

2007 DRAFTING REQUEST

Bill

Received: **11/15/2007**

Received By: **rchampag**

Wanted: **Soon**

Identical to LRB:

For: **Rich Zipperer (608) 266-5120**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **State Finance - bud generally**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Zipperer@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Earmark Transparency Act

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	rchampag 12/05/2007	jdyer 12/11/2007	rschluet 12/11/2007	_____	sbasford 12/11/2007		State
/2	rchampag 12/19/2007	jdyer 12/19/2007	pgreensl 12/19/2007	_____	mbarman 12/19/2007		State
/3	rchampag 12/20/2007	jdyer 01/02/2008	pgreensl 01/03/2008	_____	sbasford 01/03/2008	sbasford 01/11/2008	

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FE Sent For:

↳ At
Intro.

<END>

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Handwritten notes: 1/3 PS, 1/3 PS/NN

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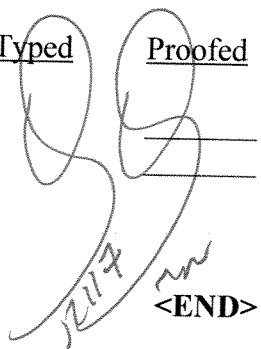
Instructions:

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/?	rchampag	1/12 jld					

FE Sent For:

12/17

 <END>

Champagne, Rick

From: Kreye, Joseph
Sent: Wednesday, November 14, 2007 4:09 PM
To: Champagne, Rick
Subject: FW: Zipperer Drafting Request

Attachments: Earmark Transparency.doc; Earmark Transparency_bullets.doc

Hi Rick,

I thought I'd give you first crack at this "earmark" draft before I try to pawn it off on one of the other ch. 16 drafters.

Joe

From: Reader, Chris
Sent: Wednesday, November 14, 2007 4:05 PM
To: Kreye, Joseph
Subject: Zipperer Drafting Request

Joe, thanks for the amendment drafts on AB67 and AB223 yesterday. Much appreciated.

Now, (and I think you are the right person to bring this to) Rep Zipperer is developing a more comprehensive bill, "The Earmark Transparency Act", to bring public attention to earmarks in the state budget process. We started to develop this legislation by looking at 2006 H.R. 1000 and adopted some of the points to the state budget process. Please review the attached bullet points and suggested language starting points, as well as 2006 H.R. 1000, and draft preliminary draft legislation on the subject. Ideally, Rich would like to have a bill to go public with by the end of December.

Thank you! Please call with any questions.

Chris Reader
Office of Rep. Zipperer
Wisconsin State Assembly
(608) 266-5120



Earmark



Earmark

H.R. 1000 nsparency.doc (45 nsparency_bullets.c



STATE REPRESENTATIVE

RICH ZIPPERER

The Zipperer Earmark Transparency Act will bring public awareness to earmarks contained within state budget bills and will require Members to take ownership of earmark proposals. Most importantly, it will prohibit new items in a budget conference committee report that weren't part of any previously adopted version of the budget.

Executive Budget

- Agency requests can not contain earmarks outside of preexisting formula-driven or competitive-bidding processes, or preexisting programs.
- Agency requests can not contain non-fiscal policy items.
- Modifications and additions to agency requests by the Governor must contain the following statements within the budget bill:
 1. for modifications: *[name of agency] budget request modified by the Governor*
 2. for additions: *This section inserted by the Governor. It was not requested by the [name of agency]*.
- When the Governor introduces the executive budget bill, DOA will be required to submit to the members of the legislature among the currently required reports a report of all modifications to agency requests, including a list of each modification, the need of each, the cost of each, and the beneficiary (business, municipality) of each.

Joint Committee on Finance

- Before voting to recommend passage of the executive budget bill or adoption of a substitute amendment, the members of the legislature must have an Earmark Transparency Report (ETR) submitted to them by the legislative fiscal bureau.
 - The ETR shall contain a listing of each separate earmark or non fiscal policy item, the cost of each, the beneficiary of each, the assembly and senate district(s) where the beneficiary is located, and the member requesting the budget motion.
 - The ETR must be public for 48 hours prior to adoption or passage vote.
- Motions adopted to the budget that include an earmark or non-fiscal policy item must contain the following statement within the bill: *This [authorizing earmark, appropriation earmark, tax earmark, non-fiscal policy item] is requested by [name of Representative/Senator who authored budget motion]*.

Assembly and Senate

- Before adopting or concurring to the executive budget bill or a substitute amendment, the members of the legislature must have an Earmark Transparency Report (ETR) from the legislative fiscal bureau.
 - The ETR shall contain a listing of each separate earmark or non fiscal policy item, the cost of each, the beneficiary of each, the assembly and senate district(s) where the beneficiary is located, and the member requesting the budget amendment.
 - The ETR must be public for 48 hours prior to adoption or passage vote.

Conference Committee

- Prohibited from adding any earmark or non-fiscal policy item that was not previously introduced as part of the executive budget bill or adopted by either the Assembly or Senate.

Joint Rule Change

- Any member may at any time that a report of a committee of conference is before the house raise the issue that the bill is not properly before the house if the conditions of the ETR have not been met.
- Budget bills shall not be considered for adoption, concurrence, or passage if the ETR requirements have not been met.
- It shall not be in order to consider a rule or order that waives the first two joint rule changes.

Zipperer Earmark Transparency Act
Suggested starting-point language

Executive Budget

✓ **Create s.16.42 (1)(h)** Agency requests shall not appropriate or allocate funds to an authorizing earmark, appropriation earmark, or a tax earmark outside of the lawful formula-driven or competitive-bidding process or for program expenditures that aren't preexisting. Agency requests shall not contain non-fiscal policy items.

Create s.16.47(1a) For each modification by the Governor to an agency request under 16.42, the executive budget bill shall include:

- Not appropriate*
- (a) In the case of an alteration to an agency request under 16.42 the following statement: *[name of agency] request modified by the Governor.*
 - (b) In the case of a budget item not requested by an agency under 16.42 the following statement: *This subsection inserted by the Governor. It was not requested by [name of agency].*

✓ **Create s.16.46 (10)** An agency request modification report containing an explanatory statement for each modification under 16.47(1a). The report shall include a list of each modification and addition to the agency requests, the need of the state for each, the cost of each, and, the benefactor(s) of each.

Joint Committee on Finance

For the biennial budget, the Joint Committee on Finance shall not:

(A) Approve an authorizing earmark, appropriation earmark, tax earmark, or non-fiscal policy item unless the author of origin is known to the public and the authorizing earmark, appropriation earmark, tax earmark or non-fiscal policy item contains the following statement: *This [authorizing earmark, appropriation earmark, tax earmark, non-fiscal policy item] is requested by [name of Representative/Senator who authored budget motion].*

(B) Vote to adopt or recommend passage of the executive budget bill or a substitute amendment or amendment thereof unless the following conditions are met:

- (1) An Earmark Transparency Report is submitted to each member of the legislature by the legislative fiscal bureau.
- (2) A time period of 48 hours has passed from the time the earmark transparency report has been submitted by the legislative fiscal bureau to each member of the legislature.
- (3) The earmark transparency report contains the following information: a listing of each separate authorizing earmark, appropriation earmark, tax earmark, and non-fiscal policy item; the dollar value of the each authorizing earmark, appropriation earmark, tax earmark, and non-fiscal policy item; the beneficiary(s) for which each authorizing earmark, appropriation earmark, tax earmark and non-fiscal policy item is intended; the assembly and senate district(s) in which the benefactor is located; and

the representative(s) or senator(s) responsible for requesting the earmark. If the legislative fiscal bureau is not able to attain any of the information through the public records of the bill, the report shall note that the required information is not available.

Pulling Earmarks

If a motion is made and seconded in Joint Finance to delete an earmark or non-fiscal policy item, a majority vote is needed to keep the earmark. A tie vote requires the earmark be deleted from the budget bill.

Assembly and Senate

For the biennial budget, the assembly and senate shall not:

(A) Approve an authorizing earmark, appropriation earmark, tax earmark, or non-fiscal policy item unless the author of origin is known to the public and the authorizing earmark, appropriation earmark, tax earmark or non-fiscal policy item contains the following statement: *This [authorizing earmark, appropriation earmark, tax earmark, non-fiscal policy item] is requested by [name of Representative/Senator who authored budget motion].*

(C) Vote to adopt or recommend passage of the executive budget bill or a substitute amendment or amendment thereof unless the following conditions are met:

- (1) An Earmark Transparency Report is submitted to each member of the legislature by the legislative fiscal bureau.
- (2) A time period of 48 hours has passed from the time the earmark transparency report has been submitted by the legislative fiscal bureau to each member of the legislature.
- (3) The earmark transparency report contains the following information: a listing of each separate authorizing earmark, appropriation earmark, tax earmark, and non-fiscal policy item; the dollar value of the each authorizing earmark, appropriation earmark, tax earmark, and non-fiscal policy item; the beneficiary(s) for which each authorizing earmark, appropriation earmark, tax earmark and non-fiscal policy item is intended; the assembly and senate district(s) in which the benefactor is located; and the representative(s) or senator(s) responsible for requesting the earmark. If the legislative fiscal bureau is not able to attain any of the information through the public records of the bill, the report shall note that the required information is not available.

Conference Committee

Create s.13.XY A report of a committee of conference shall not contain any authorizing earmark, appropriation earmark, tax earmark or non-fiscal policy item that was not previously introduced as part of the Governor's original bill, a substitute amendment, or an amendment thereof and adopted/approved/concurred in by the assembly or the senate.

Joint Rule Change

Create Joint Rule 3(4) Any member may at any time that a report of a committee of conference is before the house raise the issue that the bill is not properly before the house if the bill violates s.(any provision established by this legislation)

Create Joint Rule X(a) It shall not be in order for the house to consider a rule or order that waives the application of Joint Rule (3)(4).

Amend Joint Rule 49(1) Any member may at any time that a bill is before the house raise the issue that the bill requires a fiscal estimate or an earmark transparency report and if the presiding officer determines that the bill (not having the estimate or report) requires an estimate or report, the presiding officer shall direct the legislative reference bureau to secure the requisite estimate or the legislative fiscal bureau to secure the requisite report.

(2) Bills requiring fiscal estimates shall not be voted on by either house, and shall receive neither a public hearing nor be voted on by a standing committee, before the receipt of the original fiscal estimate for the bill. Bills requiring earmark transparency reports shall not be voted on for adoption or passage by either house or a joint or standing committee before the receipt of the original earmark transparency report for the bill is delivered to all members of the legislature and a time period of 48 hours has elapsed.

Definitions--- these are pulled from 2006 H.R. 1000. Please see that bill to develop appropriate definitions for the state of Wisconsin.

Create s.XX.XX Definitions:

- a. Authorizing earmark: a provision that permits funds to be allocated outside of the normal formula-driven or competitive bidding process and to be targeted to a specific beneficiary(s).
- b. Appropriation earmark: a provision that allocates funds outside the normal formula-driven or competitive bidding process and targets those funds to a specific beneficiary(s).
- c. Tax earmark: any revenue-losing provision that provides a State tax deduction, credit, exclusion, or preference to a specific beneficiary(s).
 - i. For the purpose of tax earmarks;
 1. all businesses and associations that are members of the same controlled group of corporations shall be treated as a single beneficiary
 2. all shareholders, partners, members, or beneficiaries of a corporation, partnership, association, or trust or estate, respectively, shall be treated as a single beneficiary
 3. all employees of an employer shall be treated as a single beneficiary
 4. all qualified plans of an employer shall be treated as a single beneficiary
 5. all contributors to a charitable organization shall be treated as a single beneficiary

6. all holders of the same bond issue shall be treated as a single beneficiary
 7. if a corporation, partnership, association, trust or estate is the beneficiary of a provision, the shareholders of the corporation, the partners of the partnership, the members of the association, or the beneficiaries of the trust or estate shall not also be treated as beneficiaries of such provision.
- d. Non-fiscal policy item: an item that changes a current state policy or creates a new state policy but does not have a fiscal effect.

H. Res. 1000

In the House of Representatives, U. S.,

September 14, 2006.

Resolved,

SECTION 1. EARMARKING REFORM IN THE HOUSE OF REPRESENTATIVES.

(a) In the House of Representatives, it shall not be in order to consider—

(1) a bill reported by a committee unless the report includes a list of earmarks in the bill or in the report (and the names of Members who submitted requests to the committee for earmarks included in such list); or

(2) a conference report to accompany a bill unless the joint explanatory statement prepared by the managers on the part of the House and the managers on the part of the Senate includes a list of earmarks in the conference report or joint statement (and the names of Members who submitted requests to the committee for earmarks included in such list) that were not committed to the conference committee by either House, not in a

report specified in paragraph (1), and not in a report of a committee of the Senate on a companion measure.

(3) In order to be cognizable by the Chair, a point of order raised under paragraph (1) may be based only on the failure of a report of a committee to include a list required by paragraph (1).

(b) In the House of Representatives, it shall not be in order to consider—

(1) a bill carrying a tax measure reported by the Committee on Ways and Means as to which the Joint Committee on Taxation has—

(A) identified a tax earmark pursuant to subsection (e), unless the report on the bill includes a list of tax earmarks in the bill or report (and the names of Members who submitted requests to the committee for tax earmarks included in such list);
or

(B) failed to provide an analysis under subsection (e); or

(2) a conference report to accompany a bill carrying a tax measure as to which the Joint Committee on Taxation has—

(A) identified a tax earmark pursuant to subsection (e), unless the joint explanatory statement prepared by the managers on the part of the House

and the managers on the part of the Senate includes a list of tax earmarks in the conference report or joint statement (and the names of Members who submitted requests to the committee for tax earmarks included in such list) that were not committed to the conference committee by either House, not in a report specified in paragraph (1), and not in a report of a committee of the Senate on a companion measure; or

(B) failed to provide an analysis under subsection (e).

(3) A point of order under paragraph (1) or (2) may not be cognizable by the Chair if the Joint Committee on Taxation has provided an analysis under subsection (e) and has not identified a tax earmark.

(c)(1) In the House of Representatives, it shall not be in order to consider a rule or order that waives the application of subsection (a)(2) or (b)(2).

(2) A point of order that a rule or order waives the application of subsection (b)(2)(A) may not be cognizable by the Chair if the Joint Committee on Taxation has provided an analysis under subsection (e) and has not identified a tax earmark.

(3) In order to be cognizable by the Chair, a point of order that a rule or order waives the application of subsection

(b)(2)(A) must specify the precise language of the rule or order and any pertinent analysis by the Joint Committee on Taxation contained in the joint statement of managers.

(d)(1) As disposition of a point of order under subsection (a) or (b), the Chair shall put the question of consideration with respect to the proposition that is the subject of the point of order.

(2) As disposition of a point of order under subsection (c) with respect to a rule or order relating to a conference report, the Chair shall put the question of consideration as follows: "Shall the House now consider the resolution notwithstanding the assertion of [the maker of the point of order] that the object of the resolution introduces a new earmark or new earmarks?"

(3) The question of consideration under this subsection (other than one disposing of a point of order under subsection (b)) shall be debatable for 15 minutes by the Member initiating the point of order and for 15 minutes by an opponent, but shall otherwise be decided without intervening motion except one that the House adjourn.

(e) The Joint Committee on Taxation shall review any bill containing a tax measure that is being reported by the Committee on Ways and Means or prepared for filing by a committee of conference of the two Houses, and shall identify whether such bill contains any tax earmarks. The Joint Com-

mittee on Taxation shall provide to the Committee on Ways and Means or the committee of conference a statement identifying any such tax earmarks or declaring that the bill or joint resolution does not contain any tax earmarks, and such statement shall be included in the report on the bill or joint statement of managers, as applicable. Any such statement shall also be made available to any Member of Congress by the Joint Committee on Taxation immediately upon request.

SEC. 2. DEFINITIONS.

(a) For the purpose of this resolution, the term “earmark” means a provision in a bill or conference report, or language in an accompanying committee report or joint statement of managers—

(1) with respect to a general appropriation bill, or conference report thereon, providing or recommending an amount of budget authority for a contract, loan, loan guarantee, grant, or other expenditure with or to a non-Federal entity, if—

(A) such entity is specifically identified in the report or bill; or

(B) if the discretionary budget authority is allocated outside of the statutory or administrative formula-driven or competitive bidding process and is targeted or directed to an identifiable entity, specific State, or Congressional district; or

(2) with respect to a measure other than that specified in paragraph (1), or conference report thereon, providing authority, including budget authority, or recommending the exercise of authority, including budget authority, for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to a non-Federal entity, if—

(A) such entity is specifically identified in the report or bill;

(B) if the authorization for, or provision of, budget authority, contract authority loan authority or other expenditure is allocated outside of the statutory or administrative formula-driven or competitive bidding process and is targeted or directed to an identifiable entity, specific State, or Congressional district; or

(C) if such authorization for, or provision of, budget authority, contract authority, loan authority or other expenditure preempts statutory or administrative State allocation authority.

(b)(1) For the purpose of this resolution, the term “tax earmark” means any revenue-losing provision that provides a Federal tax deduction, credit, exclusion, or preference to only one beneficiary (determined with respect to either present law or any provision of which the provision is a part) under the

Internal Revenue Code of 1986 in any year for which the provision is in effect;

(2) for purposes of paragraph (1)—

(A) all businesses and associations that are members of the same controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1986) shall be treated as a single beneficiary;

(B) all shareholders, partners, members, or beneficiaries of a corporation, partnership, association, or trust or estate, respectively, shall be treated as a single beneficiary;

(C) all employees of an employer shall be treated as a single beneficiary;

(D) all qualified plans of an employer shall be treated as a single beneficiary;

(E) all beneficiaries of a qualified plan shall be treated as a single beneficiary;

(F) all contributors to a charitable organization shall be treated as a single beneficiary;

(G) all holders of the same bond issue shall be treated as a single beneficiary; and

(H) if a corporation, partnership, association, trust or estate is the beneficiary of a provision, the shareholders of the corporation, the partners of the partnership, the members of the association, or the beneficiaries

of the trust or estate shall not also be treated as beneficiaries of such provision;

(3) for the purpose of this subsection, the term "revenue-losing provision" means any provision that is estimated to result in a reduction in Federal tax revenues (determined with respect to either present law or any provision of which the provision is a part) for any one of the two following periods—

(A) the first fiscal year for which the provision is effective; or

(B) the period of the 5 fiscal years beginning with the first fiscal year for which the provision is effective; and

(4) the terms used in this subsection shall have the same meaning as those terms have generally in the Internal Revenue Code of 1986, unless otherwise expressly provided.

(c) For the purpose of this resolution—

(1) government-sponsored enterprises, Federal facilities, and Federal lands shall be considered Federal entities;

(2) to the extent that the non-Federal entity is a State, unit of local government, territory, an Indian tribe, a foreign government or an intergovernmental international organization, the provision or language shall not be considered an earmark unless the provision

or language also specifies the specific purpose for which the designated budget authority is to be expended;

(3) the term "budget authority" shall have the same meaning as such term is defined in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622); and

(4) an obligation limitation shall be treated as though it is budget authority.

Attest:

Clerk.



D. Noto
State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3470/1

RAC:.....

soon

2007 BILL

jld

*SA ✓
X-ref ✓*

-gen. col

1 AN ACT ...; relating to: preparation and consideration of biennial budget bill. ✓

Analysis by the Legislative Reference Bureau

This bill makes all of the following changes relating to the preparation and consideration of biennial budget bills:

State agency budget requests

Currently, state agencies in every even-numbered ✓ year must submit certain program and financial information to the Department of Administration and the Legislative Fiscal Bureau (LFB) that is used by the ✓ governor in preparing the executive budget bill. Among the required information that state agencies must submit is proposed legislation to implement programmatic and financial plans.

* This bill prohibits state agencies from submitting a proposal for an earmark or a non-fiscal ✓ policy item. Under the bill, an earmark is a provision that authorizes or requires the payment of state ✓ moneys to a specific beneficiary or beneficiaries in a manner not determined by laws of general applicability for the selection of the beneficiary or beneficiaries. Similarly, a non-fiscal ✓ policy item is a provision that does not appropriate money, provide for revenue, or relate to taxation.

Biennial state budget report

Currently, the secretary of administration ✓ must prepare a biennial budget report for distribution to the legislature on the same day that the governor delivers his budget message to the legislature. The report contains a variety of information relating to the state's finances, state expenditures, and state revenues. This bill requires the following information to be included in the report: ✓ a statement identifying each proposal in the executive budget bill that was requested by a state

BILL

agency, but that was altered by the governor; a statement identifying each proposal in the executive budget bill that was not requested by a state agency; and a statement specifying the costs of each of these two proposals, the policy reasons for including each proposal in the executive budget bill, and the intended beneficiary or beneficiaries of each proposal.

Earmark transparency report

The bill requires that, for each biennial budget bill or amendment thereto adopted by the Joint Committee on Finance (JCF), LFB must prepare an earmark transparency report that contains all of the following: a list of all earmarks and non-fiscal policy items; the cost of each earmark and non-fiscal policy item; and the beneficiary of each earmark and non-fiscal policy item. If the beneficiary is an individual, LFB must identify the assembly and senate district in which the beneficiary resides. If the beneficiary is an entity, LFB must identify the assembly and senate district in which the beneficiary is located, incorporated, or organized. With respect to an amendment to a biennial budget bill, LFB must identify the representative to the assembly or senator who proposed the earmark or non-fiscal policy item.

Joint Committee on Finance consideration of biennial budget bill

The bill provides that JCF may not vote to recommend passage of a biennial budget bill or amendment thereto until the LFB has distributed a copy of the earmark transparency report 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.

Senate and assembly consideration of biennial budget bill

The bill provides that neither house of the legislature may pass a biennial budget bill until the LFB has distributed a copy of the earmark transparency report 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. The bill further provides that if a committee of conference is convened on a biennial budget bill, a conference report may not contain any earmark or non-fiscal policy item that was not included in the executive budget bill or an amendment thereto that was passed by either house of the legislature.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 13.102 of the statutes is created to read:
- 2 13.102 Joint committee on finance; consideration of biennial budget
- 3 bill. (1) In this section:

BILL

1 (a) "Earmark" means a provision in a bill or amendment that authorizes or
2 requires the payment of state moneys to a specific beneficiary or beneficiaries in a
3 manner not determined by laws of general applicability for the selection of the
4 beneficiary or beneficiaries.

5 (b) "Nonfiscal policy item" means a provision in a bill or amendment that does
6 not appropriate money, provide for revenue, or relate to taxation.

7 (2) For each biennial budget bill or amendment thereto adopted by the joint
8 committee on finance, the legislative fiscal bureau shall prepare an earmark
9 transparency report that contains all of the following:

10 (a) A list of all earmarks and nonfiscal policy items.

11 (b) The cost of each earmark and nonfiscal policy item.

12 (c) The beneficiary of each earmark and nonfiscal policy item. If the
13 beneficiary is an individual, the legislative fiscal bureau shall identify the assembly
14 and senate district in which the beneficiary resides. If the beneficiary is an entity,
15 the legislative fiscal bureau shall identify the assembly and senate district in which
16 the beneficiary is located, incorporated, or organized. If the legislative fiscal bureau
17 cannot determine the identity of a beneficiary, the legislative fiscal bureau shall note
18 that fact in the report. If the earmark is a tax deduction, credit, exclusion, or
19 exemption, all of the following shall apply:

20 1. All businesses and associations that are members of the same controlled
21 group of corporations shall be treated as a single beneficiary.

22 2. All shareholders of a corporation, partners of a partnership, members of an
23 association or organization, or beneficiaries of a trust or estate, respectively, shall be
24 treated as a single beneficiary.

25 3. All employees of a single employer shall be treated as a single beneficiary.

BILL**SECTION 1**

1 4. All health or other benefit plans of an employer that are qualified under the
2 federal Internal Revenue Code shall be treated as a single beneficiary.

3 5. All contributors to a charitable organization shall be treated as a single
4 beneficiary.

5 6. All holders of the same bond or note issue shall be treated as a single
6 beneficiary.

7 7. If a corporation, partnership, association or organization, or trust estate is
8 the beneficiary, the shareholders of the corporation, the partners of the partnership,
9 the members of the association or organization, or the beneficiaries of the trust or
10 estate shall not be considered beneficiaries.

11 (d) If an amendment, the name of the representative to the assembly or senator
12 who proposed the earmark or non-fiscal policy item.

13 (3) (a) The joint committee on finance may not vote to recommend passage of
14 a biennial budget bill or amendment thereto until the legislative fiscal bureau has
15 distributed a copy of the earmark transparency report, prepared under sub. (2), to
16 each member of the legislature and at least 48 hours have passed from the time when
17 the legislative fiscal bureau has distributed the report to all of the members.

18 (b) If a member of the joint committee on finance makes a motion during
19 committee deliberations on a biennial budget bill to remove an earmark or non-fiscal
20 policy item from a biennial budget bill, the motion shall prevail on either a majority
21 or a tie vote.

22 **SECTION 2.** 13.39 of the statutes is created to read:

23 **13.39 Legislative consideration of biennial budget bill.** (1) Neither
24 house of the legislature may pass a biennial budget bill until the legislative fiscal
25 bureau has distributed a copy of the earmark transparency report, prepared under

BILL

1 s. 13.102 (2), to each member of the legislature and at least 48 hours have passed from
2 the time when the legislative fiscal bureau has distributed the report to all of the
3 members.

4 (2) If a committee of conference is convened on a biennial budget bill, a
5 conference report may not contain any earmark, as defined in s. 13.102 (1) (a), or
6 nonfiscal policy item, as defined in s. 13.102 (1) (b), that was not included in the
7 executive budget bill or an amendment thereto that was passed by either house of
8 the legislature.

9 **SECTION 3.** 16.42 (1) (intro.) of the statutes is amended to read:

10 16.42 (1) (intro.) All agencies, other than the legislature and the courts, no later
11 than September 15 of each even-numbered year, in the form and content prescribed
12 by the department, shall, subject to sub. (1m), prepare and forward to the
13 department and to the legislative fiscal bureau the following program and financial
14 information:

History: 1971 c. 125, 215; 1973 c. 12, 333; 1975 c. 388; 1977 c. 29; 1977 c. 196 s. 130 (3), (4); 1977 c. 272; 1979 c. 34, 221; 1981 c. 20; 1987 a. 4; 1993 a. 16; 2001 a. 109; 2003 a. 33; 2005 a. 149.

15 **SECTION 4.** 16.42 (1m) of the statutes is created to read:

16 16.42 (1m) An agency may not include in the program and financial
17 information provided to the department and the legislative fiscal bureau under sub.
18 (1) a proposal for an earmark, as defined in s. 13.102 (1) (a), or a nonfiscal policy
19 item, as defined in s. 13.102 (1) (b).

20 **SECTION 5.** 16.46 (10) of the statutes is created to read:

21 16.46 (10) (a) A statement identifying each proposal in the executive budget
22 bill that was requested by an agency under s. 16.42 (1), but that was altered by the
23 governor.

BILL

1 (b) A statement identifying each proposal in the executive budget bill that was
2 not requested by an agency under s. 16.42 (1). ✓

3 (c) A statement specifying the costs of each proposal under pars. (a) and (b), ✓ the
4 policy reasons for including each proposal in the executive budget bill, ✓ and the
5 intended beneficiaries of each proposal. ✓

6

7

(END)

D. Mate
✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3470/1dn

RAC:.....

date

↑
JLD

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.

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266-9930
E-mail: rick.champagne@legis.wisconsin.gov

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 legislative 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.

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266-9930
E-mail: rick.champagne@legis.wisconsin.gov

Champagne, Rick

From: Reader, Chris
Sent: Tuesday, December 18, 2007 11:21 AM
To: Champagne, Rick
Subject: RE: LRB 3470/1

Rick, here are a few amendments to the draft Rich would like incorporated into a /2.

Thanks! Please call with any questions- he'll be happy to talk to you if you have questions on the intent of a particular section.

Chris

1. Earmark Transparency Report shall be prepared by LFB before JFC adopts, or either house passes/concurs with a budget bill or substitute amendment thereof. A new report shall be prepared before the passage/concurrence vote in JFC, the Assembly, and the Senate to encompass any major changes/substitute amendments adopted by each body. (if no changes made at a particular step, the report would be identical.)
2. Create a "Biennial budget earmark report" for DOA. Possibly a 16.422, which would encompass all the requirements under section 5 into one summary document prepared and delivered by DOA to members of the legislature on the night of the budget address.
3. Assembly and Senate rules created to read: It shall not be in order for the (Assembly or Senate) to consider a budget bill that does not conform to (the sections of this bill).

From: Champagne, Rick
Sent: Monday, December 17, 2007 8:34 AM
To: Reader, Chris
Subject: RE: LRB 3470/1

All of this would be included in the biennial budget report, which is presented to the legislature on the same day that the governor delivers the budget address.

From: Reader, Chris
Sent: Friday, December 14, 2007 4:29 PM
To: Champagne, Rick
Subject: RE: LRB 3470/1

Questions of Rich's on the draft: for the DOA budget, in Section 5, where exactly would the statements of changes made by the Governor to agency requests be printed?

From: Champagne, Rick
Sent: Wednesday, December 12, 2007 11:50 AM
To: Reader, Chris
Subject: RE: LRB 3470/1

Hi Chris:

No, the draft as currently constituted would not require Fiscal Bureau to prepare a new report for any caucus amendment or for the final conference report. Fiscal Bureau's only requirement is to prepare an earmark report on what Joint Finance passes. We can certainly fix that for you, though.

You might also want to share a copy of the draft with Bob Lang at some point to get his feedback since the bulk of the work in the legislature is going to fall on Fiscal Bureau. He might have suggestions on how to streamline the process.

Talk to you soon.

Rick

From: Reader, Chris
Sent: Wednesday, December 12, 2007 11:29 AM
To: Champagne, Rick
Subject: LRB 3470/1

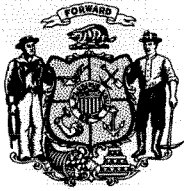
Rick, I read through the draft for LRB3470/1, the earmark transparency bill last night- the language looks great so far and hits our objectives well.

I have one question, for the 'earmark transparency report' in the legislature, Rich wants a report prepared before JFC votes, which is addressed well in the draft, but also a new report for any substitute amendment, such as what the Assembly GOP introduced and adopted during the summer and what the conference committee introduced and approved. In your opinion does the current draft require those additional reports, or as written would it only require a report for the initial budget bill or amendments that JFC considers?

For now I'm just looking for your thoughts on what is required in the bill, not any amendment language. After Rich takes a look through it this week I'm sure he'll have one or two small changes that I'll send you for a /2.

Thanks!

Chris Reader
Office of Rep. Zipperer
Wisconsin State Assembly
(608) 266-5120



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3470/12

RAC:jld:rs

SOON

RMR

2007 BILL

- regem. cat.

1 AN ACT to amend 16.42 (1) (intro.); and to create 13.102, 13.39, 16.42 (1m) and
2 16.46 (10) of the statutes; relating to: preparation and ^{legislative} consideration of ^a
3 biennial budget bill.

Analysis by the Legislative Reference Bureau

This bill makes all of the following changes relating to the preparation and consideration of biennial budget bills:

State agency budget requests

Currently, state agencies in every even-numbered year must submit certain program and financial information to the Department of Administration and the Legislative Fiscal Bureau (LFB) that is used by the governor in preparing the executive budget bill. Among the required information that state agencies must submit is proposed legislation to implement programmatic and financial plans.

This bill prohibits state agencies from submitting a proposal for an earmark or a nonfiscal policy item. Under the bill, an earmark is a provision that authorizes or requires the payment of state moneys to a specific beneficiary or beneficiaries in a manner not determined by laws of general applicability for the selection of the beneficiary or beneficiaries. Similarly, a nonfiscal policy item is a provision that does not appropriate money, provide for revenue, or relate to taxation.

Biennial state budget report

Currently, the secretary of administration must prepare a biennial budget report for distribution to the legislature on the same day that the governor delivers his budget message to the legislature. The report contains a variety of information

BILL

relating to the state's finances, state expenditures, and state revenues. This bill requires the following information to be included in the report: a statement identifying each proposal in the executive budget bill that was requested by a state agency, but that was altered by the governor; a statement identifying each proposal in the executive budget bill that was not requested by a state agency; and a statement specifying the costs of each of these two proposals, the policy reasons for including each proposal in the executive budget bill, and the intended beneficiary or beneficiaries of each proposal.

Earmark transparency report

The bill requires that, for each biennial budget bill or amendment thereto adopted by the Joint Committee on Finance (JCF), LFB must prepare an earmark transparency report that contains all of the following: a list of all earmarks and nonfiscal policy items; the cost of each earmark and nonfiscal policy item; and the beneficiary of each earmark and nonfiscal policy item. If the beneficiary is an individual, LFB must identify the assembly and senate district in which the beneficiary resides. If the beneficiary is an entity, LFB must identify the assembly and senate district in which the beneficiary is located, incorporated, or organized. With respect to an amendment to a biennial budget bill, LFB must identify the representative to the assembly or senator who proposed the earmark or nonfiscal policy item.

✓
Insert
Analysis

Joint Committee on Finance consideration of biennial budget bill

The bill provides that JCF may not vote to recommend passage of a biennial budget bill or amendment thereto until LFB has distributed a copy of the earmark transparency report to each member of the legislature and at least 48 hours have passed from the time when LFB has distributed the report to all of the members.

Senate and assembly consideration of biennial budget bill

The bill provides that neither house of the legislature may pass a biennial budget bill until LFB has distributed a copy of the earmark transparency report to each member of the legislature and at least 48 hours have passed from the time when LFB has distributed the report to all of the members. The bill further provides that, if a committee of conference is convened on a biennial budget bill, a conference report may not contain any earmark or nonfiscal policy item that was not included in the executive budget bill or an amendment thereto that was passed by either house of the legislature.

✓ on the
budget
bill, as
amended

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL**13.102 Joint committee on finance; consideration of biennial budget**

bill. (1) In this section:

(a) "Earmark" means a provision in a bill or amendment that authorizes or requires the payment of state moneys to a specific beneficiary or beneficiaries in a manner not determined by laws of general applicability for the selection of the beneficiary or beneficiaries.

(b) "Nonfiscal policy item" means a provision in a bill or amendment that does not appropriate money, provide for revenue, or relate to taxation.

(2) For each biennial budget bill or amendment thereto adopted by the joint committee on finance, the legislative fiscal bureau shall prepare an earmark transparency report that contains all of the following:

(a) A list of all earmarks and nonfiscal policy items.

(b) The cost of each earmark and nonfiscal policy item.

(c) The beneficiary of each earmark and nonfiscal policy item. If the beneficiary is an individual, the legislative fiscal bureau shall identify the assembly and senate district in which the beneficiary resides. If the beneficiary is an entity, the legislative fiscal bureau shall identify the assembly and senate district in which the beneficiary is located, incorporated, or organized. If the legislative fiscal bureau cannot determine the identity of a beneficiary, the legislative fiscal bureau shall note that fact in the report. If the earmark is a tax deduction, credit, exclusion, or exemption, all of the following shall apply:

1. All businesses and associations that are members of the same controlled group of corporations shall be treated as a single beneficiary.

BILL

1 2. All shareholders of a corporation, partners of a partnership, members of an
2 association or organization, or beneficiaries of a trust or estate, respectively, shall be
3 treated as a single beneficiary.

4 3. All employees of a single employer shall be treated as a single beneficiary.

5 4. All health or other benefit plans of an employer that are qualified under the
6 federal Internal Revenue Code shall be treated as a single beneficiary.

7 5. All contributors to a charitable organization shall be treated as a single
8 beneficiary.

9 6. All holders of the same bond or note issue shall be treated as a single
10 beneficiary.

11 7. If a corporation, partnership, association or organization, or trust estate is
12 the beneficiary, the shareholders of the corporation, the partners of the partnership,
13 the members of the association or organization, or the beneficiaries of the trust or
14 estate shall not be considered beneficiaries.

15 (d) If an amendment, the name of the representative to the assembly or senator
16 who proposed the earmark or nonfiscal policy item.

17 **(3)** (a) The joint committee on finance may not vote to recommend passage of
18 a biennial budget bill or amendment thereto until the legislative fiscal bureau has
19 distributed a copy of the earmark transparency report, prepared under sub. (2), to
20 each member of the legislature and at least 48 hours have passed from the time when
21 the legislative fiscal bureau has distributed the report to all of the members.

22 (b) If a member of the joint committee on finance makes a motion during
23 committee deliberations on a biennial budget bill to remove an earmark or nonfiscal
24 policy item from a biennial budget bill, the motion shall prevail on either a majority
25 or a tie vote.

BILL

1 **SECTION 2.** 13.39 of the statutes is created to read:

2 **13.39 Legislative consideration of biennial budget bill.** (1) Neither
3 house of the legislature may pass a biennial budget bill until the legislative fiscal
4 bureau has distributed a copy of the earmark transparency report, prepared under
5 s. 13.102 (2), to each member of the legislature and at least 48 hours have passed from
6 the time when the legislative fiscal bureau has distributed the report to all of the
7 members.

8 (2) If a committee of conference is convened on a biennial budget bill, a
9 conference report may not contain any earmark, as defined in s. 13.102 (1) (a), or
10 nonfiscal policy item, as defined in s. 13.102 (1) (b), that was not included in the
11 executive budget bill or an amendment thereto that was passed by either house of
12 the legislature.

13 **SECTION 3.** 16.42 (1) (intro.) of the statutes is amended to read:

14 16.42 (1) (intro.) All agencies, other than the legislature and the courts, no later
15 than September 15 of each even-numbered year, in the form and content prescribed
16 by the department, shall, subject to sub. (1m), prepare and forward to the
17 department and to the legislative fiscal bureau the following program and financial
18 information:

19 **SECTION 4.** 16.42 (1m) of the statutes is created to read:

20 16.42 (1m) An agency may not include in the program and financial
21 information provided to the department and the legislative fiscal bureau under sub.

22 (1) a proposal for an earmark, as defined in s. 13.102 (1) (a), or a nonfiscal policy item,
23 as defined in s. 13.102 (1) (b),

24 **SECTION 5.** 16.46 (10) of the statutes is created to read:

Insert
5-13

13.95
13.95 (1r)(a) 2
13.95 (b)(a) 1
↑
number

BILL

1 ~~16.46 (10) (a) A statement identifying each proposal in the executive budget~~
2 ~~bill that was requested by an agency under s. 16.42 (1), but that was altered by the~~
3 ~~governor.~~

4 ~~(b) A statement identifying each proposal in the executive budget bill that was~~
5 ~~not requested by an agency under s. 16.42 (1).~~

6 ~~(c) A statement specifying the costs of each proposal under pars. (a) and (b), the~~
7 ~~policy reasons for including each proposal in the executive budget bill, and the~~
8 ~~intended beneficiaries of each proposal.~~

9 (END)

Insert
6-9 ✓

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Insert Analysis:

Biennial state agency budget modification report ✓

Currently, the secretary of administration must prepare a biennial budget report for distribution to the legislature on the same day that the governor delivers his budget message to the legislature. The report contains a variety of information relating to the state's finances, state expenditures, and state revenues. ✓ This bill requires the following information to be included in the report: a statement identifying each proposal in the executive budget bill that was requested by a state agency, but that was altered by the governor; ✓ a statement identifying each proposal in the executive budget bill that was not requested by a state agency; and a statement specifying the costs of each of these two ✓ proposals, the policy reasons for including each proposal in the executive budget bill, and the intended beneficiary or beneficiaries of each proposal. ✓

Earmark transparency report

* The bill requires LFB, ✓ at the direction of the speaker of the assembly, the senate majority leader, or either co-chairperson ✓ of the Joint Committee on Finance (JCF), to prepare an earmark transparency report on a biennial budget bill or amendment thereto that contains all of the following: a list of all earmarks and ✓ nonfiscal policy items; the cost of each earmark and nonfiscal policy item; and the beneficiary of each earmark and nonfiscal policy item. ✓ If the beneficiary is an individual, LFB must identify the assembly and senate district in which the beneficiary resides. If the beneficiary is an entity, LFB must identify the assembly and senate district in which the beneficiary is located, incorporated, or organized. ✓ With respect to an amendment to a biennial budget bill, LFB must identify the representative to the assembly or senator who proposed the earmark or nonfiscal policy item. ✓

Insert 5-13:

SECTION 1. 13.102 ^x of the statutes is created to read:

13.102 Joint committee on finance; consideration of biennial budget bill. ✓ (1) The joint committee on finance ✓ may not vote to recommend passage of a biennial budget bill or amendment thereto until the ✓ legislative fiscal bureau has distributed a copy of an earmark transparency report on the biennial budget bill, as amended, prepared under s. 13.95 (1r) (b), ✓ to each member of the legislature and at least 48 ✓ hours have passed from the time when the legislative fiscal bureau has distributed the report to all of the members. ✓

↓

(2) If a member of the joint committee[✓] on finance makes a motion during committee deliberations on a biennial budget bill to remove an earmark or[✓] nonfiscal policy item from a biennial budget bill, the motion shall prevail on either a majority or a tie vote.[✓]

SECTION 2. 13.39[✓] of the statutes is created to read:

13.39 Legislative consideration of biennial budget bill. (1) Neither house of the legislature may pass a biennial budget bill[✓] until the[✓] legislative fiscal bureau has distributed a copy of an earmark transparency report[✓] prepared under s. 13.95 (1r) (b),^{MADE} on the biennial budget bill, as amended,[✓] to each member of the legislature and at least 48[✓] hours have passed from the time when the legislative fiscal bureau has distributed the report to all of the members.[✓]

(2) If a committee of conference is convened on a biennial budget bill,[✓] a conference report may not contain any earmark, as defined in s.[✓] 13.95 (1r) (a) 1., or nonfiscal[✓] policy item, as defined in s. 13.95 (1r) (a) 2.,[✓] that was not included in the executive budget bill or an amendment thereto that was passed by either house of the legislature.

SECTION 3. 13.95 (1r)[✓] of the statutes is created to read:

13.95 (1r) (a) In this subsection:[✓]

1. "Earmark"[✓] means a provision in a bill or amendment that authorizes or requires the payment of state moneys to a specific beneficiary or beneficiaries in a manner not determined by laws of general applicability for the selection of the beneficiary or beneficiaries.[✓]

2. "Nonfiscal policy item"[✓] means a provision in a bill or amendment that does not appropriate money, provide for revenue, or relate to taxation.[✓]



(b) If directed by the speaker of the assembly, the senate majority leader, or either co-chairperson of the joint committee on finance, the legislative fiscal bureau shall prepare an earmark transparency report on a biennial budget bill or amendment thereto that contains all of the following: ✓

1. A list of all earmarks and nonfiscal policy items. ✓

2. The cost of each earmark and nonfiscal policy item. ✓

3. The beneficiary of each earmark and nonfiscal policy item. ✓ If the beneficiary is an individual, the legislative fiscal bureau shall identify the assembly and senate district in which the beneficiary resides. ✓ If the beneficiary is an entity, the legislative fiscal bureau shall identify the assembly and senate district in which the beneficiary is located, incorporated, or organized. ✓ If the legislative fiscal bureau cannot determine the identity ✓ of a beneficiary, the legislative fiscal bureau shall note that fact in the report. If the earmark is a tax deduction, credit, exclusion, or exemption, all of the following shall apply: ✓

a. All businesses and associations that are members of the same controlled group of corporations shall be treated as a single beneficiary. ✓

b. All shareholders of a corporation, ✓ partners of a partnership, ✓ members of an association or organization, ✓ or beneficiaries of a trust or estate, ✓ respectively, shall be treated as a single beneficiary. ✓

c. All employees of a single employer shall be treated as a ✓ single beneficiary.

d. All health or other benefit plans of an employer that are qualified under the federal Internal Revenue Code ✓ shall be treated as a single beneficiary.

e. All contributors to a charitable organization shall be treated as a single beneficiary.



f. All holders of the same bond or note issue shall be treated as a single beneficiary. ✓

g. If a corporation, partnership, association or organization, ✓ or trust estate is the beneficiary, the shareholders of the corporation, the partners of the partnership, the members of the association or organization, or the beneficiaries of the trust or estate shall not be considered beneficiaries. ✓

4. If an amendment, the name of the representative to the assembly or senator who proposed the earmark or nonfiscal policy item. ✓

Insert 6-9:

SECTION 4. 16.45^x of the statutes is amended to read:

16.45 Budget message to legislature. In each regular session of the legislature, the governor shall deliver the budget message to the 2 houses in joint session assembled. Unless a later date is requested by the governor and approved by the legislature in the form of a joint resolution, the budget message shall be delivered on or before the last Tuesday in January of the odd-numbered year. With the message the governor shall transmit to the legislature, as provided in ss. 16.46 and to ✓ 16.47, the biennial state budget report, the biennial ✓ state agency budget modification report, and the executive budget bill or bills together with suggestions for the best methods for raising the needed revenues. The governor may distribute the biennial state budget report in printed or optical disk format.

History: 1971 c. 2; 1973 c. 333; 1987 a. 4, 186; 1993^x a. 16; 2005 a. 25.

SECTION 5. 16.465 of the statutes is created to read:

16.465 Biennial state agency budget modification report. ✓ The biennial state agency budget modification report shall be prepared by the secretary, ✓ under the direction of the governor, and a copy of the report shall be furnished to each member



of the legislature on the day of the delivery of the budget message. The biennial state agency budget ^{yo}modification report shall be furnished to each member of the ~~the~~ legislature on the same day and shall contain the following information:

(a) A statement identifying each proposal in the executive budget bill that was requested by an agency under s. 16.42 (1),[✓] but that was altered by the governor.[✓]

(b) A statement identifying each proposal in the executive budget bill that was not requested by an agency under s. 16.42 (1).[✓]

(c) A statement specifying the costs of each proposal under pars.[✓](a) and (b), the policy reasons for including each proposal in the executive budget bill, and the intended beneficiaries of each proposal.

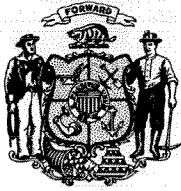
(end ins 6-9)

12/19/07

Per Chris

— have LRB prepare a report on every budget bill + every amendment, not just ones asked for by leadership + co-chairs.

— we discussed the "workability" of this proposal.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3470/2 3
RAC:jld:pg

SOM

RMR

2007 BILL

-regen. cat.

1 **AN ACT to amend** 16.42 (1) (intro.) and 16.45; and **to create** 13.102, 13.39, 13.95
2 (1r), 16.42 (1m) and 16.465 of the statutes; **relating to:** preparation and
3 legislative consideration of a biennial budget bill.

Analysis by the Legislative Reference Bureau

This bill makes all of the following changes relating to the preparation and consideration of biennial budget bills:

State agency budget requests

Currently, state agencies in every even-numbered year must submit certain program and financial information to the Department of Administration and the Legislative Fiscal Bureau (LFB) that is used by the governor in preparing the executive budget bill. Among the required information that state agencies must submit is proposed legislation to implement programmatic and financial plans.

This bill prohibits state agencies from submitting a proposal for an earmark or a nonfiscal policy item. Under the bill, an earmark is a provision that authorizes or requires the payment of state moneys to a specific beneficiary or beneficiaries in a manner not determined by laws of general applicability for the selection of the beneficiary or beneficiaries. Similarly, a nonfiscal policy item is a provision that does not appropriate money, provide for revenue, or relate to taxation.

Biennial state agency budget modification report

Currently, the secretary of administration must prepare a biennial budget report for distribution to the legislature on the same day that the governor delivers his budget message to the legislature. The report contains a variety of information

BILL

secretary of administration to also prepare a biennial state agency budget modification report that includes the

relating to the state's finances, state expenditures, and state revenues. This bill requires the following information to be included in the report: a statement identifying each proposal in the executive budget bill that was requested by a state agency, but that was altered by the governor; a statement identifying each proposal in the executive budget bill that was not requested by a state agency; and a statement specifying the costs of each of these two proposals, the policy reasons for including each proposal in the executive budget bill, and the intended beneficiary or beneficiaries of each proposal.

Earmark transparency report

The bill requires LFB, at the direction of the speaker of the assembly, the senate majority leader, or either cochairperson of the Joint Committee on Finance (JCF), to prepare an earmark transparency report on a biennial budget bill or amendment thereto that contains all of the following: a list of all earmarks and nonfiscal policy items; the cost of each earmark and nonfiscal policy item; and the beneficiary of each earmark and nonfiscal policy item. If the beneficiary is an individual, LFB must identify the assembly and senate district in which the beneficiary resides. If the beneficiary is an entity, LFB must identify the assembly and senate district in which the beneficiary is located, incorporated, or organized. With respect to an amendment to a biennial budget bill, LFB must identify the representative to the assembly or senator who proposed the earmark or nonfiscal policy item.

Joint Committee on Finance consideration of biennial budget bill

The bill provides that the JCF may not vote to recommend passage of a biennial budget bill or amendment thereto until LFB has distributed a copy of the earmark transparency report to each member of the legislature and at least 48 hours have passed from the time when LFB has distributed the report to all of the members.

Senate and assembly consideration of biennial budget bill

The bill provides that neither house of the legislature may pass a biennial budget bill until LFB has distributed a copy of an earmark transparency report on the biennial budget bill, as amended, to each member of the legislature and at least 48 hours have passed from the time when LFB has distributed the report to all of the members. The bill further provides that, if a committee of conference is convened on a biennial budget bill, a conference report may not contain any earmark or nonfiscal policy item that was not included in the executive budget bill or an amendment thereto that was passed by either house of the legislature.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 13.102 of the statutes is created to read:

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BILL**13.102 Joint committee on finance; consideration of biennial budget**

1 **bill. (1)** The joint committee on finance may not vote to recommend passage of a
2 biennial budget bill or ^{an} amendment thereto until the legislative fiscal bureau has
3 distributed a copy of an earmark transparency report on the biennial budget bill, as
4 amended, prepared under s. 13.95 (1r) (b), to each member of the legislature and at
5 least 48 hours have passed from the time when the legislative fiscal bureau has
6 distributed the report to all of the members.
7

8 **(2)** If a member of the joint committee on finance makes a motion during
9 committee deliberations on a biennial budget bill to remove an earmark or nonfiscal
10 policy item from a biennial budget bill, the motion shall prevail on either a majority
11 or a tie vote.

12 **SECTION 2.** 13.39 of the statutes is created to read:

13 **13.39 Legislative consideration of biennial budget bill. (1)** Neither
14 house of the legislature may pass a biennial budget bill until the legislative fiscal
15 bureau has distributed a copy of an earmark transparency report on the biennial
16 budget bill, as amended, prepared under s. 13.95 (1r) (b), to each member of the
17 legislature and at least 48 hours have passed from the time when the legislative
18 fiscal bureau has distributed the report to all of the members.

19 **(2)** If a committee of conference is convened on a biennial budget bill, a
20 conference report may not contain any earmark, as defined in s. 13.95 (1r) (a) 1., or
21 nonfiscal policy item, as defined in s. 13.95 (1r) (a) 2., that was not included in the
22 executive budget bill or an [✓] amendment thereto that was passed by either house of
23 the legislature.

24 **SECTION 3.** 13.95 (1r) of the statutes is created to read:

25 **13.95 (1r) (a)** In this subsection:

BILL

1 1. "Earmark" means a provision in a bill or amendment that authorizes or
 2 requires the payment of state moneys to a specific beneficiary or beneficiaries in a
 3 manner not determined by laws of general applicability for the selection of the
 4 beneficiary or beneficiaries.

5 2. "Nonfiscal policy item" means a provision in a bill or amendment that does
 6 not appropriate money, provide for revenue, or relate to taxation.

7 (b) ~~If directed by the speaker of the assembly, the senate majority leader, or~~
 8 ~~either cochairperson of the joint committee on finance, the~~ legislative fiscal bureau ^{The}
 9 shall prepare an earmark transparency report on ~~each~~ ^{each} biennial budget bill ^{and on}
 10 amendment thereto ~~that contains~~ ^{The} all of the following: ^{each} ^{contain}

- 11 1. A list of all earmarks and nonfiscal policy items.
- 12 2. The cost of each earmark and nonfiscal policy item.

13 3. The beneficiary of each earmark and nonfiscal policy item. If the beneficiary
 14 is an individual, the legislative fiscal bureau shall identify the assembly and senate
 15 district in which the beneficiary resides. If the beneficiary is an entity, the legislative
 16 fiscal bureau shall identify the assembly and senate district in which the beneficiary
 17 is located, incorporated, or organized. If the legislative fiscal bureau cannot
 18 determine the identity of a beneficiary, the legislative fiscal bureau shall note that
 19 fact in the report. If the earmark is a tax deduction, credit, exclusion, or exemption,
 20 all of the following shall apply:

21 a. All businesses and associations that are members of the same controlled
 22 group of corporations shall be treated as a single beneficiary.

23 b. All shareholders of a corporation, partners of a partnership, members of an
 24 association or organization, or beneficiaries of a trust or estate, respectively, shall be
 25 treated as a single beneficiary.

BILL

- 1 c. All employees of a single employer shall be treated as a single beneficiary.
- 2 d. All health or other benefit plans of an employer that are qualified under the
3 federal Internal Revenue Code shall be treated as a single beneficiary.
- 4 e. All contributors to a charitable organization shall be treated as a single
5 beneficiary.
- 6 f. All holders of the same bond or note issue shall be treated as a single
7 beneficiary.
- 8 g. If a corporation, partnership, association or organization, or trust estate is
9 the beneficiary, the shareholders of the corporation, the partners of the partnership,
10 the members of the association or organization, or the beneficiaries of the trust or
11 estate shall not be considered beneficiaries.

12 4. If an amendment, the name of the representative to the assembly or senator
13 who proposed the earmark or nonfiscal policy item.

14 **SECTION 4.** 16.42 (1) (intro.) of the statutes is amended to read:

15 16.42 (1) (intro.) All agencies, other than the legislature and the courts, no later
16 than September 15 of each even-numbered year, in the form and content prescribed
17 by the department, shall, subject to sub. (1m), prepare and forward to the
18 department and to the legislative fiscal bureau the following program and financial
19 information:

20 **SECTION 5.** 16.42 (1m) of the statutes is created to read:

21 16.42 (1m) An agency may not include in the program and financial
22 information provided to the department and the legislative fiscal bureau under sub.
23 (1) a proposal for an earmark, as defined in s. 13.95 (1r) (a) 1., or a nonfiscal policy
24 item, as defined in s. 13.95 (1r) (a) 2.

25 **SECTION 6.** 16.45 of the statutes is amended to read:

Duerst, Christina

From: Reader, Chris
Sent: Friday, January 11, 2008 11:43 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-3470/3 Topic: Earmark Transparency Act

Please Jacket LRB 07-3470/3 for the ASSEMBLY.