



2021 Enrolled Joint Resolution 14

A proposed constitutional amendment on the allocation of federal funds

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Introduction

The 2021 Wisconsin Legislature adopted on first consideration [2021 Senate Joint Resolution 84](#), published as 2021 Enrolled Joint Resolution 14, which would amend the constitution to state that the legislature may not delegate its sole power to determine how federal moneys may be appropriated and that the governor may not allocate federal moneys without legislative approval by joint resolution or as provided by legislative rule. Under current law under the statutes, the governor has the authority to accept federal moneys on behalf of the state and to allocate federal moneys without the approval or participation of the legislature. The senate adopted 2021 Senate Joint Resolution 84 as introduced on January 25, 2022, the assembly adopted Assembly Substitute Amendment 2 on February 23, 2022, and the senate concurred in the substitute amendment on March 8, 2022. The proposal is now eligible for second consideration by the 2023 Wisconsin Legislature.

Legislative passage of a constitutional amendment on first consideration is the first step in the process of amending the constitution. Under [article XII, section 1](#), of the Wisconsin Constitution, amendments to the constitution must be adopted by two successive legislatures and then ratified by the electorate in a statewide election.¹ On first consideration, a proposed amendment to the constitution is offered as a joint resolution in either the assembly or the senate. A joint resolution, unlike a bill, need not be submitted to the governor for approval, but must pass both houses in identical form to be effective. If the assembly and the senate both adopt the joint resolution, the Legislative Reference Bureau must publish the proposed constitutional amendment on the Internet, no later than August 1 preceding the next general election.

In the next succeeding legislature, the proposed amendment may be offered on second consideration. Once again, the proposal takes the form of a joint resolution and may be offered in either the assembly or the senate. A second consideration joint resolution proposes the identical amendment that was proposed by the first consideration joint resolution and also specifies the date of the election at which the proposed amendment will be submitted to the electorate and the wording of the question that will appear on the ballot. If the assembly and the senate both adopt the joint resolution without making changes to the proposed amendment, the proposed amendment is submitted to the electorate. If the electorate ratifies the amendment, the constitution is amended.

Current law

The Wisconsin Constitution provides the state legislature with the power of the purse. [Article VIII, section 2](#), states that no money may be paid out of the treasury “except in

1. Every Wisconsin legislature convenes in January of an odd-numbered year and adjourns in January of the next succeeding odd-numbered year.

pursuance of an appropriation by law.” However, the Wisconsin Statutes delegate to the governor the authority to accept and allocate federal moneys without the participation of the legislature, provided the moneys are allocated in a manner consistent with the federal act making the moneys available to the state. Specifically, Wis. Stat. § [16.54 \(1\)](#) provides:

Whenever the United States government shall make available to this state funds for the education, the promotion of health, the relief of indigency, the promotion of agriculture or for any other purpose other than the administration of the tribal or any individual funds of Wisconsin Indians, the governor on behalf of the state is authorized to accept the funds so made available. In exercising the authority herein conferred, the governor may stipulate as a condition of the acceptance of the act of congress by this state such conditions as in the governor’s discretion may be necessary to safeguard the interests of this state.

When the governor accepts federal moneys under this subsection, the statutes provide that “the governor shall designate the state board, commission or department to administer any of such funds, and the board, commission or department so designated by the governor is authorized and directed to administer such funds for the purpose designated by the act of congress making an appropriation of such funds, or by the department of the United States government making such funds available to this state.”²

Wis. Stat. § [16.54 \(6\)](#) and [\(7\)](#) similarly authorize the governor to accept the provisions of federal acts making moneys or other benefits available to the state and to take necessary actions in connection with such provisions. Wis. Stat. § [16.54 \(6\)](#) provides:

The governor may accept for the state the provisions of any act of congress whereby funds or other benefits are made available to the state, its political subdivisions, or its citizens, so far as the governor considers the provisions to be in the public interest. To this end, the governor may take or cause to be taken all necessary acts including, without limitation because of enumeration, the following:

- (a) The making of leases or other contracts with the federal government.
- (b) The preparation, adoption and execution of plans, methods, and agreements.
- (c) The designation of state, municipal or other agencies to perform specific duties.

Wis. Stat. § [16.54 \(7\)](#) similarly provides:

The governor may accept for the state at all times the provisions of any act of congress whereby funds are made available to the state for any purpose whatsoever, including the school health program under the social security act, and perform all other acts necessary to comply with and otherwise obtain, facilitate, expedite, and carry out the required provisions of such acts of congress.

2. Wis. Stat. § [16.54 \(2\) \(a\) 1.](#)

Proposed amendment

2021 Enrolled Joint Resolution 14 proposes amending the Wisconsin Constitution to create article IV, section 35, which would state:

- (1) The legislature may not delegate its sole power to determine how moneys shall be appropriated.
- (2) The governor may not allocate any federal moneys the governor accepts on behalf of the state without the approval of the legislature by joint resolution or as provided by legislative rule.

This change to the constitution would have the effect of nullifying the governor's statutory authority, described above, to allocate certain federal funds without legislative oversight. Any future allocation of federal funds by the governor would require approval of the legislature in some form.

Legislative history

The governor's authority to accept federal moneys on behalf of the state and to allocate the moneys without participation from the legislature originated in the 1930s. [Chapter 279, Laws of 1931](#), created Wis. Stat. § 14.205 (1931), subsection (1) of which provided:

Whenever the United States government shall make available funds for the education, the promotion of health, the relief of indigency, the promotion of agriculture or for any other purpose other than the administration of the tribal or any individual funds of Wisconsin Indians, the governor on behalf of the state is authorized to accept the funds so made available. In exercising the authority herein conferred, the governor may stipulate as a condition of the acceptance of the act of Congress by this state such conditions as in his discretion may be necessary to safeguard the interests of the state of Wisconsin.

This language is nearly identical to what now appears under Wis. Stat. § 16.54 (1). The law also created the language, which now appears under Wis. Stat. § 16.54 (2) (a) 1., that requires the governor to designate the body to administer the funds. Although Wis. Stat. § 16.54 (1) and (2) (a) 1. have come to be construed to give the governor the authority to accept and oversee the use of a wide variety of federal funds made available to the state,³ the language was originally created to address federal funds made available specifically

3. For evidence of this broad understanding, see the bill analysis for [1995 Assembly Bill 639](#). This legislation, enacted as 1995 Wisconsin Act 132, made changes in Wis. Stat. § 16.54 (2) (a) to require Joint Committee on Finance review of federal block grant expenditures. In describing existing law under Wis. Stat. § 16.54 (1) and (2), the bill analysis stated: "unless otherwise provided, whenever this state receives moneys from the federal government, the governor is empowered to accept the moneys on behalf of the state, and to designate a state board, commission or department to administer the moneys in accordance with appropriations made by the legislature."

for Wisconsin Indians. The relating clause of 1931 Chapter 279 reads: “authorizing the governor to accept on behalf of the state any funds which may hereafter be made available to the state of Wisconsin by the federal government for the education, health, relief of indigency, or promotion of agriculture among Wisconsin Indians . . .” In addition, the drafting file for Chapter 279 indicates that the bill from which that enactment originated, 1931 Senate Bill 121, was a redraft of a substitute amendment from the 1927 session that had been introduced following the “introduction of the LaFollette [*sic*]-Cooper bill in Congress, which provided that all federal appropriations for agriculture, education, health, and relief of Indians in this state should be expended through the state departments.”⁴ Further, during the 1931 session, a joint resolution was adopted memorializing Congress to enact legislation “for the expenditure of moneys appropriated by the federal government for Indian relief through state agencies.”⁵

It is not clear why the legislature decided to provide the governor with the authority to accept and allocate any such forthcoming federal funds for Indians. One reason may have been the legislative schedule. At that time, the legislature would convene its regular session in January of the odd-numbered year and would typically adjourn after roughly six months. The body would remain adjourned for the rest of the biennium unless called into special session by the governor, at which time it could act only upon matters specifically mentioned in the governor’s call.⁶ 1931 Chapter 279 was enacted in the final days of the regular session.⁷ The Republican-controlled legislature may have wanted Republican Governor Philip F. La Follette to be able to act quickly to allocate any imminent federal funds for Wisconsin Indians, without needing to convene a special session.

For the next several years, in spite of its broad wording, it appears Wis. Stat. § 14.205 was interpreted to concern only federal aid for Wisconsin Indians, as originally intended.⁸ This may explain why, during the following session, the legislature felt it was necessary to enact a law specifically permitting the governor to accept the provisions of any act

4. Drafting file for Chapter 279, Laws of 1931, Wis. Legis. Reference Bureau, Madison, Wis. Specifically, the drafting file indicates that the bill, which was introduced by Republican Senator James Carroll, was a redraft of Assembly Substitute Amendment 1 to 1927 Assembly Bill 670. The 1927 bill had been vetoed by the governor, who reasoned in his veto message that the bill was premature, given that he had only recently appointed a special committee to investigate “Indian problems” in the state. The message stated: “Until a thorough investigation can be made, legislation of this kind ought not be adopted and the state should not commit itself to the policy covered in this bill unless a definite assurance is given that at least for a number of years the Federal Government is ready to supply funds with which the state can adequately and fully carry out its obligations.” Wis. Assembly Journal (1927) 2608–9. The 1931 Chapter 279 drafting file indicates that the measure was reintroduced that session “as a result of conferences on the condition of the Indians in the state presided over by Dr. Harper of the State Board of Health and participated in by Senator Carroll, the author.”

5. [1931 Enrolled Joint Resolution 57](#). A contemporary newspaper article indicates that the joint resolution’s author, Republican Senator Philip Nelson, believed that Wisconsin Indians were in “dire distress” yet only a small portion of federal appropriations for Indian welfare ever actually reached Wisconsin Indians. “Indians’ Neglect Aired by Senator,” *Wisconsin State Journal*, January 29, 1931.

6. *Wisconsin Blue Book 1931* (Madison, WI: Legislative Reference Library, 1931), [12](#).

7. The law was signed on June 19, 1931, and the legislature adjourned the session on June 27, 1931.

8. Between 1931 and 1949, the title of the section read “Federal donations for Indians.” Beginning with the 1951 statutes, the title of the section was changed to “Acceptance of federal funds,” as it remains today under Wis. Stat. § 16.54, although it is not clear whether that change reflected a changed understanding of the section’s meaning.

of the Seventy-third Congress providing funds or other benefits for economic recovery. Specifically, [Chapter 401, Laws of 1933](#), created Wis. Stat. § 101.34 (1), which stated:

The governor is authorized to accept for the state the provisions of any act of the seventy-third congress whereby funds or other benefits are made available to the state, its political subdivisions, or its citizens, so far as the governor may deem such provisions to be in the public interest; and to this end the governor may take or cause to be taken all necessary acts including (without limitation because of enumeration) the making of leases or other contracts with the federal government; the preparation, adoption and execution of plans, methods, and agreements, and the designation of state, municipal or other agencies to perform specific duties.

Once again, this law was enacted at the very end of the regular session, this time in anticipation of federal relief in response to the Great Depression. Two months prior to the law's passage, Democratic Governor Albert Schmedeman delivered a "legislative message on relief." In the message, he explained how it was difficult to anticipate all of the state requirements under the federal government's "far reaching" "comprehensive reconstruction program." As such, he recommended that the legislature enact a law before adjourning that would "authorize the Governor and the Emergency Board to take all necessary steps to enable this state to take full advantage of any federal funds which may be made available."⁹ 1933 Chapter 401 went on to pass in the Democrat-controlled assembly and the Republican-controlled senate with unanimous votes.

This act was one of multiple passed by the legislature that imposed new duties upon the governor related to economic recovery. The 1933 *Wisconsin Blue Book* highlights these various laws before stating the following: "In short, the governor is given emergency powers in dealing with the economic depression within the state paralleling those conferred by congress on the president, but the governor is directed to exercise these powers in cooperation with the federal government, to the end of making a united drive for economic recovery."¹⁰

Two sessions later, [Chapter 6, Laws of 1937](#), amended the language under Wis. Stat. § 101.34 (1) to remove the specific reference to "the seventy-third" Congress, thereby making the statute applicable to any act of Congress. This law's relating clause described it as an "emergency executive budget bill," that made various appropriation changes in order for the state "to fully qualify for all federal aids made available under the federal social security act for blind pensions, aid to dependent children and old-age assistance," among other things. The bill was passed with near-unanimous votes by the legislature and signed

9. A. G. Schmedeman, *Governor A. G. Schmedeman's Legislative Message on Relief* ([Madison, WI?]: [Office of the Governor?], May 24, 1933), available at the Wisconsin Legislative Reference Bureau. Note that the drafting file for 1933 Chapter 401 indicates that "copy" for the bill was brought by "R.B. Goodman, Marinette, chairman of the conservation commission, with the statement that it had been agreed upon in conferences at Washington."

10. *Wisconsin Blue Book 1933* (Madison, WI: Legislative Reference Library, 1933), [274](#).

into law by Governor Philip La Follette, now a member of the Progressive Party. This provision now appears under Wis. Stat. § 16.54 (6).

One decade later, [Chapter 495, Laws of 1947](#), created a third provision permitting the governor to “accept for the state at all times the provisions of any act of congress whereby funds are made available to the state for any purpose whatsoever, including the school health program under the social security act, and to perform all other acts necessary to comply with and otherwise obtain, facilitate, expedite, and carry out the required provisions of such acts of congress.” The drafting file for the legislation states that the Executive Office requested that 1947 Assembly Bill 489 (the bill that became Chapter 495) be drafted at the suggestion of The Parents’ Institute of New York City.¹¹ An attached letter from The Parents’ Institute to Governor Walter Goodland explained that Congress was “quite likely” to pass the National School Health Services Act of 1947 and urged the governor to promote legislation cooperating with the federal government in carrying out the new program. It is unclear why the resulting bill was not limited to the school health program. Nevertheless, the law was passed with near-unanimous votes in the Republican-controlled legislature and signed by Republican Governor Oscar Rennebohm. The provision created by the act can now be found under Wis. Stat. § 16.54 (7).

Similar to the 1931 and 1933 laws, this law was passed near the end of the session and may have been intended to allow the governor to accept the anticipated funds as well as to carry out the provisions of the corresponding federal act or acts until the legislature reconvened the following session.¹² In fact, the relating clause of the legislation describes it as authorizing “the governor to accept benefits of federal acts during the interim between regular sessions of the legislature.”

All of the provisions described above are now under Wis. Stat. § 16.54 and together constitute a broad delegation to the governor to accept and allocate federal moneys, with certain exceptions.¹³ Unlike when these laws were created, the Wisconsin Legislature today is a full-time legislature, and there is no time during the biennial session when it cannot take action on its own initiative if it wishes to.¹⁴ Nevertheless, the governor retains the authority under the statutes to accept and allocate federal funds “at all times.”

The governor’s role in accepting and allocating federal moneys did not receive significant attention until 2009. In February of that year, the federal government passed the American Recovery and Reinvestment Act of 2009 (ARRA), a stimulus package devel-

11. Drafting file for Chapter 495, Laws of 1947, Wis. Legis. Reference Bureau, Madison, Wis.

12. The law was signed on July 30, 1947, and the regular session adjourned on September 11, 1947.

13. The provisions discussed were renumbered to their present locations of Wis. Stat. § 16.54 (1), (2), (6), and (7) by [Chapter 228, Laws of 1959](#), and [Chapter 154, Laws of 1969](#).

14. The 1961 Wisconsin Legislature was the first to essentially remain “in session” (i.e., not adjourn *sine die*) until the morning of the final day of the legislative session. However, it wasn’t until the 1971 session that the legislature passed a law providing for annual sessions, following the 1968 ratification of a constitutional amendment eliminating the requirement that the legislature was to meet “once in two years and no oftener.” For more information, see Madeline Kasper, “[Extraordinary Sessions of the Wisconsin Legislature](#),” *Reading the Constitution* 5, no. 2 (Madison, WI: Legislative Reference Bureau, June 2020).

oped to address the Great Recession that included large grants to the states. In response, Senator Tim Carpenter introduced [2009 Senate Bill 50](#) to increase the legislature’s role in approving the expenditure of these funds during the 2008–09 fiscal year and the 2009–11 fiscal biennium. Senator Carpenter indicated in a press release that the bill was intended to ensure legislative oversight of the “unprecedented and substantial fiscal event.” He further explained that, when the statutory authority to accept funds from the federal government was given to the governor decades prior, “it could not be contemplated that an estimated \$4.5 billion dollars in federal stimulus aid might be transferred to the state in a rapid fashion as an economic stimulus package.”¹⁵

A provision similar to 2009 Senate Bill 50 was ultimately signed into law as part of 2009 Wisconsin Act 2, a budget adjustment act.¹⁶ Specifically, section 9131 of the act required Joint Committee on Finance (JCF) review of all expenditure plans for the ARRA funds, unless the expenditure was contained in any bill introduced in the legislature at the request of the governor or was for specific transportation projects listed in the act. Throughout 2009 and 2010, JCF reviewed and approved numerous ARRA expenditures proposed by Governor Jim Doyle through this process.¹⁷

More recently, Governor Tony Evers has had sole discretion over the allocation of billions of dollars in federal COVID-19 relief funds.¹⁸ In response, the legislature considered bills during the 2021–22 legislative session that would have required the governor to submit to JCF for 14-day passive review all planned expenditures of federal funds related to COVID-19 within a certain timeframe.¹⁹ In vetoing one of these measures, Governor Evers stated that he did so “because it is critical to get the federal COVID-19 relief funds in the hands of Wisconsinites and businesses that need it as quickly as possible” and he had “concerns that the process outlined in the bill will prevent that from happening.”²⁰ He went on to state that the role of the governor to “oversee use of federal funds under Section 16.54 of the Wisconsin Statutes is clearly established and has been in place for decades.”

Other states

According to a report by the National Association of State Budget Officers (NASBO), 40 states authorize the executive branch to spend “unanticipated federal and other non-

15. Tim Carpenter, “Carpenter Seeks State Legislative Oversight of Federal Stimulus Funds,” news release, February 2, 2009.

16. 2009 Wis. Act 2 § [9131](#).

17. For example, see: Wis. State Budget Office, [Joint Committee on Finance, Minutes of the Meeting Under s. 13.10, August 4, 2009](#) (Madison, WI: Wis. Dept. of Administration), <https://doa.wi.gov>; and Wis. State Budget Office, [Joint Committee on Finance, Minutes of the Meeting Under s. 13.10, June 23, 2010](#) (Madison, WI: Wis. Dept. of Administration), <https://doa.wi.gov>.

18. For a summary of this funding, see: Wis. Legis. Fiscal Bureau memo, [Coronavirus Relief Fund Monies Under the Federal CARES Act](#) (October 22, 2020); Wis. Legis. Fiscal Bureau memo, [Updated Allocations of CRF Monies Under the Federal CARES Act](#) (September 2, 2021); and Wis. Legis. Fiscal Bureau memo, [Updated Information on State and Local Fiscal Recovery Funds Under ARPA](#) (July 21, 2021).

19. See [2021 Wis. AB 1](#); [2021 Wis. SB 183](#), and [2021 Wis. AB 149](#).

20. Wis. Senate Journal (2021) [222](#).

general funds” without special legislative approval, but 29 of these states place some restrictions on this authority.²¹ However, these restrictions vary widely. For example, the NASBO report notes that in Pennsylvania the governor may spend federal funds without legislative approval for natural disasters, for civil disobedience, or in an emergency to avoid substantial human suffering, whereas in North Carolina, the governor may spend unanticipated funds, including unanticipated federal funds, up to 3 percent of the certified budget without legislative approval.

In recent years, COVID-19 emergency declarations and the unprecedented scope of federal COVID-19 relief funds have created some confusion in states over who has authority to allocate moneys received from the federal government, which has resulted in court challenges and legislative action.²² ■

21. National Association of State Budget Officers, *Budget Processes in the States*, Washington, DC: National Association of State Budget Officers, 2021), 48 and 50.

22. Erica MacKellar, “[The Great Debate: Who Has the Authority to Spend Federal Stimulus Funds?](https://www.ncsl.org)” *NCSL Fiscal Briefs*, June 1, 2021, <https://www.ncsl.org>.

State of Wisconsin



2021 Senate Joint Resolution 84

ENROLLED JOINT RESOLUTION

To create section 35 of article IV of the constitution; **relating to:** the appropriation authority of the legislature and the allocation of moneys Wisconsin receives from the federal government (first consideration).

Resolved by the assembly, the senate concurring, That:

SECTION 1. Section 35 of article IV of the constitution is created to read:

[Article IV] Section 35 (1) The legislature may not delegate its sole power to determine how moneys shall be appropriated.

(2) The governor may not allocate any federal moneys the governor accepts on behalf of the state without the approval of the legislature by joint resolution or as provided by legislative rule.

SECTION 2. Numbering of new provision. If another constitutional amendment ratified by the people creates the number of any provision created in this joint resolution, the chief of the legislative reference bureau shall determine the sequencing and the numbering of the provisions whose numbers conflict.

Be it further resolved, That this proposed amendment be referred to the legislature to be chosen at the next general election and that it be published for three months previous to the time of holding such election.

Representative Robin J. Vos
Speaker of the Assembly

Senator Chris Kapenga
President of the Senate

March 15, 2022

Date

Michael J. Queensland
Senate Chief Clerk