



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #1122

Statutory Procedures for Handling of Fiscal Emergencies (Budget Management)

[LFB Summary of the Governor's Budget Reform Bill: Page 19, #1]

CURRENT LAW

The Secretary of the Department of Administration (DOA) is required, following the enactment of each biennial budget, to review and approve allotment estimates submitted by state agencies for the expenditure of funds appropriated to each state agency. Although this process now generally occurs only once each year when appropriations are loaded into the state accounting system for expenditure authorization and tracking, the statute gives the Secretary the general authority to determine when and for what period of time such estimates shall be prepared and to require agencies to prepare revised or supplemental estimates. The Secretary's actions are limited to approving the allotments or refusing to allot (by placing in unallotted reserve) some or all of certain monies appropriated to an agency. The Secretary is not authorized to actually reduce the statutory appropriation level. Further, the ability of the Secretary to take action under this section in the event of a fiscal emergency (generally, when actual revenues are or are expected to be less than budgeted revenues or actual expenditures are or are expected to be greater than the budgeted level of expenditures) is limited by the extent of the fiscal emergency. A statutory provision created by Chapter 30, Laws of 1981, dealing with revenue shortfalls, specifies that in any fiscal biennium following enactment of the biennial budget act, if the Secretary determines that previously authorized expenditures will exceed revenues in the current or succeeding fiscal year by more than one-half of one percent of estimated GPR appropriations for that fiscal year, the Secretary may not take any action with regard to withholding or modifying allotment estimates. Rather, the Secretary must immediately notify the Governor, the presiding officer of each house of the Legislature and the Joint Committee on Finance of the revenue shortfall. The Governor is then required to submit a bill containing his or her recommendations for correcting the imbalance between projected revenues and authorized expenditures, including a recommendation as to whether monies should be transferred from the

budget stabilization fund to the general fund. Further, if the Legislature is not in a floor period at the time of the Secretary's notification, the Governor is required to call a special session of the Legislature for consideration of the Governor's recommendations.

GOVERNOR

Repeal and recreate the existing statutory provision with regard to fiscal emergencies procedures when there is a revenue shortfall to provide for the following changes in the current provision:

- Provide that the trigger amount for when the fiscal emergency provision applies would be when it is determined that previously authorized GPR expenditures for the current fiscal year (rather than the current or forthcoming fiscal year of a fiscal biennium) will exceed general fund revenues by an amount that is greater than 2% of the estimated GPR appropriations for that year rather than the current 0.5% figure.

- Specify that this determination would no longer be made by the Secretary of Administration but rather would occur as a result of new statutory provisions that: (1) would require the Legislative Fiscal Bureau to prepare by January 31st of each even-numbered year an estimate of GPR receipts and expenditures for the current fiscal biennium; and (2) would authorize the Departments of Administration and Revenue to jointly prepare, at any time they would decide to do so, an estimate of GPR receipts and expenditures for the fiscal biennium. The reports would have to be submitted to the Governor, the presiding officer of each house of the Legislature, and the Joint Committee on Finance.

- Require that, if the Legislative Fiscal Bureau, or the Departments of Administration and Revenue jointly, as a part of the above report provisions, make a determination that the revenue shortfall provision is triggered, then the Governor would be required, no later than 15 days after the determination by the Legislative Fiscal Bureau or the Departments of Administration and Revenue, to declare a fiscal emergency.

- Specify that if the Legislature is in a floorperiod on the date on which the fiscal emergency is declared by the Governor, the Governor shall submit a bill to the Legislature containing his or her recommendations for correcting the imbalance no later than 15 days after declaring the fiscal emergency.

- Provide that if the Legislature is not in a floorperiod on the date on which the Governor declares a fiscal emergency, or if the Legislature has not acted on a bill to deal with a declared fiscal emergency by the end of the last regularly scheduled floorperiod for the Legislature, then the Secretary of DOA would be authorized, without any other approval, to take any of the following actions to correct the imbalance for that fiscal biennium: (1) reduce any sum certain appropriation from any revenue source and reduce any expenditure estimate (for non-sum certain, continuing and sum sufficient appropriations), including appropriations for general equalization aids, charter schools, the Milwaukee parental choice program, the small

municipalities shared revenue program, the expenditure restraint program account, the shared revenue account, the state aid-computers appropriation, and the county mandate relief account, except where any such action would violate the state or federal constitutions; and (2) lapse monies from program revenue appropriations to the general fund or transfer monies from segregated fund appropriations to the general fund, except where any such action would involve any of the following: federal funds; payment of principal and interest on public debt or operating notes; DOT construction projects; operation of a state institution for the care or custody of individuals; gift, grant or bequest funds; monies whose lapse or transfer violate conditions imposed on the use of such funds; or if the action would be in violation of the federal or state constitutions. In addition, any reduction, lapse or transfer action of the Secretary that would result in the provision of less money to more than one governmental unit would require the Secretary to ensure that each involved governmental unit received the same percentage reduction. A new sum sufficient appropriation would be created to allow the Secretary of DOA to accomplish the transfer of monies from individual segregated funds to the general fund under these situations.

DISCUSSION POINTS

1. There are several different aspects of the proposed changes to the fiscal emergencies procedures that the Committee could consider. Each of these is discussed in the following discussion points under separate headings.

Need for a Change

2. The State Budget Office indicates that the reasons for the proposed changes were that the size of the trigger for the declaration of a fiscal emergency needs to be larger given the larger amount of budgets and that the Governor wanted a more expeditious procedure for resolving a fiscal emergency if the Legislature was not in a floor period.

Percentage Amount for Trigger

3. Under current law, the trigger amount for declaration of a fiscal emergency is when it is determined that previously authorized expenditures are expected to exceed expected revenues in a fiscal year by more than 0.5% of estimated GPR appropriations for that fiscal year. Under Act 16 and the current law provision, that meant that the DOA declaration of a fiscal emergency would be required if DOA determined that a projected shortfall in revenues from the budgeted level was \$332.5 million or more for fiscal year 2001-02 or was \$98.8 million or more for fiscal year 2002-03. Had the 2.0% level proposed in the bill been in effect, the maximum revenue shortfall that could have occurred before a fiscal emergency would have had to be declared would have been \$503.7 million for fiscal year 2001-02 or \$274.8 million for fiscal year 2002-03.

4. The State Budget Office indicates that the increase in the trigger amount (the increase in the amount of revenue shortfall that can occur before a fiscal emergency must be declared) is proposed because the administration feels the 0.5% component (which is a percentage

of estimated total GPR expenditures) should be larger so that the executive would then have increased ability under s.16.50(2) [the DOA approval of allotments procedures] to administratively deal with fiscal imbalance situations before having to develop and submit recommendations in the form of a budget adjustment bill to the Legislature. The 0.5% factor was the level set in 1981 when the revenue shortfall provision was first created. The annual level of net GPR appropriations at that time was about \$3.6 billion and the 0.5% factor would have equated to around \$18 million. The 0.5% factor for the 2001-02 net GPR appropriations, which were about \$11.4 billion, would have equated to about \$57 million. As budgets grow, the dollar value of this part of the calculation under any given budget will be proportionately larger automatically. The other variable is what amount of uncommitted revenues are budgeted in any year. What the right percentage amount is in this calculation is as much a policy question as a numerical question.

5. The policy aspect of the issue may be seen as primarily revolving around the Governor's and the Legislature's interests in the power of the purse. In general terms, the Governor proposes an executive budget, the Legislature reviews and adopts a biennial budget, and the Governor then signs (usually with item vetoes) the legislatively-passed budget into law and oversees the administrative execution of the budget. Under s. 16.50(2), the Secretary of Administration approves the allotment of funds to state agencies in accordance with executive and legislative intent as expressed in the budget process. Appropriated funds for state agencies may be withheld (placed in unallotted reserve) by the Secretary as a part of the allotment process if the Secretary determines that with regard to the proposed allotment of appropriated funds: (a) there are not appropriations available to support the proposed allotment; (b) the expenditure levels proposed in the allotment will exhaust the appropriations before the end of the appropriation period; (c) there will not be sufficient revenues available to support the proposed allotment; or (d) the proposed allotment does not comply with the intentions of the Governor, the Joint Committee on Finance and the Legislature as expressed in budget determinations establishing the appropriations. With regard to the test as to whether there are sufficient revenues to support a proposed allotment, s. 16.50(2) provides that the power to withhold a proposed allotment for that purpose is valid only if a revenue shortfall under s. 16.50(7) has not been declared.

6. It could be argued that it would be unduly cumbersome and perhaps fiscally imprudent to prohibit a Governor, who is charged under the constitution with the broad responsibility to transact all necessary business with officers of the government and to take care that the laws of the state be faithfully executed, to not have some administrative flexibility in overseeing the execution of the budget as established by the Governor and the Legislature in the state budget act (biennial budget). At the same time, one of the Legislature's most important responsibilities and powers is that of appropriating state funds to agencies and programs. The question then for the Legislature is how much flexibility to allow the executive in modifying an adopted fiscal plan, as set through the appropriation process by the Legislature, to meet changing fiscal situations versus ensuring the Legislature's involvement in any substantial modification of a budget that it previously approved as part of its power to appropriate state funds.

7. The current provisions under s. 16.50(7) came into being as a result of Chapter 30, Laws of 1981. This law change was precipitated by administrative actions taken in 1980 by the

Secretary of the Department of Administration (under then Governor Dreyfus) under the provisions of s. 16.50(2) to withhold under the allotment approval process 4.4% of most general purpose revenue appropriations in order to address a projected deficit in the 1980-81 fiscal year of approximately \$145 million. Two State Supreme Court cases that followed from these actions determined that reductions to general and categorical school aids and shared revenue payment appropriations could not be made the Secretary under s. 16.50(2) because these appropriations were not "divisions, activities, functions or programs" of the two agencies responsible for overseeing the appropriations. Chapter 30, Laws of 1981, modified the then s. 16.50(2) provision to delete the references to those organizational components of an agency and to instead make reference only to approval of allotments for any appropriation from which an agency proposes to expend money. Further, Chapter 30 provided that the allotment submittal and review process would not apply to any appropriations for general school aids, to supplemental appropriations under the Joint Committee on Finance or to any appropriations under the s. 20.835 (shared revenue and tax relief programs). As originally introduced, the bill that eventually became Chapter 30 also would have repealed the provision that allows the Secretary of DOA to withhold allotments for the expenditure of appropriated funds in the event of a revenue shortfall. However, in the course of legislative action on the bill, a compromise was developed to allow such actions by the Secretary if the shortfall did not exceed the current 0.5% level that triggers the requirement that a Governor must submit a bill to the Legislature to deal with the shortfall. That provision is still the current law.

8. Based on information compiled by the National Conference of State Legislatures, the current practices in the 50 states with regard to budget shortfalls may be broadly categorized as follows: (a) twelve states have no reported restrictions on their governors' ability to unilaterally reduce budgeted expenditures; (b) another nine states allow their governors' to make such reductions only on an across-the-board reduction basis; (c) twenty states place some kinds of limits on their governors' ability to make such reductions, but often these relate to areas that may not be subject to overall reductions, such as the judicial or legislative branches or certain programs such as aids to public schools, or they relate to the maximum percentage reduction that a governor may make, or they relate to the procedures under which a governor has to operate in making expenditure reductions; (d) one state has no specific provision enumerated with regard to such reductions; and (e) the remaining eight states have provisions that require legislative involvement under some condition such as approval of a gubernatorial plan or when a shortfall is in excess of some level.

9. Because the trigger amount depends on both the extent to which budgeted revenues are in excess of budgeted appropriations in a given fiscal year and the level of appropriations in any given fiscal year, there will not be an overall linear relationship between any change in the percentage level set and the resultant trigger amount. This can be illustrated by comparing trigger percentages of 0.5%, 1% and 2% using the original Act 16 budget levels, as shown in the following table.

COMPARISON OF DIFFERENT PERCENTAGE TRIGGERS
Using 2001 Act 16 Budget
(\$ in Millions)

Calculation of Percent of Net Appropriation Amount

| | <u>2001-02</u> | <u>2002-03</u> |
|--------------------------------------|------------------|------------------|
| Total General Fund Revenues | \$11,692.7 | \$11,769.9 |
| Less Budgeted Net Appropriations | <u>-11,417.3</u> | <u>-11,729.7</u> |
| Revenues in Excess of Appropriations | \$275.4 | \$40.2 |

| <u>Percent of Net Appropriations</u> | <u>2001-02</u> | <u>2002-03</u> |
|--------------------------------------|----------------|----------------|
| At 0.5% | \$57.1 | \$58.6 |
| At 1.0% | 114.2 | 117.3 |
| At 2.0% | 228.3 | 234.6 |

Calculation of Total Revenue Shortfall Permitted Before Fiscal Emergency Triggered

| <u>Percent of Net Appropriations</u> | <u>2001-02</u> | | | <u>2002-03</u> | | |
|--------------------------------------|---------------------------------|--|--------------|---------------------------------|--|--------------|
| | <u>Budgeted Excess Revenues</u> | <u>Amount from Percent of Net Appropriations</u> | <u>Total</u> | <u>Budgeted Excess Revenues</u> | <u>Amount from Percent of Net Appropriations</u> | <u>Total</u> |
| At 0.5% | \$275.4 | \$57.1 | \$332.5 | \$40.2 | \$58.6 | \$98.8 |
| At 1.0% | 275.4 | 114.2 | 389.6 | 40.2 | 117.3 | 157.5 |
| At 2.0% | 275.4 | 228.3 | 503.7 | 40.2 | 234.6 | 274.8 |

10. As may be seen from the table, an important variable in the operation of the trigger is also the amount of revenue in excess of appropriations that is available in any year. For example, under the 0.5% trigger, about a \$60 million "cushion" in each year resulted in the calculation before a revenue shortfall notice is triggered, but because the budgeted revenues in excess of net appropriations was some \$235 million higher in the first fiscal year, the actual shortfall in revenues before a fiscal emergency was required to be declared in the first fixed year was more than three times larger than the comparable amount in the second year. If the percentage component of the trigger were to be looked at solely in the terms of the amount that results when the percentage is applied to net appropriations, then the question could be raised whether a "cushion" of around \$50 million, around \$100 million or around \$200 million--or some other amount--is preferable. In terms of dollars amounts, whatever percentage amount is selected will increase each biennium as the budget grows, but this provides one way of comparing the impact of a percentage amount to be used under the revenue shortfall provision. The Committee could frame a decision on this question in

terms of: (a) making no change at this time (keep percentage factor at 0.5%); (b) providing around a \$100 million cushion above budgeted revenues (set percentage factor at 1.0%); or (c) providing around a \$200 million cushion above budgeted revenues (set percentage factor at 2.0%).

Procedures for Declaring a Fiscal Emergency

11. Under current law, the determination of a fiscal emergency starts with the Secretary of Administration being responsible for making a determination that previously authorized expenditures are expected to exceed budgeted revenues by the target amount. Following such a determination, the Secretary must then notify the Governor, the presiding officer of each house of the Legislature and the Joint Committee on Finance of that determination. The Governor is then required to submit a bill to the Legislature containing recommendations for dealing with the shortfall. If the Legislature is not in a floorperiod at the time, the Governor is required to call a special session of the Legislature to deal with the recommendations.

12. Under the Governor's proposal, the question of the determination of a fiscal imbalance would no longer be left to the Secretary's discretion. Rather, the Legislative Fiscal Bureau would be newly charged with a specific requirement to prepare an updated estimate of GPR receipts and expenditures for the current fiscal biennium by January 31st of each even-numbered year. Further, the Departments of Administration and Revenue would be jointly authorized to prepare such an updated estimate of revenues and expenditures at any time during a fiscal biennium. Updated estimates from either the Legislative Fiscal Bureau or the Departments of Administration and Revenue when prepared would have to be provided to the Governor, the Co-chairs of the Joint Committee on Finance and the presiding officer of each house of the Legislature (plus to the Secretary of DOA for the Legislative Fiscal Bureau report). Under the Governor's proposal, if any such report from either the Legislative Fiscal Bureau or the Departments of Administration and Revenue indicate a fiscal imbalance under the trigger mechanism, then the Governor would be obligated to declare a fiscal emergency no later than 15 days after the determination is made.

13. A question may be raised regarding what specific time period the potential shortfall determination would apply under the Governor's proposal. Under current law, the revenue shortfall provision specifies first that it applies only following the enactment of a biennial budget and that any projected revenue shortfall would relate to the current or forthcoming fiscal years of a given fiscal biennium. This seems to logically constrain the budget fix-up nature of the revenue shortfall provision to not begin to apply in a biennium until a biennial budget has been adopted and to not extend beyond the two fiscal years of that biennium. At the same time, a determination of a fiscal emergency could be determined to affect either the first or second year of a fiscal biennium as well as both fiscal years, depending upon when the determination is made in the fiscal biennium. However, under the Governor's proposal, the reference to the revenue shortfall provision being effective only after the enactment of the biennial budget is removed and the reference to fiscal emergency declaration refers to a determination for "that fiscal year". It could be argued that this proposed phraseology is unclear as to whether it is intended that a fiscal imbalance determination can only be made within a fiscal year and also whether a fiscal imbalance could be declared for a fiscal biennium before the biennial budget was law (for example, if a budget is not enacted before

the end of the second year of the then current fiscal biennium). A technical change to the Governor's proposal could be made to maintain the same time period of references under the revenue shortfall provision as are in current law, if the Governor's overall proposal is adopted.

Procedures Following the Declaration of a Fiscal Emergency

14. Under the Governor's proposal, following the declaration of a fiscal emergency, the Governor would have 15 days to submit a bill to the Legislature to deal with the fiscal imbalance, if the Legislature was in a floor period on the day on which the Governor declared the fiscal emergency. Otherwise, the Secretary of the Department of Administration would be empowered to unilaterally reduce appropriations or appropriation estimates and lapse to the general fund monies from appropriations made from program revenues or transfer to the general fund monies from appropriations from segregated fund revenues, subject to certain limitations. Further, if the Legislature was in a floorperiod but did not act on a bill submitted by the Governor to deal with the fiscal imbalance by the end of the last regularly scheduled floorperiod for the Legislature, then the DOA Secretary would be similarly empowered to make comparable appropriation reductions and re-estimates and lapses or transfers to the general fund.

15. Two issues may be noted with regard to this aspect of the Governor's proposal. The first issue is that given the pre-set nature of floorperiod dates (they are usually set at the beginning of each biennial legislative session by a joint resolution of the Legislature), a Governor might be able to time his or her announcement of a fiscal emergency to allow the Secretary's unilateral authority to reduce take effect, depending on the particular floorperiod schedule. While the Legislature could counteract this by scheduling continuous floorperiods, it can be questioned whether that is warranted. According to the state budget office, the concern that is attempting to be addressed by this part of the Governor's proposal is being able to deal with fiscal emergencies on a timely basis. On the other side, the Legislature's concern would be to ensure legislative involvement in how budget reductions are to be made. Arguably, the Governor's proposal weights the balance under the language in the bill heavily in the executive's favor. The second issue is that the question of timeliness issue is not addressed uniformly under the Governor's proposal. For example, if a fiscal emergency occurred early in the fiscal biennium, the Legislature would have until the last floor period of that biennial legislation session to deal with a proposed bill before the Secretary's unilateral powers would take effect. However, if the fiscal emergency happened later in the fiscal biennium, the Legislature might have only days or weeks to act on a proposed bill before the Secretary's unilateral powers to reduce appropriations would become effective or the Legislature might have no opportunity for involvement if the last regular floorperiod had already ended. Further, the last six months of a given fiscal biennium actually fall in the next legislative session.

16. The Committee could consider two alternatives with regard to this aspect of the Governor's proposal. One would be to simply require that regardless of whether the Legislature is in a scheduled floorperiod or not, that the Governor would have to call a special session of the Legislature within 15 days of the declaration of the fiscal emergency to deal with the Governor's proposal. Under this alternative, the Committee could then delete all of the proposal dealing with the Secretary's unilateral powers to reduce appropriations under certain conditions. However, if the

Committee believes that there should be some time limit put on the Legislature's ability to participate in the decisions on budget adjustments with regard to revenue shortfalls, then it could consider adding a provision to specify that if the Legislature has not acted within some time period, such as 90 days after the Governor has submitted a bill to Legislature in special session to deal with the revenue shortfall, then the Secretary's proposed unilateral powers to reduce appropriations and require lapses or transfers to the general fund could become effective.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation.
2. Maintain current law.
3. Make one or more of the following changes to the Governor's proposal:

A. Percentage Amount for Trigger

1. Approve the Governor's recommendation to increase the percentage amount by which appropriations are expected to exceed revenues before a fiscal emergency must be declared to 2.0%.
2. Increase the percentage amount from the current 0.5% to 1.0%.
3. Maintain the current 0.5% amount.

B. Procedures for Declaring a Fiscal Emergency

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation by clarifying that all such estimates with respect to a given fiscal biennium will only be made following the enactment of the biennial budget for a given fiscal biennium and shall apply to either or both years of the fiscal biennium, as is the current law provision.

C. Procedures Following the Declaration of a Fiscal Emergency

1. Approve the Governor's recommendation to provide that following a Governor's declaration of a fiscal emergency, he or she would have 15 days to submit a bill to the Legislature to deal with the fiscal imbalance if the Legislature is in a floorperiod on the date of the declaration or if the Legislature is not in a floorperiod that the Secretary of Administration would be allowed on his or her own volition to reduce any sum certain appropriation or expenditure estimate or lapse to the general fund monies from appropriations made from program revenues or to transfer to the general

fund monies from appropriations made from segregated fund revenues and to provide further that if the Legislature has not acted on any bill submitted under this provision to deal with a fiscal emergency by the end of the Legislature's last regularly scheduled floorperiod, then the Secretary would be similarly empowered to make appropriation reductions, re-estimates, lapses or transfers.

2. Delete the Governor's recommendation with respect to those provisions and provide instead that following any declaration of a fiscal emergency by a Governor, the Governor would have 15 days to call a special session of the Legislature and to submit a bill to the Legislature in that special session to deal with the fiscal imbalance.

3. In addition to alternative 2, provide that if the special session of the Legislature called by the Governor to deal with the fiscal imbalance has not passed a bill to resolve the fiscal imbalance with 90 days of the day on which the Governor submits a bill to a special session of the Legislature, then the Secretary of Administration would be authorized to make the appropriation reductions, re-estimates, lapses or transfers under the procedures as recommended by the Governor.

Prepared by: Terry Rhodes