



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #176

Criteria for Transfer of Moneys from the Budget Stabilization Fund (Budget Stabilization Fund)

CURRENT LAW

There is a single statutory provision relating to when moneys in the budget stabilization fund may be transferred to other funds. That provision is contained in the fiscal emergency statute dealing with the procedures that are required to be followed in the event of a general fund revenue shortfall following the enactment of a biennial budget. If the Governor determines that a fiscal emergency exists as defined under that statute [s. 16.50(7)], the Governor must submit a bill containing recommendations for dealing with the revenue shortfall. As a part of any such recommendations, the Governor is required to include a recommendation as to whether moneys should be transferred from the budget stabilization fund to the general fund to help correct the revenue shortfall.

GOVERNOR

No provision.

DISCUSSION POINTS

1. The balance in the budget stabilization fund as of April 30, 2005, was \$33,406.89. However, despite this modest balance, there are statutory provisions that, under certain conditions, will result in more substantial amounts of moneys being transferred to the budget stabilization fund. The principal one of these is the requirement that the Secretary of DOA annually transfer 50% of any taxes that are collected in a fiscal year that are in excess of the amount of taxes estimated to be received in that fiscal year under the adopted biennial budget to the budget stabilization fund. Such transfers are to occur in each year that any such excess taxes are collected, unless the amount of

funds already in the budget stabilization fund is equal to, or in excess of, 5% of the total estimated GPR expenditures for that fiscal year.

2. There are also two other provisions that relate to potential additional revenues that are to be transferred to the budget stabilization fund. The first is a provision relating to the sale of surplus state land and buildings. The statutes require that the net proceeds from the sale or lease of surplus state land or buildings (the net sale revenues after paying off any outstanding debt on the land or buildings) are to be deposited in the budget stabilization fund. Second, the net proceeds from any sale of agency surplus property [principally agency supplies and permanent property (such as vehicles and office equipment)] are also to be deposited in the budget stabilization fund. [Note: There are provisions in AB 100 which would modify these current law provisions but they are not the subject of this paper.]

3. There is currently a single provision specified in the statutes with regard to any conditions or criteria for when moneys may be transferred out of the budget stabilization fund. However, that provision only requires that the Governor indicate whether any moneys in the fund should be used to help alleviate a declared fiscal emergency. There is no specification as to the extent of a fiscal emergency (such as a dollar magnitude of shortfall) that must exist before moneys may be used. Prior to the enactment of these new transfer requirements as a part of the 2001 Act 16 (the 2001-03 biennial budget), there was a general criterion regarding the use of any moneys in the fund.

4. Wisconsin's budget stabilization fund was created by 1985 Act 120. The creation of this fund occurred after the state had endured a difficult economic downturn during the early 1980's that necessitated budget reductions in a number of the state's programs and agencies. This was the case in many states at the time and it was during this period that many states created "rainy day" or budget stabilization funds. Generally, these funds were established for the purpose of setting aside funds for a time period when state revenues might grow much more slowly than earlier estimated levels or actually decrease from prior levels.

5. In the original establishment of the state's budget stabilization fund, language was included regarding the permissible use of moneys in the fund. The use of the fund was specifically limited by the restriction that "Moneys in this fund are reserved to provide state revenue stability during periods of below-normal economic activity when actual state revenues are lower than estimated revenues under s. 20.005(1) [the general fund condition statement as established under the biennial budget act]." This statutory use provision remained unchanged until the modifications adopted in 2001 Act 16 relating to transfers to the budget stabilization fund were made. As a part of those Act 16 modifications, that language governing the use of moneys in the fund was deleted.

6. At the time of this proposed change in the language, the State Budget Office had indicated that the intent of the change, was to limit the ways in which moneys could be used. However, it is unclear what the actual impact of this requirement is.

7. The State Budget Office indicated at the time of this statutory change that the goal

was to tie the use of this fund to only the 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 the Department of Administration determines that authorized expenditures in a fiscal year will exceed expected revenues by more than 0.5% of estimated general fund revenues, the Governor is required to submit to the Legislature his or her recommendations to address the shortfall. It could be argued then that, under this provision, if such a revenue shortfall situation arises and the Governor chooses not to recommend the use of any monies in the budget stabilization fund for the purpose of correcting the imbalance, then such moneys cannot be used by the Legislature to address that problem. Further, given the stated intent for the provision at the time, it could be argued that this would be the sole situation under which the use of moneys in the fund is statutorily authorized.

8. Notwithstanding this argument, however, the Legislature could choose to appropriate moneys from the budget stabilization fund for other purposes or for the purpose of dealing with a revenue shortfall situation even if the Governor has not included such action in his or her recommendations. If a given Legislature took such action and the action were to be challenged in court, it is reasonable to assume that the State Supreme Court would likely not hold that act of appropriation to have been enacted illegally. The State Supreme Court has held on several occasions that the remedy for such non-compliance with this type of procedural provision lies exclusively with the legislative branch.

9. The broader question may still be raised, however, as to utility of having such a statutory limitation on Legislature on the books. Further, the previously deleted language relating to the purposes of the fund served a more useful purpose in indicating the intent of having such a fund. An estimated 47 states have established some type of "rainy day" or budget stabilization fund. The mechanisms governing how revenues are provided to such funds and the specific procedures for transfer of moneys from such funds vary considerably. However, the provisions in the states are much more similar when it comes to the question of the conditions under which the transfer of moneys from such funds 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 projected deficits in the states' general funds.

10. The Joint Legislative Council's Special Committee on Improving Wisconsin's Fiscal Management reviewed this issue as a part of its overall review and study of state budget and fiscal management issues. As a part of its recommendations, that Committee recommended modifications to the current fiscal emergency language and the current statutory provisions defining the budget stabilization fund. With regard to the fund, that Committee essentially recommended restoration of the original language defining the purpose for which moneys in the fund could be used. However, the Committee recommended a further limit on the use of these moneys by adding that there should be a least a 2% shortfall in estimated general fund revenues before moneys in the fund could be used. Also, that Committee recommended creation of a reference point for measuring any such revenue shortfall by keying that measurement to the general fund revenue estimates that are enacted under each biennial budget act. The rationale for that Committee recommending that there be at least a 2% or greater revenue shortfall to allow use of moneys in the budget stabilization fund to

address the shortfall was that Committee members felt that there should be some definition of how serious of a shortfall was projected to be before a transfer from the budget stabilization fund to the general fund would be permitted. For shortfalls of less than that level, the Governor and the Legislature would have to seek remedies other than using moneys in the budget stabilization fund to address those situations.

11. The Committee could choose to take no action, thereby maintaining current law.

12. Alternatively, the Committee could take actions to: (a) modify the provisions under the revenue shortfall provision to simply state that the Governor may propose legislation and/or the Legislature may approve legislation to address revenue shortfall situations which may include the use of monies from the budget stabilization fund; or (b) create language under the fund definition to specify that: (1) the moneys in the fund are reserved for use 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 as contained in the biennial budget bill; and (2) either the Governor or the Legislature may recommend use of moneys in the budget stabilization fund to address an identified revenue shortfall under 16.50(7); or (c) include the recommendation of the Joint Legislative Council's Special Committee on Improving Wisconsin's Fiscal Management that use of moneys in the budget stabilization fund should be limited to situations when the projected revenue shortfall in the general fund is in an amount that equals or exceeds 2% of total revenues as estimated in the adopted biennial budget and provide that the Governor or the Legislature or both may in that case recommend use of moneys in the fund to address the revenue shortfall; or (d) delete any specification or reference to permitted uses of the fund (the current law reference to the Governor recommending the use of moneys in the fund to address revenue shortfalls would be deleted).

ALTERNATIVES

1. Modify the revenue shortfall statute to delete any specification that a Governor must included a recommendation at to whether moneys in the budget stabilization fund should be used to address any revenue shortfall situation.

2. Modify the revenue shortfall statute to provide that the Governor or the Legislature or both may recommend use of moneys in the budget stabilization fund to address a revenue shortfall under s. 16.50 (7) of the statutes.

3. Create language under the budget stabilization fund purpose [s. 25.60] to: (a) specify that the moneys in the fund are reserved for use 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 as contained in the biennial budget act; and (b) provide under the fiscal emergency statute [s. 16.50(7)] that the Governor or the Legislature or both may recommend use of moneys in the budget stabilization fund to address an identified revenue shortfall.

4. Include language to incorporate the Joint Legislative Council's Special Committee on Improving Wisconsin's Fiscal Management recommendation that use of moneys in the budget stabilization fund should be limited to situations when a revenue shortfall has occurred in which the amount of the projected shortfall is in an amount equal to or more than 2% of total revenues as estimated in the adopted biennial budget act and also provide that the Governor, the Legislature, or both may recommend use of moneys in the budget stabilization fund in that case to address the revenue shortfall.

5. Delete from the current revenue shortfall statute any specification or reference to permitted uses of the budget stabilization fund (the current law reference requiring that the Governor recommend with regard to any revenue shortfall under that provision whether moneys in the budget stabilization fund should be used to address the shortfall would be deleted).

6. Take no action.

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