

Vetoes by Governor Walker on Identical and Substantially Similar Provisions to Lame Duck Proposals

The proposals passed in the 2018 lame duck legislative session contain at least four provisions that are identical or substantially similar to provisions Governor Walker had vetoed as part of the 2017-19 state budget (2017 Act 59).

1. Repeal of 2017 Act 59 Authority to Transfer Funds Among Highway Program Appropriations

SB 883: This provision prohibits DOT from transferring state and federal funds between highway programs. This program allowing for transfers was initially authorized under 2017 Act 59, but Walker vetoed it in part to remove legislative oversight. This bill removes the authority to do it altogether (i.e. it was ok for Walker to do without oversight, but Evers should not be able to do it at all.)

According to the 12.6.18 memo from LFB, these provisions mean “effective July 1, 2019, repeal the Department of Transportation's authority to transfer federal and state funds between state highway program components and a related appropriation. The Governor's partial veto of 2017 Act 59 provided DOT the authority to transfer these funds without legislative oversight.”

http://docs.legis.wisconsin.gov/misc/lfb/bill_summaries/2017_19/0002_december_extraordinary_session_bills_as_passed_by_the_legislature_12_6_18.pdf

LFB Summary of veto from 2017 Act 59:

ITEM E-97. TRANSFER OF SEGREGATED FUNDS

As passed by the Legislature, Assembly Bill 64 would have required DOT to study and report on the effects of consolidating SEG in the surface transportation program (STP) and replacing these funds with FED from the state highway program and report its findings to the Joint Committee on Finance no later than May 1, 2018. The bill would have also allowed DOT to submit a s. 13.10 request to the Joint Committee on Finance in order to accomplish such transfers and would have required DOT to include an estimate of the potential savings or costs to local governments and the state associated with the request. In the event the Committee would have acted under the s. 13.10 process to approve such transfers, the bill created a SEG, all moneys transferred local transportation facility improvement assistance appropriation (STP program appropriation) to which funds could have been transferred. *The Governor's partial veto modifies the newly-created appropriation, such that it could be used to receive all moneys transferred under the Act for providing roads and highways. The veto also modifies the study provisions such that "the Department of Transportation may make transfers of state and federal moneys between the highway program." The partial veto retains the requirement that DOT study the effects of consolidating state moneys in the surface transportation program and replacing these funds with federal moneys from the state highway program.*

The Governor's veto message indicates this partial veto is intended to address "the limitations created in this budget on the allocation of segregated funds among highway projects...the southeast Wisconsin freeway megaprojects and major highway projects, in particular." However, pursuant to s. 84.0145(2) of the statutes, legislative attorneys indicate that the existing southeast Wisconsin freeway megaprojects statutes limit the appropriations that may be used to fund enumerated southeast megaprojects, and, as a result, expenditures on those projects may not be authorized from the newly-created appropriation as vetoed. Further, the existing, state-funded (SEG) appropriations for the southeast Wisconsin freeway megaprojects and the major highway development programs are sum-certain appropriations and do not appear to authorize the receipt of transfers of funding from other appropriations (or allow for an increase in expenditure authority beyond the amounts in the schedule of appropriations).

https://docs.legis.wisconsin.gov/misc/lfb/budget/2017_19_biennial_budget/035_summary_of_partial_vetos_of_2017_wisconsin_act_59_october_2017.pdf

From Walker Veto Message on 2017 Act 59:

97. Transfer of Segregated Funds Sections 359p and 9145 (4w)

These provisions require the Department of Transportation to study and report on the effects of consolidating SEG in the surface transportation program and replacing these funds with FED from the state highway program. This report is required to be submitted to the Joint Committee on Finance no later than May 1, 2018. These provisions further permit the department to submit a s. 13.10 request to the Joint Committee on Finance that would accomplish such transfers and would require such requests to include an estimate of the potential savings or costs to local governments. In addition, these provisions create a SEG continuing appropriation under which funds could be transferred to implement any actions by the Committee.

I am partially vetoing these provisions because I object to the limitations created in this budget on the allocation of segregated funds among highway projects. The limitations placed on the amounts provided for the southeast Wisconsin freeway megaprojects and the major highway projects, in particular, will inhibit the department's ability to allocate funds in the most advantageous manner especially in light of the I-94 north-south corridor project funding provided for in separate legislation.

As a result of my partial vetoes of these sections, the department will be able to make dollar for dollar reallocations among all state and local road and highway projects – including the southeast Wisconsin freeway megaprojects. My veto will ensure that the state can maximize the use of federal matching dollars and begin to implement state efforts to reduce local government's costs immediately. While no overall increase in spending will be permitted by my partial vetoes, critical reallocations, especially to advance the southeast Wisconsin freeway megaprojects will be enabled. None of these reallocations, however, will hinder my earlier commitment to keep all major projects on schedule to the highest degree possible within the overall funding provided under the budget bill.

I am also partially vetoing the Joint Committee of Finance review of reallocations under this provision because such review may impede the speed of the department's efforts to bring projects to completion. I am further partially vetoing the requirement that the department provide a report on the consolidation of funds to the Committee by May 1, 2018, because the study of such consolidation should remain as an ongoing function. My partial vetoes retain, however, the requirement for the department to study the effects of consolidating state moneys in the surface transportation program as our efforts to examine means to reduce local government costs must continue.

<https://doa.wi.gov/budget/SBO/2017-19%20Veto%20Message.pdf>

2. Annual Report for Self-Funded Portal

SB 884: This provision requires reporting on the state-funded portal for state services, commonly known as the STAR program.

According to the 12.6.18 memo from LFB, these provisions would “require DOA to submit to the Joint Committee on Finance and the Legislature an annual report on the administration of the information technology and communication services self-funded portal. Specify that the annual report: (a) be submitted by October 1 of each year for the fiscal year that ended immediately preceding the date of the report; (b) include a financial statement of the state's self-funded portal revenues and expenditures for the fiscal year; (c) list the services available through the portal, identifying the addition of services available since the previous fiscal year; (d) indicate the amounts of any fees charged for each of the services; and (e) summarize the activity levels of the services provided. The Department may include any other

information it determines is relevant to the administration of the self-funded portal. This provision was included in the 2017-19 biennial budget, as passed by the Legislature, and was vetoed by the Governor.” http://docs.legis.wisconsin.gov/misc/lfb/bill_summaries/2017_19/0002_december_extraordinary_session_bills_as_passed_by_the_legislature_12_6_18.pdf

LFB Summary of veto from 2017 Act 59:

ITEM C-44. SELF-FUNDED PORTAL ANNUAL REPORT

As passed by the Legislature, Assembly Bill 64 would have required DOA to submit an annual report to the Legislature and the Joint Committee on Finance by October 1 of each year for the fiscal year that ended immediately preceding the date of the report that would: (a) include a financial statement of the state's self-funded portal revenues and expenditures for the fiscal year; (b) list the services available through the portal, including the addition of services available since the previous fiscal year; (c) indicate the amounts of any fees charged for each of the services; and (d) summarize the activity levels of the services provided. The bill would have specified that DOA could include any other information it determines is relevant to the administration of the self funded portal. *The Governor's partial veto deletes this provision.*

https://docs.legis.wisconsin.gov/misc/lfb/budget/2017_19_biennial_budget/035_summary_of_partial_vetos_of_2017_wisconsin_act_59_october_2017.pdf

From Walker Veto Message on 2017 Act 59:

44. Self-Funded Portal Annual Report Section 172

Section 172 requires the Department of Administration to submit a report to the Joint Committee on Finance and Legislature by October 1 of each year that includes: (a) a financial statement of the state's self-funded portal revenues and expenditures for the fiscal year; (b) a list of the services available through the portal, including the addition of services available since the previous fiscal year; (c) the amounts of any fees charged for each of the services; and (d) a summary of the activity levels of the services provided, as well as any other information the department wishes to provide. The portal does not have a cost to taxpayers, but is fee-based and user-driven by agencies and customer demand for services.

I am vetoing this section to remove the reporting requirement because I believe that it encroaches on the executive branch's responsibility to manage state agency programs within the statutes and funding levels set by the Legislature. In the Executive Budget, the department requested the conversion of the self-funded portal appropriation from annual to continuing, which would have given the department more flexibility in managing the appropriation and expanding the number of e-projects based on existing fee revenue available. As part of this request, the department was directed to report to the Legislature on these projects. Given that the Joint Committee on Finance elected to reject this proposal, it will be involved directly in any expenditure authority increase and can request any additional information it would like at that time.

<https://doa.wi.gov/budget/SBO/2017-19%20Veto%20Message.pdf>

3. Notification Requirement for Transfers of State Veterans Homes Revenue to the Veterans Trust Fund

SB 884: This provision requires Department of Veterans Affairs to provide notice to JFC of any transfers from veterans homes to the veterans trust fund. This is similar to a Joint Finance Committee passive review requirement Walker had vetoed.

According to the 12.6.18 memo from LFB, these provisions would “require the Department of Veterans Affairs to notify the Joint Committee on Finance of any transfer of funds from the operation of the state veterans homes to the veterans trust fund. Under current law, the Department of Veterans Affairs may make transfers from unencumbered balance of the PR appropriations for the state veterans homes to the

veterans trust fund without legislative approval and without providing notice to the Legislature. Under this authority, DVA has made such transfers to in each fiscal year since 2015-16 (\$12.0 million in 2015-16, \$9.0 million in 2016-17, \$12.5 million in 2017-18, and \$14.5 million in 2018-19).”

http://docs.legis.wisconsin.gov/misc/lfb/bill_summaries/2017_19/0002_december_extraordinary_session_bills_as_passed_by_the_legislature_12_6_18.pdf

LFB Summary of veto from 2017 Act 59:

ITEM D-75. VETERAN'S TRUST FUND AND STATE VETERANS HOMES

As passed by the Legislature, Assembly Bill 64 would have required the Department of Veterans Affairs (DVA) to receive approval of the Joint Committee on Finance under a 14-day passive review process prior to making any transfers of moneys from unappropriated balances in the program revenue appropriations for the state veterans homes to the veterans trust fund. ***The Governor's partial veto deletes this requirement, thereby retaining the Department's current law authority to make transfers without the approval of the Committee.***

As passed by the Legislature, Assembly Bill 64 would have required DVA to submit a report to the Joint Committee on Finance that contains the following: (a) a description and analysis of the Department's administrative costs supported by the veterans trust fund and by revenue generated from the state veterans homes; (b) proposals for changes to the Department's administrative structure or position levels and salaries to increase efficiency or administrative costs; and (c) two proposed long-term plans to maintain the solvency of the veterans trust fund, one of which that includes transfers from the appropriations of the state veterans homes and one of which that does not include such transfers. ***The Governor's partial veto deletes this provision.***

As passed by the Legislature, Assembly Bill 64 would have required DVA to do the following to implement recommendations contained in the Legislative Audit Bureau's Report 17-8 relating to the Wisconsin Veterans Home at King: (a) promulgate administrative rules to establish a formula for calculating private pay rates for nursing home and assisted living care at the state veterans homes; (b) submit a report to the Joint Committee on Finance and the Joint Legislative Audit Committee by July 1, 2018, relating to the cash balance in the state veterans home PR appropriation account and providing a plan for the management and proposed use of the cash balance in the account; and (c) submit a report to the Joint Committee on Finance and the Joint Legislative Audit Committee by July 1, 2018, that includes a description of the Department's efforts to establish a process for identifying and assessing the capital-related project needs for all Wisconsin Veterans Homes and a description of the Department's efforts to use this information to complete a 10-year facilities plan for the state veterans homes. ***The Governor's partial veto deletes this provision.***

https://docs.legis.wisconsin.gov/misc/lfb/budget/2017_19_biennial_budget/035_summary_of_partial_vetos_of_2017_wisconsin_act_59_october_2017.pdf

From Walker Veto Message on 2017 Act 59:

75. Veterans Trust Fund and State Veterans Homes Sections 739qg, 739qm, 9149 (1f) and 9149 (1g) These provisions make a series of changes to the Wisconsin Department of Veterans Affairs veterans trust fund and State Veterans Homes. Under these provisions, the Department of Veterans Affairs is prohibited from making any transfer from the unencumbered program revenue balance of the Veterans Homes to the veterans trust fund unless the transfer has been approved by the Joint Committee on Finance.

The Department of Veterans Affairs is required to prepare a report that contains all of the following: (a) a description and analysis of the administrative costs supported by the veterans trust fund and veterans home revenue; (b) proposes any changes to the department's programs, administrative structure or position level and salaries to increase efficiency or lower administrative costs; and (c) proposes two long-

term plans to maintain solvency of the veterans trust fund, one of which allows for transfers from the homes and one of which uses no such transfers.

Further, these sections require the department to submit proposed changes to VA 6 of the Administrative Code to include a formula for calculating private pay rates for nursing home and assisted living care at Veterans Homes and to clearly define rate-setting terms. Further, the department is required to submit a report to the Joint Legislative Audit Committee and the Joint Committee on Finance by January 1, 2018, on the cash balance in the Veterans Home program revenue appropriation it believes is appropriate to maintain, and its efforts to develop, and routinely update, a detailed plan for the management and proposed use of the cash balance.

Finally, under these sections the department is required to submit a report to the Joint Legislative Audit Committee and the Joint Committee on Finance by January 1, 2018, on its efforts to (a) establish a systematic process for comprehensively identifying and assessing the capital related project needs for the State Veterans Homes, and (b) the use of this information to complete a ten-year facilities plan for the Veterans Homes and to help develop its required six year facilities plans in the future. I am vetoing these provisions because I object to the creation of a series of additional mandated reports which are administratively burdensome and redirects valuable staff time away from care for veterans. Further, I believe these requirements encroach on the executive branch's responsibility to manage state agency programs within the statutes and funding levels set by the Legislature.
<https://doa.wi.gov/budget/SBO/2017-19%20Veto%20Message.pdf>

4. Implementation of Childless Adult Demonstration Waiver

SB 886: This provision generally codifies the provisions of the Oct. 31, 2018 federal CMS Medicaid demonstration waiver. However, the bill adds back provisions similar to those vetoed by Gov. Walker related to JFC oversight.

According to the 12.6.18 memo from LFB, these provisions, would in relevant part “require DHS to implement the provisions of the demonstration waiver by no later than November 1, 2019. Specify that if DHS is unable to fully implement the provisions by that date, the Department may request an extension of up to 90 from the Joint Committee on Finance under a 14- day passive review process. Specify that the Department may request additional extensions, under this 14-day passive review process.

Specify that if the Committee determines that DHS has not complied with the deadline to implement provisions of the waiver or complied with implementation timelines applicable to approved waivers by DHS under this bill, the Committee may reduce from moneys allocated for state operations or administrative functions the Department's appropriation or expenditure authority, whichever is applicable, or change the Department's authorized level of full-time equivalent positions related to the medical assistance program. Specify that the procedures under s. 13.10 of the statutes do not apply to this provision.”

http://docs.legis.wisconsin.gov/misc/lfb/bill_summaries/2017_19/0002_december_extraordinary_session_bills_as_passed_by_the_legislature_12_6_18.pdf

LFB Summary of veto from 2017 Act 59:

ITEM D-64. CHILDLESS ADULT EMPLOYMENT AND TRAINING WAIVER

As passed by the Legislature, Assembly Bill 64 would require the Department of Health Services to include an employment and training program for childless adults in a Medicaid waiver amendment that the Department is required to submit (and that must include other elements, such as premiums and drug testing, that were included in the prior budget) to the U.S. Department of Health and Human Services. The enrolled bill would delete a current law requirement that the Department implement provisions of the

waiver amendment as approved by DHHS, and, instead, would have prohibited the Department from implementing any portion of the approved waiver unless approved by the Joint Committee on Finance. The enrolled bill would have also required the Department to submit a report to the Committee that includes a description of each component of the approved waiver and an estimate of the impact of the waiver on the medical assistance enrollment and budget. *The Governor's partial veto deletes the provision that requires Joint Committee on Finance approval prior to the implementation of any component of the approved waiver and the requirement that the Department submit a report on the approved waiver.*

https://docs.legis.wisconsin.gov/misc/lfb/budget/2017_19_biennial_budget/035_summary_of_partial_vetos_of_2017_wisconsin_act_59_october_2017.pdf

From Walker Veto Message on 2017 Act 59:

64. Childless Adult Employment and Training Waiver Section 928d

This section requires the Department of Health Services to submit a report to the Joint Committee on Finance no later than three months following final approval of the proposed Medicaid Childless Adult waiver, including the following: (a) a description of each component of the approved waiver, including information on the department's plan to implement; and (b) an estimate of the impact on Medical Assistance enrollment and the Medical Assistance budget.

The section further specifies that that the department may not implement the waiver unless the Joint Committee on Finance meets under s. 13.10 of the statutes to review the report and approves the waiver. Lastly, the Joint Committee on Finance may modify the waiver by removing certain components. The department is required to implement the waiver as approved by the Joint Committee on Finance and the department must submit a waiver amendment to the federal government with any changes made by the committee.

I am vetoing this section because I believe these requirements will infringe on the Department of Health Services' ability to negotiate a successful waiver with the Centers for Medicare and Medicaid Services. Further, I object to the creation of unnecessary and burdensome reporting requirements that could delay approval of the waiver, jeopardizing these reforms from being implemented.

<https://doa.wi.gov/budget/SBO/2017-19%20Veto%20Message.pdf>

December 7, 2018