Summary of Partial Vetoes of 2007 Wisconsin Act 226

March 2008 Special Session Assembly Bill 1

Legislative Fiscal Bureau
May 19, 2008

INTRODUCTION

Under Article V, Section 10 of the Wisconsin Constitution, "Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law … The rejected part of an appropriation bill, together with the governor's objections in writing, shall be returned to the house in which the bill originated."

The Governor signed March 2008 Special Session Assembly Bill 1 into law on May 16, 2008. The Governor exercised his partial veto authority over eight provisions in the budget as passed by the Legislature.

This document summarizes each of the Governor's partial vetoes. It is organized in the order listed in the Governor's May 16 veto message. For each partial veto, the document summarizes the provision as passed by the Legislature, ***explains the Governor's veto in italics,*** and identifies the fiscal effect, if any, of the veto.

Immediately following this introduction are two general fund condition statements. Table 1 reflects the estimated 2007-09 condition of the budget as passed by the Legislature (Enrolled Special Session Assembly Bill 1). The 2007-09 condition statement for Act 226 is shown in Table 2.

As part of their general fund condition statement, the administration reduced general fund compensation reserves by $24,000,000 in 2008-09 to reflect estimated savings associated with tentative 2007-09 collective bargaining agreements with represented state employees and associated modifications to the 2007-09 compensation plan for nonrepresented employees. This reestimate is not an Act 226 provision, nor is it discussed in the Governor's veto message. However, the general fund condition statement submitted by the Governor to reflect the enactment of Act 226 shows a reestimate of compensation reserves of -$24,000,000 in 2008-09.

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TABLE 1

2007-09 General Fund Condition Statement

Enrolled Special Session Assembly Bill 1

	2007-08	2008-09
Revenues		
Opening Balance, July 1	$66,288,000	$77,845,100
Estimated Taxes	12,868,300,000	13,286,500,000
Departmental Revenues		
Tribal Gaming Revenues	96,731,600	46,250,700
Other	515,409,000	460,870,600
Total Available	$13,546,728,600	$13,871,466,400
Appropriations and Reserves		
Gross Appropriations	$13,674,410,400	$14,117,862,500
Compensation Reserves	62,759,600	156,617,900
Less Lapses	-268,286,500	-429,286,400
Net Appropriations	$13,468,883,500	$13,845,194,000
Balances		
Gross Balance	$77,845,100	$26,272,400
Less Required Statutory Balance	-25,000,000	-25,000,000
Net Balance, June 30	$52,845,100	$1,272,400

General Fund Effect on the Projected 2007-09 Deficit (In Millions)

	Item	Net Balance
February 13, 2008, Projection		-$652.28
Administrative Action		
Rollover Short-Term Borrowing	$125.40	-526.88
Enrolled Special Session Assembly Bill 1		
Permanent Endowment Fund to Medical Assistance	209.00	-317.88
School Aid Payment Delay	125.00	-192.88
Additional Lapses	69.00	-123.88
Transfer from Budget Stabilization Fund to General Fund	57.00	-66.88
Reduce Statutory Balance	40.00	-26.88
Transfer REAL ID Reserve to the General Fund	22.00	-4.88
Deductions for Certain Rental and Interest Payments	15.00	10.12
Reduce Medical Assistance Appropriation	10.00	20.12
Child Care	-18.60	1.52
Tobacco Use Control Grants	-0.25	1.27

TABLE 2

2007-09 General Fund Condition Statement

2007 Wisconsin Act 226

	2007-08	2008-09
Revenues		
Opening Balance, July 1	$66,288,000	$80,539,800
Estimated Taxes	12,868,300,000	13,286,500,000
Departmental Revenues		
Tribal Gaming Revenues	96,731,600	46,250,700
Other	643,103,700	514,175,900
Total Available	$13,674,423,300	$13,927,466,400
Appropriations and Reserves		
Gross Appropriations	$13,799,410,400	$14,117,862,500
Compensation Reserves	62,759,600	132,617,900
Less Lapses	-268,286,500	-429,286,400
Net Appropriations	$13,593,883,500	$13,821,194,000
Balances		
Gross Balance	$80,539,800	$106,272,400
Less Required Statutory Balance	-65,000,000	-65,000,000
Net Balance, June 30	$15,539,800	$41,272,400

General Fund Effect on the Projected 2007-09 Deficit
(In Millions)

	Item	Net Balance
February 13, 2008, Projection		-$652.28
Administrative Action		
Rollover Short-Term Borrowing	$125.40	-526.88
2007 Wisconsin Act 226		
Additional Lapses	270.00	-256.88
Permanent Endowment Fund to Medical Assistance	209.00	-47.88
Transfer from Budget Stabilization Fund to General Fund	57.00	9.12
Reestimate Compensation Reserves	24.00	33.12
Deductions for Certain Rental and Interest Payments	15.00	48.12
Reduce Medical Assistance Appropriation	10.00	58.12
Transfer part of REAL ID Reserve to the General Fund	2.00	60.12
Child Care	-18.60	41.52
Tobacco Use Control Grants	-0.25	41.27

Summary of Provisions

Chg. to Enrolled SS AB 1	
GPR	$125,000,000

ITEM 1. GENERAL SCHOOL AIDS PAYMENT DELAY

As passed by the Legislature, Special Session Assembly Bill 1 would have increased the amount of equalization aid paid on a delayed basis by $125 million, from $75 million to $200 million, beginning with payments made in 2008 for the 2007-08 school year. The bill also would have changed the date of the total $200 million delayed payment from the current law fourth Monday in July to the first Monday in July. The bill would have reduced the general school aids appropriation by $125 million in 2007-08 to reflect the delay. Under the bill, the additional $125 million delay would have been taken from the June, 2008, payment.

The bill would have created a mechanism to buy back the $200 million delayed payment into the current fiscal year. The bill would have modified the current law provision regarding the treatment of additional general fund tax revenue realized by the state in a given year to specify that this additional revenue would have been used to reduce the amount of the delayed payment. Under current law, 50% of this additional revenue is transferred to the budget stabilization fund and the remainder is retained by the general fund. This current law transfer would have resumed when the entire $200 million delayed payment had been bought back into the current year.

The Governor's partial veto deletes these provisions.

[Act 226 Vetoed Sections: 1, 3, 4 (as it relates to reductions in school aid), 5, 6, 7, 22, 104, 107 thru 110, 9137(1), 9237(1), and 9437(1)]

ITEM 2. TOBACCO BOND REFINANCING

As passed by the Legislature, Special Session Assembly Bill 1 would authorize the Secretary of the Department of Administration (DOA) to issue up to $1.7 billion in appropriation obligation bonds of the state before July 1, 2009, for the purpose of purchasing any of the tobacco settlement revenues that had been sold by the DOA Secretary under current law. In addition, the bill would have specified that if appropriation obligation bonds are issued for this purpose before July 1, 2009, $309 million would be transferred from the permanent endowment fund to the medical assistance trust fund in 2008-09. The bill specifies that the amount of appropriation obligation bonds issued for this purpose may not exceed $1.7 billion, excluding amounts representing original issue discount, unless a higher amount is required to defease any outstanding indebtedness secured by tobacco settlement revenues and to release those revenues to the state free and clear. Under the bill, the $1.7 billion limit on appropriation obligation bonds would not apply to: (a) any obligations that have been defeased under a cash optimization program; and (b) obligations issued to pay issuance or administrative expenses, to make deposits to reserve funds, to pay accrued interest, to pay the costs of credit enhancement, and to make payments on ancillary agreements.

The Governor's partial veto deletes the provision that specifies that the $1.7 billion limit on appropriation obligation bonds issued to purchase tobacco settlement revenues sold by the DOA Secretary would not apply to certain appropriation obligation bonds that have been defeased. The Governor's partial veto also deletes the provision that specifically allows for appropriation obligation bonds that are issued to purchase tobacco settlement revenues to be used for paying issuance or administrative expenses, making deposits to reserve funds, paying accrued interest, paying the costs of credit enhancement, and making payments on ancillary agreements. Under the partial veto, appropriation obligations could be issued for these purposes under a more general provision that is being partially vetoed back to current law. Because the partial veto deletes the authority of DOA to issue appropriation obligations for these specific purposes, several cross references to the specific authority are also deleted by veto.

The Governor's partial veto would also delete the reference to fiscal year 2008-09 from the requirement that $309 million be transferred from the permanent endowment fund to the medical assistance trust fund. Instead, under the partial veto, the funds could be transferred any time before July 1, 2009. The partial veto also deletes the provision that specifies that the $309 million transfer is to occur only if appropriation obligation bonds are issued before July 1, 2009 to purchase the state's tobacco settlement revenues previously sold by the DOA Secretary.

[Act 226 Vetoed Sections: 14, 15, 17, 23 thru 26, and 9255(2)]

ITEM 3. LAPSES OR TRANSFERS TO THE GENERAL FUND

Chg. to Enrolled SS AB 1	
GPR-REV	$201,000,000

As passed by the Legislature, Special Session Assembly Bill 1 would have modified a provision of Act 20 that requires total lapses and transfers to the general fund of $200 million from executive branch agencies during the 2007-09 biennium to specify that it would not have applied to the Department of Transportation (DOT), except to the SEG appropriation for state highway rehabilitation. The bill would have limited the total amount lapsed from DOT under the Act 20 provision to $50 million. ***The Governor's partial veto deletes these provisions, so that no restrictions relating to DOT would apply to the Act 20 provision.***

As passed by the Legislature, the bill would have required the Secretary of the Department of Administration to lapse or transfer $69 million biennially to the general fund from the unencumbered balances of appropriations of executive branch state agencies, other than sum sufficient appropriations and federal appropriations, during each of the 2007-09 and 2009-11 fiscal biennia, notwithstanding current law governing state appropriations. This $69 million lapse or transfer requirement would be in addition to the similar $200,000,000 biennial lapse or transfer requirement under 2007 Act 20. These moneys would be treated as revenue (GPR-Earned) to the general fund. ***The Governor's partial veto modifies these provisions to delete selected digits, so that the provision as vetoed requires the lapse or transfer of $270,000,000, but without any reference to the 2007-09 or the 2009-11 biennia. The Governor's***

partial veto also specifies that this provision applies notwithstanding any other statute, rather than notwithstanding certain specific statutes governing state appropriations as passed by the Legislature. This broader notwithstanding provision makes clear that current law prohibiting transfers from the transportation fund does not apply to transfers under this item.

As passed by the Legislature, the bill would have specified that no amount could be lapsed or transferred under the proposed $69 million biennial amounts from appropriations to DOT, the Department of Revenue, general and categorical elementary and secondary school aids, or the GPR appropriations for SeniorCare benefits and tobacco use control grants. ***The Governor's partial veto deletes these restrictions.***

[Act 226 Vetoed Sections: 119 and 9201(1)]

ITEM 4. REAL ID IMPLEMENTATION FUNDS

Chg. to Enrolled SS AB 1	
GPR-REV	- $20,000,000
SEG-Lapse	- $21,989,300
SEG-Transfer	- $20,000,000

As passed by the Legislature, Special Session Assembly Bill 1 would have prohibited the Joint Committee on Finance from providing an appropriation supplement to the Department of Transportation for the cost of implementing provisions of the federal Real ID Act, resulting in the lapse of $21,989,300 to the transportation fund (the amount of funds set aside for such a supplement). In addition, the bill would have transferred $22,000,000 from the transportation fund to the general fund. ***The Governor's partial veto deletes the prohibition against providing a supplement for Real ID implementation and would reduce the transfer from the transportation fund to the general fund from $22,000,000 to $2,000,000 by deleting a digit in the enrolled bill.***

[Act 226 Vetoed Sections: 9148(1) and 9248(1)]

ITEM 5. REQUIRED GENERAL FUND BALANCE

Chg. to Enrolled SS AB 1	
Req. Statutory Balance	$40,000,000

As passed by the Legislature, Special Session Assembly Bill 1 would have reduced the required statutory balance from $65 million to $25 million for 2007-09. ***The Governor's partial veto deletes this change, so that the required statutory balance is $65 million for each fiscal year of the 2007-09 biennium.***

[Act 226 Vetoed Sections: 19 and 20]

ITEM 6. AUTHORIZATION FOR CHILD CARE PAYMENTS

As passed by the Legislature, Special Session Assembly Bill 1 would have required a child care administrative agency to authorize payment for licensed child care providers based on authorized units of service for a child to attend and not on the actual units attended by a child. The bill would have defined a child care administrative agency as an agency that has a contract with the Department of Workforce Development (DWD) or the Department of Children and Families (DCF) to administer child care funds or an agency that has a subcontract to administer child care funds with an agency that has a contract with DWD or DCF. However, the bill would have permitted the agency to authorize payment to licensed child care providers based on actual units of service attended by each child, up to the maximum number of authorized hours, if: (a) the schedule of child care to be used was expected to vary widely (with the reimbursement rate increased by 10% to account for absent days); or (b) the agency had documented three separate occasions where the provider significantly overreported the attendance of a child.

The bill also would have required a child care administrative agency to authorize payment for certified child care providers for actual units of service attended by each child, up to the maximum number of authorized units, unless payment was made to the certified child care provider to hold a slot for a child whose parent had a temporary break in employment.

Finally, the bill would have permitted a child care administrative agency to authorize payment to a licensed or certified child care provider to hold a slot for a child if the parent had a temporary break in employment and intended to return to work and continue to use the child care provider upon return to work. The bill would have limited such payments to six weeks if the absence was due to a medical reason and was documented by a physician, or to four weeks for other reasons. The bill would have specified that the temporary absence could not be considered an overpayment if the parent intended to return to work but did not actually return.

The Governor's partial veto deletes this provision. However, in his veto message, the Governor indicates that he is directing DWD to suspend the current attendance-based rule for the remainder of fiscal year 2007-08. As a result, the method of payment to child care providers described above would be in effect for the remainder of fiscal year 2007-08, but DCF would have the authority to implement a rule for attendance-based reimbursement in fiscal year 2008-09 if there is a shortfall in funding in that year. Under the attendance-based reimbursement policy, Wisconsin Shares no longer pays licensed child care providers for absences in child care when attendance is less than half the number of authorized hours per week. DWD had implemented the attendance-based reimbursement policy through an emergency rule from April, 2007, through October, 2007, and again on March 30, 2008. The bill also provided $18.6 million GPR in 2007-08 to address a projected deficit in Wisconsin Shares. This funding was not vetoed.

[Act 226 Vetoed Section: 43]

ITEM 7. PROPERTY TAX EXEMPTION FOR LOW-INCOME HOUSING

As passed by the Legislature, Special Session Assembly Bill 1 would have modified the property tax exemption for educational, religious, and benevolent institutions to extend to low-income housing and would have excluded low-income housing from the "rent use" requirement under current law. Low-income housing would have been defined as any housing projects financed by the Wisconsin Housing and Economic Development Authority, provided that the property was owned by a tax-exempt corporation, organization, or association as described in section 501(c)(3) of the Internal Revenue Code and was in existence on January 1, 2008, or as any residential unit within a low-income housing project occupied by a low-income or very low-income person. These provisions would have been extended to property tax assessments as of January 1, 2009. ***The Governor's partial veto deletes these provisions.***

[Act 226 Vetoed Sections: 49 thru 52, 9141(2), and 9341(2)]

ITEM 8. PAYMENTS TO RELATED ENTITIES -- AUSTRALIAN UNIT TRUSTS

As passed by the Legislature, Special Session Assembly Bill 1 requires, under the state individual income and corporate income and franchise taxes, that the deductions claimed for certain rental and interest payments by businesses to related entities be added back when computing state total income. Specifically, rental expenses and interest expenses deducted or excluded under the federal Internal Revenue Code (IRC) would have to be added back if they are directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related entities.

"Related entity" would mean any person related to a taxpayer as provided under specified sections of the Internal Revenue Code during all or a portion of the taxpayer's taxable year, and any real estate investment trust (REIT), under the IRC, except a qualified REIT, of which more than 50% of any class of the beneficial interests or shares of the real estate investment trust are owned directly, indirectly, or constructively by such taxpayer or any person related to the taxpayer during all or a portion of the taxpayer's tax year. Constructive ownership rules under specified sections of the IRC would apply in determining the ownership of stock, assets, or net profits of any person.

"Qualified real estate investment trust" would mean a REIT except a real estate investment trust the shares or beneficial interest of which are not regularly traded on an established securities market and more than 50% of the voting power or value of any class of the beneficial interests or shares of which are owned or controlled, directly, indirectly, or constructively, by a single entity that is treated as an association taxable as a corporation under the IRC. The following entities would not be considered an association taxable as a corporation:

a. An entity that is exempt from Wisconsin taxation under state law and exempt from federal income tax under the IRC.

b. A qualified REIT.

c. A qualified REIT subsidiary under the IRC which is a subsidiary of a qualified REIT.

d. An Australian unit trust under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia, and is regularly traded on an established securities market; or an entity organized as a trust if a listed Australian property trust owns or controls, directly or indirectly, 75% or more of the voting power or value of the beneficial interests or shares of such trust.

e. A corporation, trust, association, or partnership organized outside the laws of the United States which satisfies all of the following criteria:

(1) At least 75% of the entity's total asset value at the close of its taxable year consists of real estate assets as defined in the IRC, cash and cash equivalents, and U.S. Government securities;

(2) The entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;

(3) The entity distributes at least 85% of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

(4) Not more than 10% of the voting power or value in such entity is held directly, indirectly, or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

(5) The entity is organized in a country which has a treaty with the United States.

The Governor's partial veto deletes the provision that would include an Australian unit trust under the Australian Corporations Act in the definition of an entity that would not be considered an association taxable as a corporation and, as a result, not subject to the interest and rental expense add-back requirements. The Governor indicated that the vetoed provision is redundant and unnecessary because other exclusion provisions include foreign entities with qualities similar to those of an Australian unit trust. In addition, taxpayers can request the Department of Revenue to determine that a transaction not be subject to add-back provisions because the primary motive of the transaction was one or more business purposes and not tax avoidance.

[Act 226 Vetoed Section: 66]