

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3470/1dn
RAC:jld:rs

December 11, 2007

Representative Zipperer:

This draft contains the key provisions of your Earmark Transparency Act, modified to fit in with Wisconsin law and LRB drafting conventions. In reviewing the draft, please note the following:

1. Look at how I defined the terms “earmark” and “nonfiscal policy item” in s. 13.102 (1). These definitions apply throughout the draft. Rather than define different kinds of earmarks, I defined earmark, in general, to cover all of the different kinds of earmarks you requested. I also altered the suggested definition to have it fit into a Wisconsin legal framework. With respect to “nonfiscal policy item,” I defined it in such a manner that, if the item were the sole provision in a bill, then the bill would not need to be referred to the Joint Committee on Finance (JCF). After all, fiscal bills are referred to the JCF, not nonfiscal bills. Please let me know if this definition is different from what you intend.
2. I did not include the requirements that the governor must identify agency proposals and nonagency proposals in the executive budget bill. Instead, this requirement will be incorporated into the budget report. The reason is that the executive budget bill is drafted by the LRB and not the governor. If you wish to require the governor of the Department of Administration to provide the LRB with notes to insert in the bill, we can certainly. But it would most certainly slow down the preparation of the executive budget bill for introduction in the legislature and it would not provide any additional information that is already in the new requirements for the budget report. Please advise.
3. In s. 13.39 (1), I drafted the requirement that neither house of the legislature may pass a biennial budget bill until the Legislative Fiscal Bureau (LFB) has distributed a copy of the earmark transparency report, prepared under s. 13.102 (2), to each member of the legislature and at least 48 hours have passed from the time when the LFB has distributed the report to all of the members. This provision may be redundant with s. 13.102 (3) (a). After all, JCF cannot make a recommendation on the budget bill until this condition has been satisfied.
4. Finally, please note that all of the provisions in the draft that regulate the internal operations of the legislature are not legally enforceable. Instead, these provisions are rules of proceeding under article IV, section 8, of the Wisconsin Constitution. As such,

the legislature is free to follow the rules or not follow the rules. The Wisconsin Supreme Court has held that the remedy for noncompliance with these types of provisions lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363–369 (1983). In other words, while these types of provisions may be effective to govern internal legislative procedure, the courts will not enforce the provisions if the legislature does not follow them.

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