

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1068/1dn

RAC:jld:rs

December 12, 2006

Please note that any law requiring the governor to limit the amount of his recommended appropriations in the executive biennial budget bill may very well be unconstitutional. In *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 449-450 (1973), the court stated clearly that "Whatever recommendations the governor chooses to make to the legislature relating to appropriations are constitutionally committed to his discretion." In other words, the legislature by law cannot direct the governor as to what total amount of appropriations he or she can recommend in the budget bill.

Please note that s. 13.39 is not legally enforceable, but rather is a rule of proceeding under article IV, section 8, of the Wisconsin Constitution. The supreme court has held that the remedy for noncompliance with this type of provision 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 this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision if the legislature does not follow it.

Finally, please note that I took out the requirement that the legislature has to pass a bill to reduce the deficit in the *same* fiscal year as the year in which the deficit occurs. The reason I did this is that the Department of Administration does not publish its report until after the close of the fiscal year. Instead, I simply required the legislature simply to pass a bill to reduce the deficit for that fiscal year.

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