



## WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO:       SPEAKER JOHN GARD  
FROM:     Ronald Sklansky, Senior Staff Attorney  
RE:       Correction of Budgetary Imbalance  
DATE:     January 29, 2003

This memorandum, prepared at your request, responds to questions you have raised regarding gubernatorial action to correct a budgetary imbalance. Specifically, you have asked the following:

1. Under the provisions of s. 16.50 (7), Stats., must the Governor propose legislation to completely eliminate a budgetary imbalance?
2. If the Governor fails to propose legislation that completely eliminates a budgetary imbalance, what consequences may ensue?

### **SECTION 16.50 (7), STATS.**

Section 16.50 (7), Stats., provides that if, following the enactment of the biennial budget act in any biennium, the Secretary of the Department of Administration (DOA) determines that previously authorized expenditures will exceed revenues in the current or forthcoming fiscal year by more than 1/2 of 1% of the estimated general purpose revenue appropriations for that fiscal year, the Secretary must immediately notify the Governor, the presiding officers of each house of the Legislature, and the Joint Committee on Finance. Following notification from the Secretary, the Governor is required to submit a bill containing his or her recommendations for correcting the imbalance between projected revenues and authorized expenditures. If the Legislature is not in a floorperiod at the time of the Secretary's notification, the Governor must call a special session of the Legislature to consider the projected revenue shortfall and the Governor must submit a bill for consideration in that session.

### **DISCUSSION**

There appear to be no Wisconsin judicial opinions or opinions of the Attorney General regarding the meaning of the phrase "correcting the imbalance between projected revenues and authorized expenditures" as used in s. 16.50 (7) (b), Stats. However, the plain meaning of the language is not

difficult to discern. *Webster's* defines the term "correct" in part as meaning "to make or set right" and "to alter or adjust so as to bring to some standard or required condition." [See *Websters Third New International Dictionary*, unabridged (1993).] Consequently, in order to "make right" the difference between expenditures and revenues or to achieve the "required condition" of balance, s. 16.50 (7), Stats., appears to require that the Governor propose legislation that remedies the problem by eliminating the gap between expenditures and revenues. The importance of fulfilling this requirement is reflected by the statutory mandates to the Secretary of DOA to "immediately notify" specified governmental officials and bodies and to the Governor to call a special session of the Legislature if necessary.

There are no statutory consequences if the Governor's bill under s. 16.50 (7), Stats., does not completely eliminate an estimated budgetary imbalance. If a bill proposed by the Governor does not entirely correct a budgetary imbalance, the problem may be addressed by the Legislature as it reviews the Governor's proposal prior to the end of the fiscal year or the problem must be addressed by the Legislature in the next fiscal year under the provisions of Wis. Const. art. VIII, s. 5.

It also is possible that a party with standing, or who is acting in the name of the state, could petition the Wisconsin Supreme Court in a case of original jurisdiction for a *writ of mandamus* directing the Governor to propose legislation that resolves an estimated budgetary imbalance. There are serious practical and legal difficulties with this approach, however. First, there is the question of whether sufficient time exists before the end of the 2001-2003 Biennium in which the Supreme Court could take action and in which the Governor could respond. Second, in order to support a *writ of mandamus*, the Supreme Court must find that it is an appropriate remedy, a clear legal right exists, there is a plain and positive ministerial duty on the part of the Governor, substantial damages or injury will result if relief is not granted, and there is no other adequate remedy at law. [See *Galuska v. Kornwolf*, 142 Wis. 2d 733, 419 N.W.2d 307 (Ct. App. 1987).] The sentiments of the Wisconsin Supreme Court regarding the issuance of an order to the Governor have been expressed as follows:

It must not be understood that there is any want of appreciation here of the fact that much deference is due to the co-ordinate department of the government, vitalized by the governor. It is the pleasure and the duty of the courts to pay that deference and, perhaps, to resolve reasonable doubts as to where mere deference ends in favor of the executive department. But the court must not go so far as to cast any doubt upon its own authority to deal with all judicial questions, regardless of whether it may necessarily call in question some act of the governor. It may very properly hesitate, and even decline, to use its authority in any coercive way as to him, whether there is any measure of discretion to do so, but not even venture to doubt that it possesses the power to act when action is necessary. [See *Ekern v. McGovern*, 154 Wis. 157, 213, 142 N.W.595 (1913).]

It appears that the Governor's proposal under s. 16.50 (7), Stats., to address a budgetary imbalance should completely rectify that estimated imbalance. It is also a possibility that the Wisconsin Supreme Court could order the Governor to do so, but the court probably would be very reluctant to take this action.

If I can be of any further assistance in this matter, please feel free to contact me.