H

AGENCY: Public Defender (Base Budget Reduction)

Paper #: 246

ISSUE: 5% cut

ALTERNATIVE:

NOT A1 (approve 5% cut)

A2 is reduction between 0% and 5% (see alt A2 in paper).

A3 is deleting the 5% cut, but cutting 5% of SPD supplies and services ($328,900 annually)

A4 is maintaining current law (no cut)

A5a and b must be done in addition to one of the above. They provide more money so SPD can handle more cases (which saves money in the end).

A5a is adding 37.5 positions and A5b is adding 16 positions.

SUMMARY:

BY: Tanya

Representative Albers
Senator Moore
Representative Kaufert
Senator Plache

PUBLIC DEFENDER

Base Budget Reductions

[LFB Paper #246]

Motion:

Move to make the following provisions concerning the State Public Defender (SPD):

a. Delete the Governor's recommendation and restore $3,236,900 GPR annually to the SPD's trial representation appropriation.

b. Require the SPD to lapse $550,000 GPR annually, in total, from its GPR appropriations. Require the SPD to report quarterly to the Joint Committee on Finance on recognized savings. Direct the SPD to request additional funding through the s.13.10 process if a shortfall occurs in any appropriation.

c. Delete $418,000 GPR annually from the SPD's supplies, services and administrative budgets.

d. Provide $243,900 GPR in 2001-02, delete $1,154,600 GPR in 2002-03 and provide 43.3 GPR positions annually (30.0 attorneys, 7.5 legal secretaries, 4.3 investigators and 1.5 client services specialists).

e. Reduce the private bar and investigator reimbursement appropriation by $40,600 GPR in 2001-02 and $357,500 GPR in 2002-03 and raise the felony thresholds for the following crimes to $2,500: (a) criminal damage to property; (b) graffiti; (c) theft; (d) fraud on hotel; (e) receiving stolen property; (f) fraudulent insurance; (g) credit card crimes; (h) retail theft; (i) theft of library materials; (j) unlawful receipt, loan payments; and (k) issuing a worthless check.

Note:

This motion is in addition to the Committee's action to adopt Alternative 5b which created a conflicts office.

[Change to Bill: $4,329,000 GPR and $1,100,000 GPR-Lapse and 43.3 GPR Positions]

MO#_____

BURKE	Y	N	A
DECKER	Y	N	A
2 MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
1 ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 16 NO 0 ABS ____

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June 5, 2001 | Joint Committee on Finance | Paper #246

Base Budget Reduction (Public Defender)

[LFB 2001-03 Budget Summary: Page 527, #2]

CURRENT LAW

Under current law, the following Public Defender appropriations are GPR state operations appropriations: (a) program administration; (b) appellate representation; (c) trial representation; (d) private bar and investigator reimbursement; (e) private bar and investigator payments: administration costs; and (f) transcript and record payments. The adjusted base for all Public Defender GPR state operations appropriations is $64,738,600 GPR annually.

GOVERNOR

Reduce the base budgets for state operations for a number of agencies by 5% annually. In total, the proposed reduction generates general fund savings of $41,355,000 in 2001-02 and $41,069,900 in 2002-03. Thus, the Governor's budget reduces base level appropriations by $8.4 million for the biennium. A total of 44 agencies, including the State Public Defender, would be subjected to a reduction.

Reduce the State Public Defender's (SPD's) largest GPR state operations appropriation, trial representation, by $3,236,900 GPR annually. This amount represents 5% of the agency's total GPR adjusted base for state operations.

DISCUSSION POINTS

1. The cost of providing indigent defense is generally borne by the state. The SPD provides legal representation for eligible indigent defendants who are formally accused of crimes or are defendants in certain specified civil matters. The SPD also represents indigent defendants

seeking certain post-conviction relief. 1995 Act 27 (the 1995-97 biennial budget act) eliminated SPD representation of clients in cases where there is no clear constitutional right to representation. Act 27 eliminated SPD representation in cases involving conditions of confinement, early representation, certain sentence modifications and certain appeals. In addition, representation was limited for paternity and nonpayment of child support cases, probation and parole modifications, and revocations. Representation for parents whose children are alleged to be in need of protection or services (CHIPS) was also eliminated, except for parents who are themselves minors.

2. Under current law, when an accused has a constitutional right to counsel and meets the financial eligibility standards of the SPD, the SPD must provide counsel to the accused. The SPD's caseload, therefore, is non-discretionary. The statutory standards to determine indigency were established in 1987 and have not been updated. As a result, a person with an income level below the current federal poverty guidelines may not meet the financial standards for SPD representation, yet cannot afford to hire a private attorney. In such cases, the court may appoint an attorney, at county expense, to assure that the individual's constitutional right to counsel is satisfied.

3. Increasingly, courts are appointing counsel for individuals who do not qualify for SPD representation, yet the court determines the individuals cannot afford counsel. In 1999, 69 counties voluntarily reported court-appointed counsel costs to the Director of State Courts of $4,078,900 for four types of cases: (a) adult criminal; (b) mental commitment or emergency detention; (c) CHIPS parents; and (d) other (the "other" category is not defined). In 2000, 65 counties reported court-appointed counsel costs of $4,486,300 for the above four case types.

4. Under the bill, the SPD's largest state operations appropriation, trial representation, is reduced by $3,236,900 GPR annually. Although the reduction is initially assigned to the trial representation appropriation, the bill does allow the SPD to submit an alternative plan to the Department of Administration (DOA) allocating the required reduction among its sum certain GPR state operations appropriations. The bill does not change current law which requires the SPD to provide counsel to an accused when the accused has a constitutional right to counsel and meets the SPD financial eligibility standards.

5. Under current law, when the SPD determines that an accused has a right to SPD representation, the case is either assigned to an SPD staff attorney or to a private attorney (the private bar). In 1999-00, 58.5% of new cases were assigned to SPD staff and 41.5% of new cases were assigned to the private bar.

6. It is projected that the SPD caseload (the number of cases assigned to SPD staff and the private bar) for the upcoming biennium will remain constant. As a result, it is not anticipated that the SPD will be able to address the recommended reduction through declining caseloads.

7. Given projections that the SPD caseload is not expected to decline, other options to manage base budget reductions could be considered. One option would be to reduce the SPD's nondiscretionary caseload by lowering the financial eligibility standards. However, these financial standards of poverty are tied to 1987 Aid to Families with Dependent Children income guidelines.

As a result, an individual with an income below the current federal poverty guidelines may already not qualify for SPD representation. If the Committee were to lower the SPD financial eligibility standards further, courts would likely increase the number of counsel hired at county expense to meet the state's constitutional obligation to provide counsel to defendants who cannot afford counsel. While the state retains private bar attorneys at the rate of $40 per hour, counties are required to pay counsel $70 per hour or more under Supreme Court Rule. Wisconsin units of government as a whole could end up paying more for constitutionally-required indigent defense if the state lowered the SPD financial eligibility standards.

8. As part of standard budget adjustments, the Department of Administration (DOA) requires most state agencies to budget a 3% turnover rate for agency positions in each appropriation with 50 or more employees. In 2000-01, DOA required the SPD and 14 other state agencies to generate a 7% turnover rate for agency positions and lapse the additional revenues to the general fund.

9. In meeting the DOA requirement, SPD indicates that it was able to manage the required GPR lapses in 2000-01 by keeping attorney positions vacant, without increasing private bar costs, through a one-time change in private bar billing policy. In prior fiscal years, the SPD has paid private bar attorneys entering into misdemeanor case contracts at the beginning of the contract before the work was done. In 2000-01, the SPD began paying for the contract work at the end of the contract. This change provided one-time savings that allowed the SPD to manage the 2000-01 required GPR lapses.

10. Approximately 90% of the SPD's budget is for salary, fringe benefit and private bar costs. Certain supplies and services costs, such as rent, remain relatively fixed. As a result, cost saving measures would have to cut salary, fringe benefit or private bar costs. Because such a large portion of the agency's budget is devoted to personnel costs, the SPD argues that the 5% reduction could not be realized.

11. On the other hand, a number of other agencies subject to the 5% reduction also have a significant portion of their budgets devoted to salaries and fringe benefits. The fact that approximately 90% of their budget is devoted to compensation is not unique to the SPD.

12. If it is viewed that the SPD's mission would not permit a reduction of the magnitude of that recommended by the Governor, but that some reduction should be applied, some percentage other than 5% could be adopted. Each 1% of the SPD's base budget equals $647,400 annually.

13. If the Committee believes that it would be unwise to implement the reduction amount of SB 55, the Committee could consider reducing the SPD's supplies and services budget in all of its appropriations. If reduced by 5% annually, these reductions would generate $328,900 GPR annually.

14. Another potential approach to managing the recommended reduction is to shift more indigent defense cases to either SPD staff or the private bar, depending on whether SPD staff or the

private bar provides representation more cost effectively. For budgetary purposes, the statutes provide an annual caseload standard for SPD attorneys to meet that has been converted into a weighted point system. Based on an analysis that assigned all SPD costs of providing indigent representation to either SPD staff or the private bar, the estimated cost of the private bar is $813 per weighted point and the estimated cost of SPD staff is $779 per weighted point. As a result, it is anticipated that savings could result if indigent defense cases were shifted from the private bar to SPD staff.

15. The Committee could consider providing an additional $1,690,500 GPR in 2001-02, $1,982,900 GPR in 2002-03 and 37.5 GPR positions annually (25.0 assistant public defenders, 8.0 legal secretaries, 3.5 investigators and 1.0 client services specialist) to the SPD's trial representation appropriation, and delete $728,400 GPR in 2001-02 and $2,913,600 GPR in 2002-03 from the private bar and investigator reimbursement appropriation. For the biennium, this alternative would require an additional $31,400 GPR, but in 2002-03, would save $930,700 GPR (annualized cost savings).

16. The Committee could also consider the creation of a conflicts office in the SPD that would handle cases that the trial division could not handle due to a conflict. Under current rules of ethics governing attorneys, public defenders generally may not represent multiple defendants who have conflicting interests. Such conflicts cases, as well as other indigent defense cases if the number of conflicts cases was insufficient, could be assigned to a newly-created conflicts office.

17. The SPD indicates it would place a conflicts office in Milwaukee where there is the largest caseload and where the most conflicts are generated. In an effort to avoid legal problems, the SPD would place the office under its assigned counsel division, as opposed to its trial division, so that the newly-created conflicts office would have the necessary separation from the trial division.

18. Under current Supreme Court Rule 20:1.10, governing the ethical conduct of attorneys, there is ambiguity as to the permissibility of a conflicts office in the SPD and how it would have to be structured so as to avoid problems with this rule. The rule provides that if an attorney in a firm could not represent a client due to a conflict of interest, the entire firm would also be precluded from representing the client due to the attorney's conflict of interest. The comment to the rule provides that, "lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units." The question unresolved in Wisconsin courts or by the Wisconsin Supreme Court is what would the SPD have to do to qualify the conflicts office as a "separate unit." In 1990, the Wisconsin State Bar's Standing Committee on Professional Ethics responded to an opinion request by the SPD and advised the SPD to petition the Wisconsin Supreme Court for an amendment to the rule to clarify matters on the permissibility of a conflicts office.

19. The SPD believes, however, that such a conflicts office would be permissible so long as it: (a) had its own separate office; (b) included attorneys, support staff and supervisors who were entirely separate from the trial division; and (c) kept all conflicts files separate from trial

division files, with access limited to conflicts office employees.

20. The Committee could consider providing an additional $734,400 GPR in 2001-02, $863,300 GPR in 2002-03 and 16.0 GPR positions annually (10.0 assistant public defenders, 1.0 attorney supervisor, 3.0 legal secretaries, 1.5 investigators and 0.5 client services specialist) to the SPD, and delete $311,800 GPR in 2001-02 and $1,247,000 GPR in 2002-03 from the private bar and investigator reimbursement appropriation. For the biennium, this alternative would require an additional $38,900 GPR, but in 2002-03, would save $383,700 GPR (annualized cost savings). Costs are higher than private bar savings in the first year because it takes, on average, six months for a case assigned to the private bar to be completed and the resulting bill to be paid. In 2001-02, there would be: (a) a period of overlap when the SPD would be paying both higher private bar costs for cases already assigned to the private bar as well as paying new staff salaries and fringe benefits; and (b) one-time costs associated with the creation of new staff positions.

21. During briefings on the SPD's budget, questions were raised regarding collection efforts that are made by the agency or on the agency's behalf. Under administrative rule, an SPD client may elect to prepay, within 30 days of appointment of counsel by the state public defender, an optional prepayment amount based on the type of case as follows: (a) first-degree intentional homicide, $500; (b) other class A or B felony, $100; (c) sexual predator, $100; (d) other felony, $50; (e) commitment, $25; (f) protective placements under Chapter 55, $50; (g) misdemeanor, $50; (h) parole/probation revocation, $50; (i) termination of parental rights, $50; (j) special proceeding, $25; (k) paternity, $50; (l) appellate/plea, $50; and (m) appellate/trial, $100. If a client prepays, the client is not liable for any additional payment for public defender legal counsel for that case. Internal SPD collections are largely based on these upfront payments. SPD's collection efforts (largely based on prepayment) have netted the following amounts: (a) $825,938 in 1997-98; (b) $851,654 in 1998-99; (c) $863,665 in 1999-00; and (d) an estimated $928,100 in 2000-01.

22. If an SPD client does not prepay, the client is liable for a higher amount, which is based on the average cost of the type of case. DOA is responsible for collecting these costs from SPD clients after their cases have been concluded if there has been no payment activity for 120 days. DOA's collection efforts have netted the following amounts: (a) $31,613 collected in 1997-98 on payment obligations of $18,041,686; (b) $38,774 collected in 1998-99 on payment obligations of $17,558,437; (c) $83,536 collected in 1999-00 on payment obligations of $18,168,915; and (d) through mid-April, $67,882 in 2000-01 on payment obligations of $13,254,573.

23. DOA bids and awards contracts for collection of state agency accounts under which the collection agencies typically retain a percentage of monies they are able to collect, generally ranging from 13% to 30%.

24. For SPD collection work, DOA contracts with the State Collections Service (SCS). When SCS first began collecting monies owed to the SPD, it retained 17% of what it collected, but this was raised to 60% in 1997, as SCS was losing money processing SPD accounts. In 1998, DOA renegotiated with SCS so that it now retains 50% of the SPD monies it is able to collect. The

problems SCS has experienced in collecting SPD accounts may be due to the fact that an individual may be below the federal poverty guidelines but still not qualify for SPD representation. Also, a portion of the individuals are in jail or prison.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to reduce the SPD's largest GPR state operations appropriation, trial representation, by $3,236,900 GPR annually.

2. Modify the budget of the SPD by any of the following amounts.

	Amount to be Restored to SB 55	
Reduction %	2001-02	2002-03
No reduction	$3,236,900	$3,236,900
1%	2,589,600	2,589,600
2%	1,942,200	1,942,200
3%	1,294,800	1,294,800
4%	647,400	647,400

3. Delete the Governor's recommendation. In addition, delete $328,900 GPR annually, which represents a reduction of 5% annually of the SPD's supplies and services adjusted base.

Alternative 3	GPR
2001-03 FUNDING (Change to Bill)	$5,816,000

4. Maintain current law.

Alternative 4	GPR
2001-03 FUNDING (Change to Bill)	$6,473,800

5. In addition to any of the above alternatives, do any of the following:

a. Provide $1,690,500 GPR in 2001-02, $1,982,900 GPR in 2002-03 and 37.5 GPR positions annually (25.0 assistant public defenders, 8.0 legal secretaries, 3.5 investigators and 1.0 client services specialist) to allow SPD staff to handle more cases. Delete $728,400 GPR in 2001-02 and $2,913,600 GPR in 2002-03 from the private bar and investigator reimbursement appropriation.

Alternative 5A	GPR
2001-03 FUNDING (Change to Bill)	$31,400
2002-03 POSITIONS (Change to Bill)	37.50

b. Provide $734,400 GPR in 2001-02, $863,300 GPR in 2002-03 and 16.0 GPR positions annually (10.0 assistant public defenders, 1.0 attorney supervisor, 3.0 legal secretaries, 1.5 investigators and 0.5 client services specialist) to create a conflicts office in the SPD. Delete $311,800 GPR in 2001-02 and $1,247,000 GPR in 2002-03 from the private bar and investigator reimbursement appropriation.

Alternative 5B	GPR
2001-03 FUNDING (Change to Bill)	$38,900
2002-03 POSITIONS (Change to Bill)	16.00

MO# 5 b

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
2 KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 16 NO 0 ABS ____

MO# ____

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE ____ NO ____ ABS ____

Budget Management and Compensation Reserves

Bill Agency

(LFB Budget Summary Document: Page 152)

LFB Summary Items for Which Issue Papers Have Been Prepared

Item #	Title
3	Statutory Limit on State GPR Appropriations (Paper #240)
4 (part)	Treatment of Budget Surpluses and Deficits (Paper #241)
4 (part)	Tax Relief Fund Tax Credit (Paper #242)

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June 5, 2001 | Joint Committee on Finance | Paper #240

Statutory Limit on State GPR Appropriations (Budget Management and Compensation Reserves)

[LFB 2001-03 Budget Summary: Page 153, #3]

CURRENT LAW

No provision.

GOVERNOR

Create a statutory limit, first effective for the 2003-05 fiscal biennium, on the percent by which year to year total GPR appropriations can be increased.

DISCUSSION POINTS

1. Under the bill, the statutory limit would specify that for any biennial budget period, the total amount of GPR appropriated (after certain enumerated exclusions) in that biennial period may not exceed the projected percentage increase in state personal income for the next two calendar years. The applicable projected increase in state personal income would have to be determined by Department of Revenue by December 5th of each even-numbered year for the two calendar years for which January 1 of that calendar year immediately precedes respectively the first or second fiscal year of the budget biennium. For example, for the 2003-05 biennial budget, the two calendar years that would be the reference point for projected personal income growth would be January 1, 2003 and January 1, 2004 and thus projected personal income growth for calendar years 2003 and 2004 respectively. The Department of Administration (DOA) would then be required to use the projected respective percentage increases in personal income to determine the allowable increase in GPR appropriations for the forthcoming fiscal biennium and to include in the Executive Budget Book a statement of this determination. DOA would have the authority, in accord with the statute,

to determine the prior year total GPR appropriated level to which the limit is to be applied.

2. Under the bill, the following GPR appropriations would be excluded from the total GPR appropriations otherwise subject to the expenditure limitation:

- Any appropriation passed by at least a two-thirds vote of each house of the Legislature

- Principal and interest payments on public debt

- Principal and interest payments on operating notes

- Payments to honor statutory moral obligation pledges

- Payments to the federal government from bond revenues to avoid designation of state bonds as arbitrage bonds

- Payments for legal expenses and the costs of judgments, orders and settlements of actions and appeals incurred by the state

- Payments for tax relief under s. 20.835(2) of the statutes

- Payments to execute a transfer from the general fund to the budget stabilization fund

- Payments to execute a transfer from the general fund to the tax relief fund (also created under the bill)

3. The most recent survey of states concerning state expenditure limits done by the National Conference of State Legislatures identified 26 states with some type of limit (either statutory or constitutional) on amount by which expenditures in those states could increase over the prior year. Ten of the 26 states had a limit that was established statutorily and the remaining 16 had a limit that was constitutionally established.

4. In general, questions relating to placing limits on state appropriations, fall into three categories: (a) what appropriations or categories of appropriations, if any, are excluded from the limit? (b) what is the allowable increase amount (typically expressed as a percentage increase over some base level) based on? and (c) how effective is the limit, that is, how easy is it for the Legislature to ignore or override the established limit? One way of reviewing the Governor's proposed limit on state appropriations is to examine the provisions in the bill in terms of these three general categories.

5. Exclusions from limit. Under the bill, the statutory limit would apply only to GPR appropriations; appropriations from program revenues, segregated funds or federal funds would not be subject to the limit. Further, certain categories of GPR appropriations would also be excluded from the limit. The three most significant categories in terms of current dollar impact are those relating to exclusions of: (a) principal and interest payments on public debt; (b) principal and

interest payments on operating notes; and (c) payments for tax relief under s. 20.835 (2) of the statutes. As a point of reference, these three categories of appropriations in the bill total $548.6 million in 2002-03 and represent about 4.6% of total GPR appropriations plus compensation reserves under the bill for that fiscal year. The other excluded categories (payments to honor statutory moral obligation pledges, payments to the federal government from bond revenues to avoid designation of state bonds as arbitrage bonds, payments for legal expenses and the costs of judgments, orders and settlements of actions and appeals incurred by the state, and payments to execute a transfer from the general fund to the budget stabilization fund or the proposed tax relief fund) could potentially be significant in dollar amounts under certain situations but are not likely to be a significant exclusion in terms of year-to-year budgeted levels. Further, any specific appropriation that was passed by at least a two-thirds affirmative vote of the Legislature would be excluded from the limit. Because the limit provision is statutory, any session of the Legislature could amend it to include or exclude additional individual GPR appropriations or categories of appropriations.

6. Basis for calculation of the permitted increase. The survey of the states done by NCSL indicated a variety of ways in such limits have been designed, often with some unique adaptations in different states. In general terms, however, the 26 states with limits may be categorized, with respect to what the permitted increase is based upon, into the groupings shown in Table 1.

TABLE 1

Summary Categorization of State Spending Limits Increase Basis

Increase Basis Category	Number of States
Percentage Increase in State Personal Income	11
Percentage Increase in State Personal Income and State Population	1
Fixed Percent of Total State Personal Income	4
Fixed Percent of Total Available Revenues	5
Percentage Increase in CPI and State Population	4
Percentage Increase in CPI	1
TOTAL	26

7. The groupings in the above table may be further summarized by stating that of the 26 states identified in the survey, 16 states (62%) based their limits on a factor relating to state personal income, another five states (19%) based their limits on a factor relating to estimated available revenues and the remaining five states (19%) based their limits on a factor relating to the percentage increase in the CPI or the CPI plus state population growth.

8. For growth in state personal income, a number of states look backwards by

measuring the actual growth in state personal income over the last two to five years. For those that use percentage increase in state population and/or the percentage increase in the CPI, again the increase is typically calculated by measuring that growth over a past number of years. Under the bill, the applicable limit would be forward-looking in that the increase would be calculated based on an estimate to be prepared by the Department of Revenue on the projected growth in state personal income for the two calendar years corresponding to the legislative biennium in which the biennial budget is considered. For example, under the bill, this limit would be first effective for the 2003-05 biennial budget. Thus DOR would be required to provide by December 5th of calendar year 2002 its estimate of growth in personal income for calendar years 2003 and 2004. Those projected percentage increases would then determine the allowable annual percentage increase in state appropriations subject to limit in each year. In terms of having a limit that is tied to some kind of ability to pay type approach, relating the limit to estimated revenue growth in the future budget biennium could be seen as preferable to looking at past years' growth. An argument against using such a measure is that it relies on projections of growth that may not happen.

9. Effectiveness of the limit. In general, limits such as this can be established in one of two ways: (a) as a statutory limit; or (b) as a limit established under the state constitution. Of the 26 states that have some kind of limit, a majority (16 states) established the limit in their state constitutions. Under the bill, the limit would be established statutorily. With regard to regulating the Legislature, a statutory provision obviously has legislative intent value. Further, failure to follow the statutory requirement may subject the Legislature to public criticism. However, if the Legislature wishes to not have a given biennial budget subject to the limit it could exempt that budget from the limit by including a provision that the budget is deemed to be valid notwithstanding that it does not comply with the statutory limit or by including a repeal of the statutory limit provision in that budget bill. Moreover, if a given Legislature were to simply ignore the statutory limit on permissible increases in appropriation levels, it is reasonable to assume that the State Supreme Court would likely not hold that budget to have been be enacted illegally. The State Supreme Court has held on several occasions that the remedy for noncompliance with this type of procedural provision lies exclusively within the legislative branch of government. Others would argue, however, that such a statutory limit would provide a considerable pressure for the Governor and Legislature to comply with the statutory provisions. They would note, for example, that the Governor and Legislature follow the statutory requirement that each biennial budget have a percentage amount of total GPR appropriations set aside as a reserve (required statutory balance).

10. In considering any proposed limit on increases in appropriations, the first question that usually arises is what impact such a limit would have had if it been in effect for past budgets or if it were to be made effective for the applicable budget under consideration. Table 2 provides such a comparison for the limit as proposed under the bill using the 2001-03 the budget as introduced by the Governor and for the final applicable budgeted levels for the six previous biennia. For the 2001-03 budget, the applicable projections of personal income growth (for calendar years 2002 and 2003) were used. For prior biennia, the actual personal income percentage increases were used.

TABLE 2

Comparison of GPR Budgeted Amounts to Estimated Bill Limits
Limit Calculated Separately for Each Biennium
($ In Millions)

Biennium	Budgeted Amount	Limit Under Bill	Limit Less Budgeted Amount
1989-91	$11,546.8	$11,548.9	$2.1
1991-93	12,912.3	12,986.3	74.0
1993-95	14,519.1	14,284.8	-234.3
1995-97	16,503.0	16,212.5	-290.5
1997-99	18,861.3	19,031.5	170.2
1999-01	20,952.6	20,599.4	-353.2
2001-03	22,504.0*	22,887.3	383.3

*Represents applicable SB 55/AB 144 levels.

11. As can been seen from Table 2, under the Governor's budget, the amount of the GPR budget that would be subject to the limit (about 95% of the total GPR budget) totals $383.3 million less than the proposed limit, if the limit were made applicable to the budget as recommended by the Governor. Three of the past final budgets, including the budget for the 1999-01 biennium, would have been in excess of the estimated applicable limit amounts for those fiscal biennia and three of the past final budgets would have been under the applicable limit amounts.

12. Since the Assembly has recently passed an appropriation limit bill, another question is how the provisions of that bill, as passed by the Assembly, compare with the appropriation limit provisions of the bill. The provisions of Assembly Substitute Amendment 1 to 2001 Assembly Bill 1, as amended by Assembly Amendments 2 and 3 [referred to as ASA 1 in the following points], are the same as the provisions contained in the bill, with the following exceptions:

- Under ASA 1, the limit would apply to the current budget rather than first being effective for the 2003-05 budget as proposed under the bill.

- ASA 1 would have the Legislative Fiscal Bureau make the determination, using the estimates of state personal income growth projected by the Department of Revenue, of the amount appropriated from general purpose revenue for any fiscal biennium to which the appropriation limit applies. Under the bill, the Department of Administration would make this determination.

- Under the bill, the estimates of growth in state personal income would have to be prepared by December 5th of each even-numbered year. Under ASA 1, that date would instead be by November 20th of each even-numbered year. Under the bill, the determination of the GPR amount appropriated would have to be completed no later than December 31st of each even-

numbered year. Under ASA 1, that date would be changed to December 1st of each even-numbered year.

- As a separate bill, ASA 1 also contains a session law provisions to require that: (a) the Department of Revenue make its projections of personal income growth for calendar years 2002 and 2003, by the 15th day of the second month after the effective date of the bill; and (b) that the Legislative Fiscal Bureau make its determinations of the amount of GPR appropriated to which the appropriation limit would apply for the 2001-03 budget by the 15th day of the second month after the effective date of the bill. The bill contains no such provisions since the proposed appropriation limit would not be effective under the 2003-05 budget.

13. When proposals for appropriation limits have been discussed, an issue that has frequently been debated is what is the most appropriate measure to be used for calculating the allowable amount of increase? The use of personal income growth is probably most often advanced on the argument that it relates to a type of "ability to pay approach." Another factor that is sometimes suggested for use is the increase in the consumer price index (CPI) over some period of time. Any number of variations of these factors or others could be proposed. However, for the purposes of providing an example of how different factors might impact on the applicable budget base as proposed under both the bill and ASA 1 to 2001 AB 1, the comparison in Table 3 was prepared.

14. Table 3 compares, for the budget as recommended by the Governor and the final budgeted amounts for the 1999-01 and 1997-99 biennia, the limits that would result based on: (a) the projected percentage increase in state personal income growth factor that is proposed in both the bill and ASA 1; (b) the use of a factor based on that same projected percentage growth in state personal income less one percentage point; and (c) the use of a factor based on a percentage increase equal to 85% of the annualized increase in the CPI-U for the four calendar years immediately preceding the fiscal biennium to which the limit is to be applied.

TABLE 3

Comparison of GPR Budgeted Amount to Various Limit Amounts
Limits Calculated Separately for Each Biennium
($ in Millions)

Fiscal Biennium	Budgeted Amount	SB55/AB1 Factor	Limit Less Budget	Pers. Income Growth -1% Factor	Limit Less Budget	85% CPI Factor	Limit Less Budget
1997-99	$18,861.3	$19,031.5	$170.2	$18,760.2	-$101.1	$18,077.2	-$784.1
1999-01	20,952.6	20,599.4	-353.2	20,304.0	-648.6	19,701.7	-1,250.9
2001-03	22,504.0	22,887.3	383.3	22,557.1	53.1	22,060.8	-443.2

15. In considering this issue, the first question the Committee could consider is whether or not it wishes to establish a statutory spending limit of any kind. The argument could be made

that the determination of the appropriate level of taxes to be raised and the level of spending to be authorized in any fiscal biennium is something that needs to be assessed each biennium as an integral part of the biennial budget process and that this is a primary fiscal responsibility assigned to the Governor and members of the Legislature elected to make decisions for that fiscal biennium. Further, it can be argued that one session of the Legislature cannot bind a future session of the Legislature. If the Committee does not believe any type of limit provision should be created, then it could maintain current law.

16. The Committee could also take action based on a view that this issue is already under consideration by the Legislature as a separate bill (2001 Assembly Bill 1) and that that bill has already passed the Assembly. The Committee could remove these provisions from the bill on the basis that this issue will be addressed by the Legislature through the separate legislation route.

17. Alternatively, if the Committee does wish to have the creation of such a limit included in the budget bill, the following are several options that the Committee could consider. One would be to approve the Governor's recommendation. A second one would be to approve the Governor's recommendation with the modification that the proposal in the bill be changed by substituting the determination procedures specified in 2001 AB 1, as passed by the Assembly, except retaining the provision that the appropriation limit provisions would first apply to the 2003-05 budget and including the exception from the limit of any payments from the proposed tax relief fund. A third alternative would be to modify the Governor's recommendation to include the alternative determination procedures proposed in AB 1 as passed by the Assembly (again except for the immediate applicability provision) and in addition substitute the use of either: (a) a percentage increase factor based on growth in state personal income less one percentage point for the same time periods as proposed under the bill; or (b) a percentage increase factor based 85% of the increase in the consumer price index (CPI-U) for the prior four calendar years immediately preceding the fiscal biennium to which the limit is to be applied.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation.

2. Modify the Governor's recommendation by substituting the determination procedures for computing allowable growth under spending limit as proposed in 2001 Assembly Bill 1 (as passed by the Assembly) for those corresponding provisions in the bill but retain the bill provisions that would make this limit first effective for the 2003-05 biennial budget.

3. In addition to Alternative 2, further modify the Governor's recommendation to provide that the calculation of the permitted increase percentage be instead based on the future year's projected annual percentage increase in state personal income less one percentage point.

4. In addition to Alternative 2, further modify the Governor's recommendation to provide that the calculation of the permitted increase percentage be instead based on 85% of the increase in urban consumer price index (CPI-U) for the four calendar years immediately preceding

the fiscal biennium to which the limit is to be applied. *[Note: Alternatives 3 and 4 cannot both be adopted.]*

5. Remove the provisions from this bill on the basis that a separate bill dealing with this issue is already under consideration.

6. Maintain current law. *[Note: Either Alternative 5 or 6 will result in the same change to the bill itself.]*

Prepared by: Terry Rhodes

MO# Alt. 6

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 6 NO 8 ABS ____

MO# ____

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE ____ NO ____ ABS ____

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June 5, 2001 | Joint Committee on Finance | Paper #241

Treatment of Budget Surpluses and Deficits (Budget Management and Compensation Reserves)

[LFB 2001-03 Budget Summary: Page 154, # 4 (part)]

CURRENT LAW

There is a budget stabilization fund which has a current estimated balance of approximately $36. Aside from donations to the fund, revenues to the fund come from any direct appropriation by the Legislature of monies into the fund. Expenditures of monies from the fund also occur only as a result of direct appropriation from the fund. The provisions establishing the fund specify that monies in the fund are reserved to provide for state revenue stability during periods of below-normal economic activity when actual state general fund revenues are lower than the level of revenues that were estimated to be received when the budget was enacted.

GOVERNOR

Establish an automatic procedure for the transfer of certain revenue amounts to the budget stabilization fund. Require that the Secretary of DOA annually calculate the difference between the amount of taxes estimated in the biennial budget act for a given fiscal year and the amount of taxes actually collected. Provide that if the amount of taxes actually collected exceeded the amounts estimated, the Secretary shall transfer (subject to certain conditions) 50% of the additional revenues to the budget stabilization fund and (subject to certain conditions) 50% to a new tax relief fund that would be created under the bill. Repeal the current limitation that transfers from the budget stabilization fund be made only when there is a decline in state revenues from the levels projected in the adopted budget. Instead, modify the current law provision which requires that, in the event of a revenue shortfall after the enactment of budget that is greater than 0.5% of gross GPR appropriations the Governor submit recommendations to the Legislature for dealing with the shortfall, to include the requirement that such recommendations shall include a recommendation as to whether monies should be transferred

from the budget stabilization fund to the general fund. [Note: Provisions regarding the expenditure of monies from the proposed new tax relief fund are summarized and reviewed in a separate issue paper entitled "Tax Relief Fund Tax Credit" (Issue Paper #242).]

DISCUSSION POINTS

1. The budget stabilization fund was created by 1985 Wisconsin Act 120 (the 1986 budget adjustment bill). The creation of the fund occurred after the state (and much of the nation) had endured a difficult economic downturn during the early 1980's that necessitated budget reductions in a number of this state's programs and agencies. This was the case in many states at the time and a number of these states created "rainy day" or budget stabilization funds for the purpose of setting aside funds for a time period when state revenues might grow much more slowly than earlier estimated or actually decrease from prior levels. In addition to creating the budget stabilization fund, Act 120 also required that the Secretary of Administration recommend an amount of GPR monies that should be transferred into the fund in the succeeding (1987-89) budget. However, no such recommendation was ever provided.

2. Since the creation of the fund by Act 120, the fund and funding structure have remained in the statutes but no appropriation of monies into the fund has ever been made. Until 1998, the balance in the fund remained at zero. In that year, Representative Doris Hanson and Mr. Nathan Henry donated $10 and $2 respectively to the fund. Then, in April of this year, an additional $21.50 was donated to the fund by co-workers of departing State Budget Director Rick Chandler. Today, with estimated interest, the balance in the fund is projected to be about $36.

3. The most recent comprehensive survey data available from the National Conference of State Legislatures (NCSL) indicates that some 44 states have established a general "rainy day" or budget stabilization fund of some kind. Three of those states have more than one such fund. While the mechanisms governing how revenues to the funds are provided, the amount of fund balance permitted, and the specific procedure for transfer of monies from the funds vary considerably among the states, the provisions in the states are much more similar when it comes to the question of conditions under which transfer of monies from the budget stabilization fund to the general fund is permitted. Generally, if there are conditions established on the withdrawal of monies from these funds, they focus on the occurrence of revenue downturns or the development of projected deficit conditions in the states' general funds.

4. Arguably, since Wisconsin has had a budget stabilization fund for some 15 years, a decision to eliminate that fund is not necessarily at issue. At the same time, however, proponents of having such a fund might argue that if there is not a meaningful mechanism to get revenues into that fund so that monies are there when fiscal exigencies develop, perhaps the fund should be repealed. At an overall level, options for the Committee, in addition to approving the Governor's recommendation, would be to delete the provisions relating to a tax relief fund, to not approve the Governor's recommendations by maintaining current law, and to repeal the existing budget stabilization fund.

5. The Committee could delete the proposed changes to the budget stabilization fund and/or and the proposed creation of a tax relief fund. Instead, the Committee could add a provision to current law to require that a Governor's biennial budget recommendations include a statement with regard to the Governor's recommendation for appropriating to the budget stabilization fund any of the unreserved, undesignated general fund balance as of June 30 of the odd-numbered year preceding that biennial budget.

6. In reviewing this overall issue, if the Committee believes that Wisconsin should continue to have such a fund, then consideration of the details of the Governor's proposal could be focused on three areas: (a) should some mechanism be established by which monies are automatically transferred to the fund, such as under the Governor's recommendation, or should the current mechanism be retained as it is, where the Governor and the Legislature must act to place monies in the fund? (b) should there be a maximum on the amount that can be accumulated in such a fund and if so, how should that amount be established? and (c) what provisions, if any, should exist with respect to when monies can be withdrawn from the fund?

Automatic Appropriation of Revenues to the Budget Stabilization Fund

7. *Governor's Provision.* Under current law, funds are transferred to the budget stabilization fund only when the Governor and the Legislature agree to make an appropriation from the general fund into the budget stabilization fund. Under the bill, there would be an automatic transfer each year via a sum sufficient appropriation, if certain conditions obtain. The bill provides that the Secretary of Administration shall annually transfer to the budget stabilization fund 50% of the amount of difference, if any, between the total taxes actually collected in a given fiscal year and the amount of taxes that were estimated to be collected under the biennial budget act. However, this transfer would not occur if the balance in the fund on June 30th of that fiscal year equaled at least 5% of estimated general fund expenditures for that fiscal year. Further, the amount of any transfer that would otherwise occur would have to be reduced by the amount by which such transfer would result in the ending balance for that year being lower than the required statutory balance for that year. Finally, the bill provides that the remainder of any taxes actually collected in a given fiscal year that are in excess of the amount of taxes that were estimated to be collected for that fiscal year under the under the biennial budget act and not transferred to the budget stabilization fund would be transferred to a new tax relief fund that would also be created under the bill.

8. Just as with other statutory provisions, a statutory requirement for transfer of monies to the budget stabilization fund could be subsequently modified or repealed by another legislative act. For example, a subsequent bill could contain a provision to circumvent or supercede this statutory requirement for the automatic transfer of monies to the budget stabilization fund.

9. If the Committee believes that overall the Governor's proposal represents a desirable change towards ensuring that revenues will flow to the fund on a somewhat regular basis, then it could approve the Governor's recommendations.

10. However, the Committee could consider the following technical modifications to the

provision. The first concern is that, under the bill, the calculation of how much actual tax collections exceeded, if any, estimated tax collections establishes as the reference point for what estimated taxes were the biennial budget act. There are at least three situations under which that will not reflect the final legislative estimate of tax collections for a given fiscal year. The first situation involves legislative sessions in which a budget adjustment or other type of fiscal modification bill is enacted as an update or general modification to the biennial budget bill. Typically, during consideration of such a bill, the Legislature will be apprised of any updates in projected revenues to be received in the fiscal biennium and adopt those revised revenue estimates in acting on a budget adjustment bill. The second situation is that, following the enactment of the biennial budget bill, the Legislature may enact separate tax legislation which affects the previously estimated level of tax collections for the budget biennium. The third situation is that under current law, following the conclusion the last regular floor period of the Legislature, the Department of Administration must submit to the Joint Committee of Finance for its approval a final compilation of the authorized appropriations for the fiscal biennium including the general fund condition statement, which contains the final estimate of taxes to be collected in each fiscal year based on update estimates that are prepared in January of the even-numbered calendar year. Unless the expectation is that no fiscal changes are to be made to the budget once the biennial budget is passed, it could be argued that the final budgeted level of taxes would be the better reference point for the Secretary of Administration to use in calculating what revenues, if any, are available to transfer to the budget stabilization fund since tax and spending decisions in a biennial legislative session do not end simply with enactment of the biennial budget.

11. A second concern is that under the bill there is no date specified for when the Secretary has to make any transfer, although it could be presumed that the transfer would have to occur after the close of the fiscal year so that amount of actual tax collections for the fiscal year would be known. The common information point for actual tax collections, actual expenditures and the ending general fund balance is the state annual fiscal report. This report has to be issued by the October 15th following the June 30th close of a given fiscal year. Since the transfer cannot take place before the final tax collections for the fiscal year are known, the Committee could add a provision to specify that the annual transfer, if any, by the Secretary of Administration would have to occur no later than the October 15th following the close of a fiscal year, but specify that the transaction would be charged to that fiscal year for which the tax collections are compared.

12. A third concern is that under the bill, any proposed transfer amount that might be calculated by the Secretary must be reduced by any amount by which such transfer would result in the actual ending general fund balance for the fiscal year being less than the required statutory reserve. The proposed language refers to the minimum general fund balance required under the statute. It is unclear what the term "minimum" balance means. The statutory reference is to a citation headed "required general fund balance." And that is the same balance figure that is indicated in the general fund condition as the "required statutory balance." To ensure clarity, the Committee could substitute the statutory title "required general fund balance" for the term "minimum general fund balance."

13. The Committee could also consider the following substantive modifications to the

Governor's proposed transfer mechanism.

14. From information in the NCSL survey, of the 49 funding mechanisms identified (some states had more than one fund or more than one funding mechanism) there were 22 reported uses of the required transfer of some or all of year-end general fund balances to the budget stabilization funds. The second most predominant method was by specific appropriation (10 uses) and the third most frequently used method (eight instances) involved transferring amounts based on actual revenues received in excess of budgeted revenue levels or above certain levels of state personal income growth. There were four uses of some type of automatic appropriation based on a formula calculation (for example, percentage of total general fund revenues collected) and five miscellaneous types of uses.

15. The Committee could provide that, instead of the Governor's language, there be a requirement that the Governor and the Legislature appropriate a specific amount per year to the budget stabilization fund, beginning in 2003-04. The requirement could be established at $59 million or $118 million per year which would represent about 0.5% or 1%, respectively, of gross GPR appropriations for 2002-03 under the bill.

16. Alternatively, a requirement could be established that, beginning in fiscal year 2001-02, either 25%, 50% or 100% of the unrestricted, unreserved general fund balance at the end of a fiscal biennium be transferred to the budget stabilization fund. The use of surpluses or unrestricted general fund balances would differ from the Governor's proposal in that increases or decreases in revenues and increases or decreases in expenditures from the budgeted (planned) levels would all be taken into account when considering amounts available for transfer and only the net available monies at the end of a fiscal biennium would be transferred. Under the Governor's proposal, any expenditures that are below the "estimated expenditures" would not be subject to transfer and conversely, if actual expenditures were above estimated expenditures, under the bill any extra revenues would transfer to the budget stabilization fund even if expenditures were greater than expected, so long as the required statutory balance would not be reduced as a result of the transfer. The unrestricted, unreserved balance for the end of each of the last five fiscal biennia.

TABLE 2

Unreserved, Undesignated Ending General Fund Balances
($ in Millions)

Fiscal Year	Balance
1998-99	701.3
1996-97	327.1
1994-95	400.9
1992-93	153.5
1990-91	113.6

Automatic Appropriation of Revenues to the Tax Relief Fund

17. Under current law, there is no tax relief fund. Under the bill, a tax relief fund is created to accumulate monies to be used to provide a non-refundable individual income tax credit to state taxpayers when the balance in the fund exceeds $25 million. The issue of how this tax credit provision would operate is discussed in a separate issue paper (Issue Paper #242). The discussion here is limited to how revenues to the tax relief fund would be generated and the interplay of that revenue provision with the provision of revenues to the budget stabilization fund.

18. *Governor's Provision.* Under the bill, 50% of any increase in actual tax collections in a given fiscal year above the level of taxes that were estimated in the biennial budget act to be collected for that year would be transferred to the budget stabilization fund, subject to certain conditions. Of the total difference between increased actual tax collections over estimated taxes, any amounts available that were not transferred to the budget stabilization fund would then be transferred to the new tax relief fund. For example, if there were available revenues of $100 million to transfer under this provision and exactly $50 million were transferred to the budget stabilization, then the remaining $50 million would be transferred to the tax relief fund. However, if the budget stabilization fund was at its capped maximum fund balance (discussed below), then the entire $100 million in this example would be transferred to the tax relief fund. Similarly, because of the prohibition on any transfer of revenues to the budget stabilization fund that would result in a reduction in the required statutory reserve, if only $40 million could be transferred to the budget stabilization fund, then the remaining $60 million would be transferred to the tax relief fund.

19. An overall question for the Committee to consider with regard to the tax relief fund is whether it wants to create such a fund. If it does, the Committee could approve the Governor's recommendations. If it does not, the Committee could simply delete those provisions from the bill and consider the remaining issues related to the budget stabilization fund. If the Committee takes that action, it would not need to consider Issue Paper #242.

20. Alternatively, the Committee may believe that the creation of such a fund has merit but that full funding of the budget stabilization fund should have first priority. Under that approach, the Committee could modify the provisions in the bill to provide that no monies would be transferred to tax relief fund until such time as the maximum balance (under the Governor's recommendation) in the fund had been reached and further to specify that whenever the maximum balance in the budget stabilization fund might be subsequently reduced, then restoring the balance in the budget stabilization fund would take priority over any transfers to the tax relief fund.

21. If the Committee were to adopt a fixed dollar or percent of ending surplus transfer provision in lieu of the Governor's recommendation, as reviewed under discussion points #15 and #16 above, it would be possible to consider a similar funding appropriation for the tax relief fund also. However, since the intent here is presumably to return to taxpayers in effect some of any surplus, the direct appropriations method does not seem a logical approach for this item. The

Committee could, however, substitute the transfer of half of any one of the surplus transfers outlined in discussion point #16 as the amount to be transferred to the tax relief fund. For example, if the Committee decided that a total of 50% of any surplus at the end of a biennium should be transferred, it could provide that half of that surplus to be transferred (25% of the total available surplus) be transferred to the budget stabilization fund and half (25% of the total available surplus) be transferred to the tax relief fund.

22. If the Committee wishes to retain the general framework of the provisions in the bill relating to funding of the budget stabilization and tax relief funds, it could consider one technical modification. Under the bill, any transfer to the budget stabilization that would be required under the transfer calculations would have to be reduced by the amount that such transfer would cause the ending general fund balance to be less than the required statutory balance. However, under the bill, no such limitation applies to any calculated transfer to the tax relief fund. The Committee could add such a limitation to that transfer provision.

Maximum Balance of the Budget Stabilization Fund

23. *Governor's Provision.* Under current law, there is no maximum on the amount of monies that may be accumulated in the budget stabilization fund. Under the bill, if the balance of the budget stabilization fund on June 30 of any fiscal year totals at least 5% of the estimated general fund expenditures for that year, no transfer of monies to the budget stabilization fund would occur and any monies available for transfer would instead all be transferred to the new tax relief fund. There is no item called "estimated expenditures" under the general fund condition statement. Assuming however that the intended reference is to "total expenditures" in the condition statement, then under the bill, that 5% limit would be about $576 million for 2001-02 and $593 million for 2002-03.

24. From information in the NCSL survey, there were 12 cases of funds with no established cap amount and 36 cases of funds with an established cap amount (some states have more than one fund). Of the 36 funds with a reported cap on the maximum permitted balance in the fund, the vast majority (24 funds) had a cap based on a percentage of state revenues and the percentage level ranged from a low of 2% to a high of 10% (although one state, Michigan, has a reported 25% cap on its Countercyclical Budget and Economic Stabilization Fund). Another nine funds had caps that were based on a percentage of general fund appropriations (one fund uses expenditures) and these percentage levels ranged from a low of 2% to a high of 8%. The remaining three funds had caps that were some fixed dollar amount.

25. Setting a cap on the budget stabilization fund in the manner proposed by the Governor would allow the cap to grow as the size of the state general fund budget grows as opposed to being a set dollar amount. In one sense, setting a cap on such a fund can be seen as establishing an expectation of what amount of reserve is seen as adequate for the purposes for which the fund is designed. If the budget stabilization fund is seen primarily in the context of a contingency reserve for potential deficit situations during a fiscal biennium after the enactment of a biennial budget (due to actual revenues being less than projected or actual expenditures being more than projected), then

a lower level of maximum fund balance might be envisioned than if the purpose of the fund is intended to also provide reserves to be available for use in a future biennium when no growth or negative growth in state taxes might be projected due to economic conditions. Most states' budget stabilization funds address only deficit situations within a given adopted budget, as has been the intent with Wisconsin's budget stabilization fund.

26. However, two states' funds are of interest in that these funds appear to also allow the use of the funds to address a decline in revenue growth anticipated in a future budget from the revenue levels of the current budget. Louisiana's Revenue Stabilization - Mineral Trust Fund (which is constitutionally established) allows the use of moneys from this fund (up to 1/3 of the balance) for situations when the official forecast for revenues for a fiscal year is less than the revenues actually received by the state in the preceding fiscal year. However, a two-thirds affirmative vote of the Legislature is required for such use. Funds from the Economic Stabilization Fund (constitutionally established) in Texas can be used for situations where the estimated revenues for a succeeding biennium are less than projected actual revenues for the current biennium. However, a three-fifths affirmative vote of the Legislature is required for such use. There is no reported cap on Louisiana's fund and there is a cap on Texas's fund of 10% of general fund deposits during the preceding biennium.

27. Some analysts of state fiscal affairs have suggested a rule of thumb for state contingency type reserves of 3 to 5% of the total budget. If the Committee believes a goal of having a maximum budget stabilization balance equal to 5% of the budget is desirable one, it could adopt the Governor's recommendation in this area. Alternatively, the Committee could choose to have a higher percentage cap amount such as 7% or 10%.

28. The Committee could consider two modifications to the calculation of the cap amount as proposed by the Governor. First, under the bill, the 5% cap is believed to apply to what is shown in the general fund condition statement as "total expenditures". Under the bill, this would include gross GPR appropriations, compensation reserves, transfers to the Tobacco Control Fund and the deductions for estimated overall lapses from appropriated levels. However, the existing law provision relating to the statutory required reserve in each fiscal year is calculated based on taking the specified percentage (1.2% for each year under the bill) times gross GPR appropriations plus compensation reserves. If this higher budget appropriation level were used (rather than including estimated lapses and transfers) for calculating the balance cap for the budget stabilization fund, the cap amount under the bill would be about $93 million higher for 2001-02 and about $91 million higher for 2002-03 (the estimated total cap amount for 2001-02 would be $669 million and for 2002-03 the estimated cap amount would be $684 million).

29. A second consideration, however, is that if the 5% figure were selected as the goal for the desirable amount of a contingency reserve, it could be argued that in dollar terms that should be determined by both the amount available in any given year under the statutory balance requirement (which is currently scheduled to increase in increments to a maximum of 2% beginning in 2005-06) and the maximum amount that could be available in the budget stabilization fund. Under this approach, this would mean that the cap amount should be changed so a specific

maximum percentage would be set in the statutes and that then the net percentage cap amount for the fund in any year would be that maximum less the statutory balance percentage requirement required in each budget. Thus, in 2005-06, for example, if the Governor's 5% cap level were the gross contingency reserve amount, then with a statutory reserve requirement of 2% for that year, the net cap on the balance in the budget stabilization fund would be 3%. Alternatively, under this approach, if the Committee believes that a prudent total contingency reserve (statutory reserve plus maximum budget stabilization fund balance) ought to be higher than a total of 5%, it could approve a higher gross percentage cap amount of 7% or 10%. This would mean then, for example, that in 2005-06, the gross percentage cap amount on the budget stabilization fund would be 7% (or 10%), but with the 2% statutory reserve percentage, the net percentage cap on the fund would be 5% (or 7%).

30. A technical concern with regard to this provision is that the cap amount refers to 5% of estimated expenditures. There is no such term in the general fund condition statement (referred to in the bill language as "summary"). If the change outlined in the discussion point above were made, this concern would not need to be addressed. If, however, the language of the bill in this area is retained, the reference to "estimated expenditures" should be replaced with "total expenditures" which would reference the total, under the condition statement, of all GPR appropriations, reserves and transfers less estimated lapses.

Withdrawals From the Budget Stabilization Fund

31. *Governor's Provision.* Under current law, any withdrawal from the budget stabilization fund is by legislative appropriation from the fund. The current appropriation language contains no other specification regarding withdrawals. However, the statutory language establishing the fund contains the purpose statement that monies in the fund are reserved to provide state revenue stability during periods of below-normal economic activity when actual state revenues are lower than the level of revenues estimated in the general fund condition statement. This condition statement is initially established in the biennial budget act, but is subsequently revised to reflect all actions of the Legislature before being published in the biennial edition of the statutes. Under the bill, the language creating the fund, including the above provisions, is repealed. The new language reestablishing the fund simply specifies that the fund consists of monies transferred to the fund under the new transfer provisions created elsewhere in the bill. Thus, no purpose statement would remain.

32. However, the bill would add a provision to current law relating to the one possible use of monies in the fund. Under current law, if the Secretary of Administration determines at any time after enactment of the biennial budget for a biennium that authorized expenditures for either fiscal year will exceed revenues by more than a specified amount, the Secretary must notify the Governor and Legislature of this fact and the Governor is required to submit recommendations to the Legislature for correcting the imbalance. Under the bill, a provision would be added to this section to require that the Governor's recommendations to the Legislature under this provision include an explicit recommendation as to whether monies should be transferred to the general fund from the budget stabilization fund as a part of steps to correct the imbalance.

33. The State Budget Office indicates that the intent of this change is to tie the use of the fund to only those type of revenue shortfall situations specified under s. 16.50 (7). That section of the statutes specifies that if, after enactment of the biennial budget, the Secretary of Administration determines that authorized expenditures in a fiscal year will exceed expected revenues by more than 0.5% of estimated general fund revenues and the Governor is thereby obligated under current law to submit to the Legislature his or her recommendations to address the shortfall. Arguably then, under the bill, if such a situation arises and the Governor chooses not to recommend the use of monies in the budget stabilization fund, such monies cannot be used by the Legislature to address that problem. Further, the intent is that this would be the sole situation where use of the monies in the fund would be statutorily authorized.

34. However, the Legislature could choose to appropriate monies from the budget stabilization fund for other purposes or without a Governor's recommendation to deal with a revenue shortfall. If a given Legislature did so, it is reasonable to assume that the State Supreme Court would likely not hold that appropriation act to have been enacted illegally. The State Supreme Court has held on several occasions that the remedy for noncompliance with this type of procedural provision lies exclusively with the legislative branch.

35. That having been said, the question may still be raised whether the Committee agrees with the proposed elimination of the current purpose statement regarding the use of any available monies in the budget stabilization fund. The language proposed in the bill is intended to specify that the Legislature may use monies in the fund to deal with an imbalance between appropriated levels and available revenues only if the Governor recommends such use to solve such an imbalance situation. Under that view, if the proposed statute were to be followed, the Legislature would not be able to use such funds for this purpose if the Governor had not recommended such an action. As alternatives to these bill provisions, the Committee could: (a) retain the existing language regarding the purposes of the fund; (b) delete the language in the bill regarding use of monies in the bill and instead create a new paragraph under that section which would specify that any bill or amendment to a bill to address a budgetary imbalance problem may include a provision authorizing the use of any available balance in the budget stabilization fund for such purposes; or (c) remove any language regarding uses of monies in the fund.

ALTERNATIVES TO BILL

A. Overall Issue (Budget Stabilization Fund and Tax Relief Fund)

1. Approve the Governor's recommendation.

2. Approve the Governor's recommendation except delete provisions dealing with the creation of and provision of revenues to a tax relief fund.

3. Modify current law only to add a requirement that every recommended biennial budget submitted by a Governor must include a recommendation with regard to how much, if any, of the current fiscal biennium's estimated unreserved, undesignated general fund balance should be appropriated to the budget stabilization fund as it exists under current law.

4. Maintain current law.

5. Delete the Governor's recommendations and, in addition, repeal the current budget stabilization fund.

B. Automatic Appropriation of Revenues to the Budget Stabilization Fund

1. Approve the Governor's recommendation.

2. In addition to alternative B1, make the following technical modifications to the appropriation language: (a) as a reference point for the Secretary of Administration to calculate the amount of available revenues to transfer to the budget stabilization fund, provide that the estimated taxes amounts under the final Chapter 20 schedule approved by the Committee under s. 20.004(2) be the source to be used by the Secretary; (b) specify that the Secretary must make any annual transfer for a fiscal year by the October 15th following the end of a fiscal year but that the transfer would be charged to the fiscal year for which the estimate and actual tax collections are compared; and (c) provide that the exception to the full transfer of a calculated amount to the budget stabilization fund because of a resultant decrease in the required minimum balance be modified by substituting the term " required general fund balance" for the term "minimum general fund balance."

3. Require that, beginning in 2003-04, the Secretary of Administration annually transfer from the general fund to the budget stabilization fund an amount equal to: (a) $59 million GPR; or (b) $118 million GPR.

4. Require that, beginning in 2002-03, the Secretary of Administration transfer from the general fund to the budget stabilization fund at the end of each fiscal biennium, an amount equal to: (a) 25% of the unrestricted, unreserved general fund balance as reported in the state annual fiscal report; or (b) 50% of the unrestricted, unreserved general fund balance as reported in the state annual fiscal report; or (c) 100% of the unrestricted, unreserved general fund balance as reported in the state annual fiscal report.

5. In addition to Alternative 4a, 4b or 4c, add the provision that the required transfer shall be made by the Secretary of Administration by the October 15th following the end of a fiscal year but that the transfer would be charged to the fiscal year for which the surplus calculation was made.

6. Maintain the current law provision for direct appropriation into the budget stabilization fund.

C. Automatic Appropriation of Revenues to the Tax Relief Fund

1. Approve the Governor's recommendation.

2. Modify the Governor's recommendation to provide that no monies may be transferred to the tax relief fund until such time as the balance in the budget stabilization fund has reached its statutory cap amount and to require that whenever the balance in the budget stabilization fund is below its statutory cap amount, all available monies at the next transfer occasion or occasions shall first be transferred to the budget stabilization fund until its statutory maximum if reached before any monies are transferred to the tax relief fund.

3. In addition to Alternative C1 or C2, add a provision that the amount of any transfer of revenues to the tax relief fund by the Secretary of Administration would have to be reduced by the amount that such transfer would cause the ending general fund balance for that fiscal year to be less than the required general fund balance (statutory reserve).

4. Require that, beginning in 2002-03, one-half of any monies that would be transferred to the budget stabilization fund under either Alternative B3a, B3b or B3c instead be transferred to the tax relief fund.

5. Maintain current law. *[Note: no funding mechanism would be provided for the proposed tax relief fund.]*

D. Maximum Balance of Budget Stabilization Fund

1. Approve the Governor's recommendation.

2. Modify the Governor's recommendation to provide that the term "total expenditures" be substituted for "estimated expenditures" as the figure against which the cap is to be applied.

3. Modify the Governor's recommendation to provide that the cap amount be set at a fixed percent of "gross appropriations plus compensation reserves" rather than "estimated expenditures." *[Note: Alternatives 2 and 3 cannot both be adopted.]*

4. Modify the Governor's recommendation to provide that the cap percentage amount be either: (a) 7%; or (b) 10%.

5. Modify the Governor's recommendation to provide that the cap percentage amount indicated for the budget stabilization fund would be a gross percentage amount from

which the applicable required statutory reserve percentage would deducted to arrive at the net percentage cap amount for the budget stabilization fund for a given fiscal year. *[Note: This alternative can be adopted only if Alternative 3 is also adopted. However, Alternative D4a or D4b could also be adopted along with alternative. Under this alternative, if the gross percentage cap amount for the budget stabilization fund for a given fiscal year were 7.0% and the statutory balance percentage figure for that year were 1.4% then the net percentage cap amount for the fund for that fiscal year would be 5.6%, but if the statutory balance percentage figure for that fiscal year were 2.0%, then the net percentage cap amount for the fund for that fiscal year would be 5.0%]*

E. Withdrawals From the Budget Stabilization Fund

1. Approve the Governor's recommendation.

2. Delete the Governor's recommendation and instead insert new language specifying that any bill or amendment to a bill that is introduced to deal with a budget imbalance as identified under s. 16.50(7(a) may provide for the appropriation of monies from the budget stabilization fund.

3. Maintain current law with regard to the stated purposes of the budget stabilization fund.

4. Repeal the current law provisions regarding appropriation of monies from the budget stabilization. *[The effect of this alternative would be there would be no statutory definition regarding uses of monies in the fund; the Governor and Legislature would determine through the enactment of fiscal legislation their joint judgment (by passage of a bill by the Legislature and by the approval or veto of that legislation by the Governor) of the appropriate use of monies from the fund on a case by case basis.]*

Prepared by: Terry Rhodes

Senator Decker

BUDGET MANAGEMENT AND COMPENSATION RESERVES

Establish Funding in Lieu of Bonding, Delete Tax Relief Fund and Credit

[LFB Paper #241]

Motion:

Move to delete the proposed tax relief fund and tax relief credit from the bill and instead provide for the creation of a segregated fund to provide funding in lieu of bonding. Provide that this segregated fund would receive 50% of the amount of tax revenues that are in excess of budgeted levels in the same way as was proposed in the bill for the tax relief fund. Specify that all monies in the segregated fund would be expended only in lieu of issuing general fund supported general obligation bonding from a continuing segregated appropriation established for this purpose. Provide that once monies would be deposited in the fund, when the Building Commission next issues general fund supported bonding, the Commission would use all available monies from the fund to replace general fund supported bonding. Specify that expenditures from the fund would reduce the amount of general fund supported bonding that could be issued dollar-for-dollar.

Note:

Under the bill, a tax relief fund is created for the purpose of providing a nonrefundable individual income tax credit to Wisconsin taxpayers when the monies in the fund exceed $25 million. Revenues would be deposited to the fund whenever the actual amount of taxes collected in a year exceeds the budget level of taxes. When that occurs, the Secretary of Administration would, in general, have to transfer 50% of such excess tax collections to the budget stabilization fund and 50% of such excess tax collections to the proposed tax relief fund. Under this motion, the same transfer provisions would remain in the bill, but the proposed tax relief fund would be deleted and instead a new segregated fund to provide funding in lieu of bonding would be created, with revenues from the 50% transfer amounts that would have, under the bill, gone to the tax relief fund.

Under the motion, a continuing segregated appropriation would allow monies in the proposed fund to be expended only in lieu of issuing general fund supported general obligation bonding. This appropriation would be similar to the current appropriation for interest earnings from the capital improvement fund, where these earnings are used in lieu of borrowing. As under current law, any expenditures from the fund would count against the bonding authorization, so that the monies from the fund would permanently replace the issuance of an equal amount of general fund supported borrowing.

Motion #1535

MO#_____

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 8 NO 8 ABS ____

Legislative Fiscal Bureau
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June 5, 2001 | Joint Committee on Finance | Paper #242

Tax Relief Fund Tax Credit
(Budget Management and Compensation Reserves and General Fund Taxes -- Individual and Corporate Income Taxes)

[LFB 2001-03 Budget Summary: Page 20, #1 and Page 154, #4 (part)]

CURRENT LAW

Under current law, the state provides certain credits that may be applied against a taxpayer's gross state income tax liability. Commonly used credits include the property tax/rent credit, the married couple tax credit, the itemized deduction tax credit and the working families tax credit. In each case, the formula for determining a taxpayer's credit is specified in the statutes and is based on certain factors related to the taxpayer's income or expenditures.

GOVERNOR

Create a nonrefundable individual income tax credit for the purpose of returning moneys from the tax relief fund to taxpayers when the fund exceeds $25 million.

Under the bill, certain moneys would be deposited to the tax relief fund in the event that actual general fund tax revenues exceeded estimated collections. The provisions pertaining to the transfer of monies to the tax relief fund are discussed in Issue Paper #241.

The bill would provide that, no later than September 1 of each year, the Secretary of the Department of Administration (DOA) would certify to the Secretary of the Department of Revenue (DOR) the amount in the tax relief fund. If the certified amount exceeded $25 million, DOR would be required to determine a tax relief fund tax credit amount that could be claimed by taxpayers for the taxable year. No tax relief fund credit would be available for a year in which the certified amount were $25 million or less.

For example, under these provisions, DOA would certify to DOR by September 1, 2002, the amount, if any, in the tax relief fund. If the certified amount exceeded $25 million, DOR would determine the tax relief fund tax credit that could be claimed by taxpayers when filing returns for tax year 2002 (due in April, 2003). If the certified amount in the tax relief fund on September 1, 2002, were less than $25 million, no tax relief fund credit would be available to taxpayers for tax year 2002.

Under the bill, in a year for which a tax relief fund tax credit were to be made available to taxpayers, DOR would be required to divide the total certified amount in the fund by the sum of all claimants (taxpayers), spouses of claimants (in the case of joint returns) and claimants' dependents to determine a credit per unit. (However, no credit could be claimed on tax returns filed by individuals who are dependents of other taxpayers.) The bill would direct DOR to modify the credit per unit so that as much of the total certified amount would be expended as possible. In addition, the bill would require the unit amount to be rounded down to the nearest whole dollar. No later than August 15 of the year following a year for which there has been a tax relief fund credit, DOR would be required to determine and certify to the Secretary of DOA the amount of revenue lost because of such credits claimed against individual income taxes.

With certain exceptions, no credit would be allowed unless it was claimed within four years of the unextended due date of the individual income tax return for the taxable year in which a tax relief fund credit was available. Part-year residents and nonresidents would not be eligible for the credit. The bill would provide that income tax provisions under Chapter 71 of the statutes relating to assessments, refunds, appeals, collection, interest and penalties would apply to the tax relief fund tax credit. DOR would be authorized to enforce the credit and take any action and conduct any proceeding as otherwise authorized under Chapter 71.

The provisions on the tax relief fund tax credit would first apply to taxable years beginning on January 1 of the year in which the bill generally takes effect, unless the bill's general effective date is after July 31. In that case, these provisions would first apply to taxable years beginning January 1 of the following year. No fiscal effect is estimated because the credit would be provided only if actual general fund tax revenues significantly exceeded estimates.

DISCUSSION POINTS

1. In an attempt to control the growth of state government, numerous states have adopted revenue and/or expenditure limits. The most common types of limits are expenditure limits, which are sometimes linked with a mechanism to provide taxpayer refunds. Some states impose revenue limits, which tie yearly increases in revenue to personal income or another type of growth index. Many of the states that impose revenue and/or expenditure limits have procedures requiring that some or all of the excess is to be deposited to a budget stabilization or rainy day fund or used for some other specific purpose (such as education or infrastructure) and is only to be returned to taxpayers once the fund has reached a specified level. Provisions for returning excess revenue to taxpayers include tax rebates, individual income tax credits, and revisions to tax rates and fees.

2. Under the bill, a tax relief fund tax credit would be provided as a nonrefundable credit against the individual income tax. (The mechanism for depositing moneys in the tax relief fund is described in Issue Paper #241). The Department of Revenue would divide the total available for the credit by the estimated number of claimants (taxpayers), spouses of claimants (in the case of joint returns) and dependents to determine the per person credit amount.

3. The tax relief fund tax credit would be triggered if the amount in the tax relief fund were certified to be $25 million or more. Based on simulations with the 1999 Wisconsin tax sample, at $25 million, the estimated credit amount per person would be $6 and would result in an average tax reduction of approximately $14 for 1.7 million tax filers. The benefits to taxpayers would be fairly evenly distributed, with the greatest concentration of benefits in the middle-income ranges (which corresponds to the greatest concentration of taxpayers).

4. One advantage of the proposed credit is that the administrative cost would be small, since the credit could be incorporated into the regular income tax filing process. DOR estimates that it would cost $55,500 (in 2002-03 dollars) to make the credit available in a given year. In addition, there would be one-time development costs estimated at $26,400 the first time that the credit was made available. The administration did not include provisions on how to pay for administrative costs, under the assumption that either: (a) the credit would not be made available during the 2001-03 biennium, so there would be no cost; (b) DOR would be able to absorb such costs; or (c) DOR would submit a request to the Joint Committee on Finance under s.13.10 for supplemental funding to cover those administrative costs that could not be absorbed.

5. It could be argued that a tax credit to return excess revenue to Wisconsin residents should be designed in a manner so that all residents benefit. Under a nonrefundable credit, lower-income state residents without an income tax liability would be ineligible for the credit (even though such residents pay other state taxes, such as the sales tax). If the credit were refundable, however, all Wisconsin residents would receive a benefit. One option would be to provide a refundable credit based on the number of dependents (similar to the nonrefundable credit proposed under the bill). It is estimated that a refundable credit based on $25 million in the tax relief fund would result in a per person credit of $4. It is projected that approximately 2.9 million applicants (including tax filers and other applicants not required to file taxes) would receive an average credit of $9. In contrast, the nonrefundable credit provided under the bill would provide an average benefit of $14 to an estimated 1.7 million tax filers.

6. The administrative cost of a refundable credit would be somewhat greater than the cost for a nonrefundable credit, as there would be additional expenses for processing returns and issuing refunds. DOR estimates that it would cost $138,100 (in 2002-03 dollars) to administer a refundable credit (each year for which the credit was available), with an additional one-time development cost of $26,400.

7. State income taxes may be claimed as itemized deductions for federal income tax purposes. State sales taxes are not deductible. Therefore, for itemizers, tax relief provided through the state income tax may result in increased federal income taxes.

8. An alternate approach that would avoid this effect on federal taxes would be to provide a tax relief fund tax credit in the form of a sales tax rebate. Because sales taxes paid are not deductible for federal tax purposes, a refund of sales taxes paid is not considered to be taxable income by the federal government. The State of Colorado, which is required by the state constitution to return budget surpluses to the citizens, did so in the form of a state sales tax refund for tax years 1999 and 2000. The Colorado refunds were issued primarily through the individual income tax return. For eligible recipients that were not required to file a Colorado individual income tax form, the refund could be claimed on a separate form also used for another refundable state credit.

9. The Colorado method of returning excess revenues to taxpayers in the form of a sales tax rebate through the individual income tax form could be adopted for use with the proposed tax relief fund tax credit. A sales tax rebate modeled on the rebate offered by Wisconsin under 1999 Wisconsin Act 10 would address two concerns mentioned previously: (a) that the return of excess state revenues should benefit all taxpayers; and (b) that the refund of excess state tax revenues should not result in an increased federal tax liability. In order to be considered a rebate of sales tax paid, the rebate would have to be made available to nonresidents that applied for the rebate and had proof as to taxes paid. [The amount rebated to nonresidents as a result of Act 10 was minimal.] If the rebate were modeled after the Act 10 rebate, it would also be made available to: (a) dependents claimed on another person's return (with certain limitations); and (b) residents and part-year residents who were married to nonresidents [based on their Wisconsin adjusted gross income (AGI)]. DOR has projected that the administrative costs of a sales tax rebate would be comparable to the costs for a refundable credit that was based on number of dependents. Such costs would be lower than the costs of the sales tax rebate under Act 10, as most refunds could be provided in conjunction with individual income tax filings, so that fewer checks and less additional processing would be required.

10. Under Act 10, a taxpayer's AGI was used as an indicator of sales taxes paid and was used to determine the rebate amount. The total rebate was approximately $700 million, with an average rebate of $271. Based on this information, it is projected that a total rebate of $25 million would provide an average rebate of approximately $9 to 2.9 million applicants. This average is comparable to the average for a refundable credit based on the number of dependents. However, the sales tax rebate would be higher for higher-income applicants and lower for lower-income applicants.

11. Under each of the options discussed above, the estimated per unit credit would be quite small if the credit were provided when the total in the tax relief fund were $25 million. One could argue that it would be reasonable to set a higher threshold for providing the credit, whether the credit was refundable or not and whether the credit was based on dependents or on AGI or some other factor.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to provide a nonrefundable tax relief fund tax credit for a tax year in which DOA certified by September 1 of that year that moneys in the tax relief fund exceeded $25 million. Specify that the per person credit amount would be determined by DOR, based on the total available in the fund and, for the estimated number of filers with an income tax liability, the estimated total number of: (a) claimants [taxpayers]; (b) spouses of claimants, in the case of a joint return; and (c) dependents of claimants.

2. Modify the Governor's recommendation to specify that the credit would be made available if the amount in the tax relief fund were certified to exceed one of the following:

a. $100 million (with an estimated average credit of $57 per tax filer).
b. $250 million (with an estimated average credit of $144 per tax filer).
c. $500 million (with an estimated average credit of $288 per tax filer).
d. Some other amount.

It is estimated that a credit in this form would provide a tax reduction for 1.7 million tax filers. However, the actual credit would depend on the total number of units (taxpayers, spouses and dependents) per filer.

3. Modify the Governor's recommendation to specify that the tax relief fund tax credit would be a refundable credit. Provide that the credit would be available for a tax year in which DOA certified by September 1 that moneys in the tax relief fund exceeded a specified threshold. In addition, specify that the unit credit amount determined by DOR would be based on the amount in the tax relief fund as certified by DOA and the estimated number of Wisconsin residents [rather than taxpayers, spouses and dependents, as under the bill]. Require DOR to administer the credit in a manner similar to the homestead credit (which is also refundable and can be claimed when filing individual income taxes or through a separate schedule if no income tax form is required). Specify that the credit would be available for a tax year in which the amount in the tax relief fund, as certified by DOA to DOR, exceeded one of the following:

a. $25 million (with an estimated average credit of $9 per applicant)
b. $100 million (with an estimated average credit of $35 per applicant).
c. $250 million (with an estimated average credit of $87 per applicant).
d. $500 million (with an estimated average credit of $174 per applicant).
e. Some other amount.

It is estimated that a credit in this form would provide a tax reduction for 2.9 million applicants (including tax filers and other applicants not required to file taxes). However, the actual amount received would vary with the number of individuals per application.

4. Modify the Governor's recommendation to provide that the tax relief fund tax credit would be a refundable credit in the form of a sales tax rebate. Provide that the credit would be

available for a tax year in which DOA certified by September 1 of that year that moneys in the tax relief fund exceeded a specified threshold. Require DOR, in a year for which the credit is to be made available, to develop a proposal for implementing the credit as a sales tax rebate to submit by September 15 to the Joint Committee on Finance under a 14-day passive review process. In addition, direct DOR to: (a) model the rebate proposal after the rebate provided under Act 10 with respect to eligibility requirements, limitations and conditions; (b) return the rebate using the individual income tax form, when possible or through another means for individuals not required to file individual income taxes [for example, the schedule for the homestead credit could be adapted to accommodate the sales tax rebate as well as the homestead credit]; and (c) include in the proposal a schedule for the size of the rebate by filing status and Wisconsin AGI. Finally, provide that the credit would be available for a tax year in which the amount in the tax relief fund as certified by DOA to DOR exceeds one of the following:

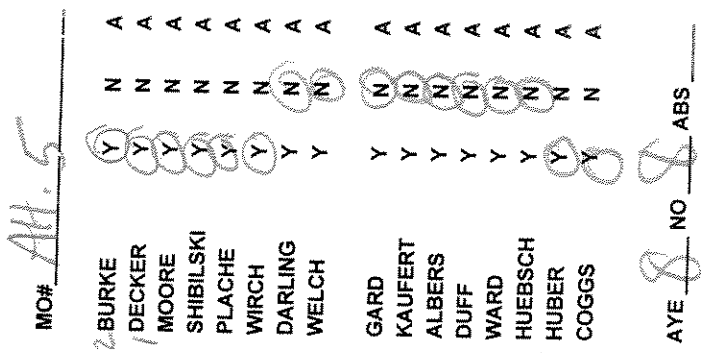
a. $25 million (with an estimated average rebate amount of $9).
b. $100 million (with an estimated average rebate amount of $35).
c. $250 million (with an estimated average rebate amount of $87).
d. $500 million (with an estimated average rebate amount of $174).
e. Some other amount.

It is estimated that a credit in this form would provide a tax reduction for 2.9 million applicants (including tax filers and other applicants not required to file taxes). However, the actual amount received would vary with the recipient's AGI.

In each of the alternatives outlined above, the estimated average credit is based on the assumption that the total credit would be the same amount as the specified threshold. However, the actual amount in the tax relief fund could exceed the threshold, in which case the total and average credits would exceed the estimates provided. For example, if the threshold were $25 million and the certified amount in the tax relief fund were $50 million, the total credit provided would be $50 million (and the average credit would be higher than the estimates shown for alternatives at the $25 million threshold).

There are no estimated fiscal effects provided for any of the alternatives for the 2001-03 biennium, as the tax relief fund tax credit would only be provided in the event that the moneys in the tax relief fund reached the specified minimum amount.

5. Maintain current law.



MO# AH 2a

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 15 NO 1 ABS ____

Senator Burke

BOARD ON AGING AND LONG TERM CARE

Five Percent Budget Reduction

Motion:

Move to provide $31,400 PR in 2001-02 and $31,400 PR in 2002-03 to eliminate the 5% budget reduction for the Board on Aging and Long-Term Care. Direct the Department of Health and Family Services to request approval by the Health Care Financing Administration in the Federal Department of Health and Social Services to use civil money penalties related to federal nursing home deficiencies for funding of this volunteer coordinator.

Note:

Nursing homes may be assessed civil money penalties for violation of federal rules and regulations relating to nursing home care. These monies are provided to the state, but federal rules require that the monies be used for the "protection of the health and property of residents of facilities that the state or HCFA finds non compliant." The Department of Health and Family Services indicates that they would have to request HCFA approval to use the funds for a use other than: (1) payment for the costs of relocating residents to other facilities; (b) state costs related to the operation of a facility pending correction of deficiencies or closure; or (c) reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or by individuals used by the facility to provide services to residents. The Department has suggested that HCFA may not support a request that would supplant existing state funds.

Annual civil money penalty revenues have ranged from $189,300 to $461,700 over the last four year. The current balance is $1,194,039. Although the balance is sizable, the Department indicates that the balance in the nursing home monitoring and receivership account is a negative $1,111,500 due to a number of problem facilities recently. The Department has indicated that it was planning to use the civil money penalties to cover these monitoring and receivership costs. The Department has also indicated that it has received approval through a s. 16.515 request for a "value added technical assistance" project that would use $247,000 of civil money penalties in year one and $200,000 in year two. The Department has deferred this project because of the large receivership and monitoring costs, but would like to start the project once an adequate balance of revenues has accumulated.

[Change to Bill: $62,800 PR]

Motion #1606

Senator Burke

BUDGET MANAGEMENT AND COMPENSATION RESERVES

Tax Stabilization Fund for Milwaukee County

Motion:

Move to authorize county boards in counties with a population over 500,000 to create a tax stabilization fund. Require amounts from the following funding sources to be deposited into the fund: (a) the difference between the estimated nonproperty tax revenues and the corresponding actual receipts for the prior year, to be determined by April 15 of each year; (b) the difference between total adjusted operating budget appropriations and total expenditures, commitments and reserves for the prior year, to be determined by April 15 of each year; (c) any general surplus balance as of December 31 of the prior year, to be determined by April 15 of each year; and (d) any amounts included in the county's property tax levy that are designated for deposit in the fund. Authorize the county board to withdraw amounts from the tax stabilization fund by three-quarters vote of the entire membership of the county board or by a majority vote of the county board if the county's total levy rate, as defined under current law, is projected to increase by more than 3% and the withdrawn funds would prevent an increase of more than 3%. Prohibit the tax stabilization fund from being used to offset any deficit that may occur between total estimated and total actual non-property tax revenue or between total appropriations and total expenditures. Require any uncommitted balance in the fund that is in excess of 5% of the current year's budget under the control of the county board, as of June 1 of the current year, to be applied to reduce the county's next property tax levy.

Note:

The motion would authorize the county board for Milwaukee County to create a tax stabilization fund. State law authorizes the City of Milwaukee to create a tax stabilization fund. The operation of the fund is governed by city ordinance. The motion would extend provisions related to the operation of the City's fund to the County's fund.

MO#_____

BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

AYE 16 NO 0 ABS ____

BUDGET MANAGEMENT AND COMPENSATION RESERVES

LFB Summary Items for Which No Issue Paper Has Been Prepared

Item #	Title
1	Required General Fund Statutory Balance
2	Compensation Reserves
5	Budget Reports by DOA and LFB