

The legislature and the state budget

The legislature has the power of the purse. In Wisconsin, the state government may not spend a single dollar without the legislature specifically authorizing the expenditure by law. The manner in which the legislature controls the expenditure of state funds is through its appropriation power, which is a power granted to the legislature under the Wisconsin Constitution. In the 1936 case *Finnegan v. Dammann*, the Wisconsin Supreme Court defined an appropriation as “the setting aside from the public revenue of a certain sum of money for a specified object, in such a manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.”¹ It is the legislature that directs the governor and the executive branch in determining what state moneys are to be spent and the purposes for which they may be spent.

The most consequential exercise of the legislature’s appropriation power is the enactment of the state budget. The biennial budget bill is easily the most significant piece of legislation that is enacted during the entire legislative session. This is the case for two reasons. First, the biennial budget bill appropriates almost all dollars that will be spent by the state government during the two fiscal years covered by the bill. These dollars consist mostly of state taxes and revenues, program and license fees, and federal moneys allocated to Wisconsin. In 2019 Wisconsin Act 9, the state budget act for the 2019–21 fiscal biennium, the legislature authorized over \$81 billion in total state government spending from all revenue sources. The second reason for the significance of the biennial budget bill is that it contains most of the governor’s public policy agenda for the entire legislative session. The biennial budget bill is generally considered the one bill that “must pass” in order to sufficiently fund state government operations and programs during the fiscal years covered in the bill. As such, there is a strong incentive for the governor, as well as for legislators, to include in the biennial budget bill the major public policy items supported by the governor and the legislators. The state budget process is therefore unequaled in its significance for the operations of state government and for its effects on the people of Wisconsin.

The state budget process: core principles

There are several core principles to the state budget process in Wisconsin. First, the state budget is a biennial budget, covering two fiscal years of state government operations and programs, with each fiscal year beginning on July 1 and ending

on June 30. Many states have a “drop-dead” date by which a new state budget must be enacted in order for state government to continue to operate. Wisconsin does not have such a deadline. In Wisconsin, if a new state budget is not enacted by June 30 of the odd-numbered year, state government continues to operate and its programs are funded, but only at the prior year’s appropriation amounts. The governor and the legislature strive to enact the state budget bill before July 1 of the odd-numbered year, but there is little short-term fiscal impact if that deadline is not met.

Second, Wisconsin uses what is known as program budgeting, in which executive branch state agencies are assigned to different functional areas and generally lump-sum appropriations are made to the agencies to fund the programs. The biennial budget bill therefore lists the overall amounts appropriated for agency operations and programs, but does not contain the level of expenditure detail that one might find in a state that uses a “line-item” budget, in which each agency expenditure is specifically budgeted by line in the bill. Instead, this level of detail appears in accompanying budget documents, which are not law but which do capture the intentions of the governor and the legislature in budget deliberations. Consequently, that portion of the biennial bill that sets the expenditure levels of state operations and programs is roughly 200 pages in length, which is typically about 15 to 20 percent of the total number of pages of recent biennial budget bills.

Third, the Wisconsin Constitution requires that the legislature “provide for an annual tax sufficient to defray the estimated expenses of the state for each year.”² What this means in practice is that Wisconsin has a balanced-budget requirement, in which state expenditures must equal revenues received by the state. Generally speaking, at each stage of the budget process, in which different versions of the budget are formulated and considered, each version of the budget must be balanced by having proposed state expenditures in any fiscal year be less than or equal to anticipated state revenues. This is a real constraint on state budgeting, one that is not found at the federal level.

Finally, the Wisconsin Constitution grants the governor partial veto power over appropriation bills. This partial veto power allows the governor to reduce amounts appropriated to state agencies for their operations and programs by writing in a lower amount and allows the governor, with limitations, to veto specific words and digits within newly created statutory text in appropriation bills. The governor can thus significantly alter the legislature’s budget actions. While this power has been curtailed in recent years by amendments to the constitution as well as litigation, the governor still can reduce all state expenditures, or the expenditures of any specific state agency, with the stroke of a pen, subject only

to an override of his or her actions by a two-thirds vote of each house of the legislature—an event that last occurred in 1985.

The state budget process: an overview of executive action

The provision for a biennial executive budget bill was created by Chapter 97, Laws of 1929,³ and it has applied to all legislative sessions since 1931. Prior to that time, the governor was not responsible for submitting an executive budget bill to the legislature; individual bills were introduced for each department. The legislature delegated the biennial budget task to the governor for understandable reasons. As head of the executive branch, the governor can assess and coordinate the expenditure needs of each executive branch agency. In addition, the growth in state government in the twentieth century resulted in a level of public policy and budgetary expertise in the executive branch that is generally not available in the legislative branch, which has a much smaller professional staff. Requiring the governor to produce the budget bill allows the legislature to work from a document that may require modification, because of different legislative public policy or budgetary priorities, but which already contains numerous budgetary matters and details that the legislature need not address. The governor's budget is a solid foundation on which the legislature can build its version of the budget, a process which serves both the governor and the legislature well.

To begin the biennial budget process, in the summer of each even-numbered year, the State Budget Office in the Department of Administration submits budget instructions to executive branch agencies, establishing the manner of submitting budget requests and informing them of any broad fiscal or policy goals that the governor intends the state agencies to achieve. By September 15, state agencies must submit their budget requests to the State Budget Office for review by that office, the state budget director, and the governor. By November 20, the Department of Administration publishes a compilation and summation of the agency budget requests, as well as estimated revenues to the state for the current and forthcoming fiscal biennia. The State Budget Office oversees the preparation of legislation to achieve the governor's budget and policy recommendations. In this endeavor, the State Budget Office works closely with legal counsel at the Legislative Reference Bureau—the legislature's bill-drafting agency—to draft the statutory language that will ultimately be incorporated into the governor's budget bill. Throughout the process, the governor is briefed on individual items in the budget bill, and the bill is complete only when the governor has signed off on the items in the bill. The governor is then required to deliver the budget bill to the legislature no later than the last Tuesday in January of each odd-numbered year, though the legislature regularly moves this deadline back into February to allow

the governor to make changes in the bill once more accurate revenue estimates for the current and forthcoming fiscal biennia are available in late January. When the budget bill is delivered to the legislature, the governor addresses the legislature on the proposals contained in the bill, which more often than not are the key public policy goals of the governor's administration for the entire legislative session.

The first thing to note about the production of the executive budget bill is the role of the State Budget Office. The State Budget Office is headed by the state budget director and consists of about 25 budget analysts who serve in classified civil service positions. These analysts serve both Republican and Democratic gubernatorial administrations in a strictly nonpartisan and highly professional manner and are able to provide independent review of state agency funding requirements, as well as fashion fiscal and nonfiscal policies to achieve the governor's political and public policy aims. The State Budget Office translates the governor's public policy goals into workable and funded programs.

The second thing to note about the production of the executive budget bill is that the State Budget Office works directly with nonpartisan legal counsel in the Legislative Reference Bureau to prepare statutory text that achieves the governor's policy goals. The Legislative Reference Bureau has about 20 licensed attorneys with subject matter and legal expertise in virtually all policy areas. This is significant. The governor's budget bill is drafted in a professional, nonpartisan manner, so that the legislators need only focus on the public policies in the bill and not worry about the bill's legal quality or effectiveness. In addition, when the legislature takes up the governor's budget bill, the Legislative Reference Bureau attorneys who originally drafted the governor's provisions in the bill will be the ones who draft the legislature's alternatives. In this way, often the very same attorneys are working on the same language in the bill throughout the process. The legislature can thus count on experienced and competent legal counsel to prepare its budget bill in an accurate, high-quality, and nonpartisan manner.

Finally, it is important to note the political uses of the executive budget bill. Given that it must pass, the budget bill is the primary tool by which a governor may advance his or her public policy agenda during the legislative session. Consequently, it is by far the longest and most complex bill before the legislature during the entire biennium. In recent years the bill has grown substantially in length. From 1961 to 1986, executive budget bills averaged 367 pages in length. From 1987 to 2019, in contrast, executive budget bills averaged 1,463 pages in length, roughly a fourfold increase in size. The governor uses the massive bill as a tool to garner public support for various policy changes.

The executive budget bill is now a blueprint for the legislature for taking up the governor's goals for public policy change. When the governor steps up to the

assembly podium, usually in early or mid-February, to present the budget address to the legislature, an event that is televised throughout the state and broadcast live on the Internet, in many ways the political season commences in Wisconsin.

The state budget process: the role of the legislature

The Wisconsin Legislature is the policymaking body in this state and has the sole power to appropriate all moneys expended by the state. The biennial budget bill is, therefore, every bit as much of a product of legislative deliberation and action as it is a product of the governor's actions. The governor sets the agenda for legislative action on the budget, but the legislature examines, modifies or rejects, and altogether recreates what the governor originally had in the budget bill. In addition, the legislature will devise a few policies of its own, often from whole cloth, or it will refashion the governor's policies so that they are barely recognizable from their original form. Much of what the governor has proposed in the budget bill will survive the legislative process, but the document that emerges from the legislature is very much a product of the legislature.

When the governor presents the budget bill to the legislature, it is legally required to be introduced by the Joint Committee on Finance and referred to that committee. In 1885, a young congressional scholar by the name of Woodrow Wilson, then a professor at Bryn Mawr College, wrote that "Congress in session is Congress on public exhibition, whilst Congress in its committee rooms is Congress at work."⁴ This applies perfectly to the Wisconsin Legislature. It is in its several committee rooms that the Wisconsin Legislature does its work, and no committee more exemplifies that work ethic than the Joint Committee on Finance.

The Joint Committee on Finance consists of eight senators and eight representatives to the assembly. All bills that affect revenues, taxes, or expenditures are referred to that committee and must be reported out of that committee before the legislature may take the bill up for consideration and passage. It is fair to say that this committee is the most powerful standing committee in the legislature and is a training ground for legislative leadership. Legislators on this committee work long hours.

The Joint Committee on Finance does not work alone, but is staffed by the Legislative Fiscal Bureau, a nonpartisan legislative service agency. The Legislative Fiscal Bureau has about the same number of analysts as the State Budget Office, each of whom has policy and budgetary expertise in specific areas of state government. The analysts perform their work in a professional, nonpartisan manner, serving both the majority and minority parties in the legislature. After the budget bill is introduced, Legislative Fiscal Bureau analysts prepare a lengthy, detailed summary document that contains an analysis of every single item in the bill. The

summary is written in plain English, is precise and exhaustive in its presentation of the governor's policies, and is hundreds of pages in length. The Legislative Fiscal Bureau summary is the document that forms the basis on which the Joint Committee on Finance begins its work on the budget.

The Joint Committee on Finance will often hold hearings at different locations throughout the state to receive testimony from the general public and interest group representatives. Beginning in April and continuing into May, the Legislative Fiscal Bureau prepares papers on the items contained in the budget bill, laying out alternatives or even new ways to address the same items in the bill. The Legislative Fiscal Bureau derives its policy alternatives from its own public policy expertise and from committee member involvement. Sometimes working groups will form among members of the committee to consider and propose policy alternatives. During this time, the Joint Committee on Finance meets to approve items it will include in its version of the budget. These are lengthy, often contentious meetings that run late into the evening or early morning. It is not uncommon to see Joint Committee on Finance members and Legislative Fiscal Bureau analysts leaving the Capitol building in the bright light of early morning.

Once the committee has finished its work, the Legislative Fiscal Bureau oversees the production of a substitute amendment that incorporates the committee's version of the budget to replace the governor's budget bill. In this regard, the Legislative Fiscal Bureau gives drafting instructions to attorneys at the Legislative Reference Bureau, who also work around the clock to prepare the substitute amendment. While the executive branch often has six months or more to prepare the governor's budget bill, the Joint Committee on Finance will do its work in a much shorter time span, often only six to eight weeks.

The committee's substitute amendment is not always the final and complete version of the legislature's budget bill. Each house of the legislature has the option to further amend the substitute amendment to include items of its own design or to modify or reject items included by the Joint Committee on Finance. Whether this occurs, and the extent to which the substitute amendment will be modified, depends on a number of factors, such as whether the same political party is the majority party in both houses, whether legislators who do not serve on the Joint Committee on Finance believe that their interests and concerns have been addressed in the substitute amendment, and the likelihood of the convening of a conference committee on the bill to resolve differences between the two houses. These calculations are based on substantive factors, in that members will work to include items that benefit them or their constituents, as well as on strategic considerations, in that members will want to fortify their own house's position in conference committee negotiations with the other house.

Once the legislature passes its version of the budget bill, the bill is presented to the governor for signing. As mentioned earlier, the governor has partial veto power over appropriation bills and will use that power to modify what the legislature has passed. The governor can reduce appropriations, as well as modify some statutory text. The extent to which the governor will partially veto the bill also depends on a number of factors, such as the partisan makeup of the legislature, the degree to which the governor agrees with what the legislature has done, and whether the governor has made agreements in negotiations with the legislature over what can and cannot be vetoed. Once the governor has signed the bill into law, the budget-making process is concluded, as the only other possible step is for the legislature to override one or more of the governor’s partial vetoes—an action, as mentioned earlier, that has not happened since 1985.

Concluding considerations

The state budget-making process is truly a year-long event, beginning in the summer of each even-numbered year when the State Budget Office sends budget instructions to the state agencies and concluding the following summer with the enactment of the biennial budget act. The process is characterized both by careful deliberation and by frenzied, all-night sessions and meetings. The budget bill is the work product of the governor, every elected member of the Senate and the Assembly, and numerous professional staff in both the executive and legislative branches. There is never an “easy” budget, as each fiscal biennium presents its own unique budgetary and political challenges. But there is never complete gridlock, as the legislature does complete its work. Sometimes the budget will be late, especially when the two houses are controlled by different political parties, but in the end Wisconsin will have a state budget. **BB**

NOTES

1. *Finnegan v. Dammann*, 220 Wis. 143, 148, 264 N.W. 622 (1936).
2. Wisconsin Constitution, article VIII, section 5.
3. This would have been called Act 97 if it took effect today; before 1983, a bill that was enacted into law was called a “chapter” rather than an “act.”
4. Woodrow Wilson, *Congressional Government, A Study in American Politics* (1885).