the budget legislation: The "Budget Footnote."

Budget Footnotes live in the pages of the state's budget bill (which you can keep track of at <http://legisweb.state.wy.us>), and a quick scan of it will show their prevalence. Their purpose is to place conditions on the budgets of agencies, and give specific direction on how and when funds are to be spent. While it's difficult to determine when they began, it is clear that their use – though waxing and waning over the years - has increased steadily over time. While perhaps their original purpose was benign, to many they have come to be viewed as legislative overreach: the legislature setting mandates, priorities and policies within the traditional authority of the executive branch.

It's important to note that there is nothing illegal about the use of budget footnotes. They violate no rules or statutes. Rather, the problem lies in the manner in which they come into being, and how they put strings on expenditures or command specific actions when those directives have not undergone the exhaustive vetting that goes with the crafting of statutes. In the most extreme cases, one could argue that the edicts in a budget footnote violate the authority of the Executive Branch by overreaching into its decisions.

So what can possibly be wrong with a budget footnote? Unfortunately it's a fundamental problem. The passage of legislation is a long, time-consuming, and arduous process. And it's designed to be that way. It should be a difficult and deliberative process to write the rules of society. Many bills go through interim committee studies between sessions. Multiple hearings can be held around the state, and include testimony from stakeholders, opponents and supporters. Questions are asked, debate takes place and changes are made. Multiple drafts of the proposed statutes are drafted, circulated and edited. Even bills introduced immediately prior to the session – or during – are subjected to open committee hearings. Budget footnotes receive none of this scrutiny. They are inserted into the budget by a simple amendment from the floor. While they can be the subject of floor debate, or discussion during the inevitable conference committee, the contrast between the levels of review could not be more striking. And only the most patient and observant daily watchers of the legislature would be aware of them. Beyond the small group of lawmakers who sponsor them, little attention is paid to them, or even can be, given the intensity and customarily hurried debate that comes over the budget towards the end of the session. The consequences of the use of budget footnotes are many, but are probably best demonstrated in three distinct areas.

First, of course, is that footnotes appear without the significant vetting ordinary bills receive. Public input and debate from those directly and indirectly impacted is absent or severely limited, meaning the footnotes can easily have unintended consequences.

A second issue may seem more esoteric, but it carries perhaps significant consequences. It is absolutely the prerogative of the legislature to set the state budget, yet there is an equally clear role for the governor to administer that budget. A budget footnote dictating specific actions be taken in a particular way at a definite time using definite funds for an explicit purpose risks legislative overreach and comes perilously close to intrusion on the separation of powers. And because of its specificity, the footnote may prevent the governor from reacting to changing circumstances, as funds dedicated by footnote arguably can't be redirected. This constrains a governor needing to reallocate funds in the event of necessity or emergency.

Lastly, the budget footnote is frequently overlooked. While they're certainly not a secret - they're in black-and-white and there for anyone to see - the way in which they come into being is such that they fly under the radar. Anecdotal evidence indicates that state agencies are sometimes surprised to find that along with their budget come specific orders from the Legislature.

Despite these issues, budget footnotes are certainly not going away and in fact, are worth the effort to watch. They are a particularly good barometer of the legislature's attitude towards particular agencies, the initiatives they feel are important and for the implicit messages they contain. They are clues to what our lawmakers believe to be necessary and are frequently a harbinger of things to come.

The upcoming budget session will be a difficult one for everyone. It also promises to be a revealing look at the core priorities of the legislature and what it views as essential to the long-term benefit of the state. But to find the full story, don't forget to carefully look for the budget footnotes.

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