



Wisconsin Briefs

from the Legislative Reference Bureau

Brief 14-9

September 2014

CONSTITUTIONAL AMENDMENT TO BE CONSIDERED BY WISCONSIN VOTERS, NOVEMBER 4, 2014

INTRODUCTION

One proposal to amend the Wisconsin Constitution will be submitted to Wisconsin voters on November 4, 2014. The constitutional amendment relates to creating a transportation fund and a department of transportation.

Sections Affected	Resolutions	Subject
Article IV, Sec. 9 (2) Article VIII, Sec. 11	2011 Senate Joint Resolution 23 (Enrolled Joint Resolution 4) 2013 Assembly Joint Resolution 2 (Enrolled Joint Resolution 1)	Creating a transportation fund and a department of transportation

Amendment Process

Article XII, Section 1, of the Wisconsin Constitution requires that every constitutional amendment must be adopted by two successive legislatures and ratified by the electorate before taking effect. A proposed change is introduced in the legislature for “first consideration” in the form of a joint resolution that must pass both houses but does not have to be submitted to the governor for approval. It must be published for three months before the next election. If the resolution is adopted on first consideration, a new joint resolution embodying the identical constitutional text must be approved on “second consideration” by the next legislature. The second joint resolution specifies the wording of the ballot question and sets the referendum date. The third and final step involves submitting the question to a statewide referendum vote where it takes a majority of those casting ballots to ratify the amendment.

CREATING A TRANSPORTATION FUND AND A DEPARTMENT OF TRANSPORTATION

Ballot Question

The question will appear on the ballot in this form:

Creation of a Transportation Fund. Shall section 9 (2) of article IV and section 11 of article VIII of the constitution be created to require that revenues generated by use of the state transportation system be deposited into a transportation fund administered by a department of transportation for the exclusive purpose of funding Wisconsin’s transportation systems and to prohibit any transfers or lapses from this fund?

Proposed Language

SECTION 1. Section 9 of article IV of the constitution is renumbered section 9 (1) of article IV.

SECTION 2. Section 9 (2) of article IV of the constitution is created to read: [Article IV] Section 9 (2) The legislature shall provide by law for the establishment of a department of transportation and a transportation fund.

SECTION 3. Section 11 of article VIII of the constitution is created to read: [Article VIII] Section 11. All funds collected by the state from any taxes or fees levied or imposed for the licensing of motor vehicle operators, for the titling, licensing, or registration of motor vehicles, for motor vehicle fuel, or for the use of roadways, highways, or bridges, and from taxes and fees levied or imposed for aircraft, airline property, or aviation fuel or for railroads or railroad property shall be deposited only into the transportation fund or with a trustee for the benefit of the department of transportation or the holders of transportation-related revenue bonds, except for collections from taxes or fees in existence on December 31, 2010, that were not being deposited in the transportation fund on that date. None of the funds collected or received by the state from any source and deposited into the transportation fund shall be lapsed, further transferred, or appropriated to any program that is not directly administered by the department of transportation in furtherance of the department's responsibility for the planning, promotion, and protection of all transportation systems in the state except for programs for which there was an appropriation from the transportation fund on December 31, 2010. In this section, the term "motor vehicle" does not include any all-terrain vehicles, snowmobiles, or watercraft.

Legislative Reference Bureau Analysis

The Legislative Reference Bureau analysis of 2011 Senate Joint Resolution 23 states:

Currently, the revenues generated by use of the state transportation system may be deposited into any fund as provided by law. This proposed constitutional amendment, proposed to the 2011 legislature on first consideration, requires that such revenues be deposited into a transportation fund, and requires the legislature to create such a fund and a department of transportation.

Attorney General's Explanatory Statement

Attorney General J.B. Van Hollen provided the following explanatory statement of the effect of the proposed amendment as required by Section 10.01 (2) (c), Wisconsin Statutes:

In general, funds collected in fees and taxes may be appropriated for any public purpose determined by the Legislature. Wisconsin's transportation fund, which currently exists under statute, is designed to be the source of funding for all modes of transportation in the state. Wisconsin law requires that specific revenue streams such as taxes or fees related to motor vehicles, aircraft, and railroads be deposited into the transportation fund.

At times, the Legislature has transferred moneys initially deposited into the transportation fund to programs with non-transportation-related purposes. Such transfers have typically been to general revenue funds, which are used for state programs

such as education, health care, and shared revenue. The Wisconsin Supreme Court has suggested that these transfers are permissible under current law.

In essence, the proposed amendment would change the Wisconsin Constitution to require that revenues generated by specified uses of the state transportation system be deposited into a transportation fund and expended only for transportation-related purposes.

A “yes” vote on this question would establish a department of transportation and a transportation fund in the state constitution. The current Department of Transportation and transportation fund exist only under statute. A “yes” vote would mean that all funds collected from taxes or fees in existence after December 31, 2010 for the licensing of motor vehicle operators, for the titling, licensing, or registration of motor vehicles, for motor vehicle fuel, or for the use of roadways, highways, or bridges, and from taxes and fees levied or imposed for aircraft, airline property, or aviation fuel or for railroads or railroad property would be deposited in the transportation fund or with certain authorized parties, such as a trustee for the benefit of the department of transportation. Funds in the transportation fund may not be lapsed, further transferred, or used for any program that is not directly administered by the department of transportation in furtherance of the department’s responsibility for the planning, promotion, and protection of all transportation systems in the state (except for programs with an appropriation from the statutory transportation fund as of December 31, 2010). The proposed amendment does not define “transportation systems.”

A “no” vote would mean that the Department of Transportation continues to be a statutory agency. It also would mean that monies collected from motor vehicle, aircraft, and railroad fees and taxes could be appropriated by the Legislature for transportation systems or for other programs as determined by the Legislature.

Background

Wisconsin initiated a coordinated system of road improvements with the creation of the state highway commission in 1911. Under the commission, transportation projects and state transportation aids to county and local governments were financed through dedicated state property tax levies; motor vehicle fees, and, eventually, motor fuel taxes. These revenues were all deposited in the general fund and appropriated for transportation expenditures from the general fund as needed. Chapter 310, Laws of 1939, created a motor vehicle department to oversee motor vehicle registration, licensing, and inspection, as well as the promotion of highway safety.

Chapter 358, Laws of 1945, created a highway fund to receive all revenues from motor vehicle registrations, operator’s license fees, motor fuel taxes and federal transportation aids, and placed it at the disposal of the highway commission for projects and aids authorized by law. As part of the reorganization of state government in 1967, the motor vehicle department was combined with the highway commission and the aeronautics commission to form the department of transportation. The secretary of transportation was placed in charge of the highway fund. The 1973 budget created a transportation aids fund, also under the secretary of transportation, primarily to accept federal transportation aids and general fund revenues appropriated for

transportation purposes. Chapter 29, Laws of 1977, combined the functions of the two funds, creating the modern transportation fund.

Throughout this 100-year period, the transportation fund, the department of transportation, and their predecessors were statutory creations; as such, their duties could be modified and their funds appropriated for non-transportation purposes by the legislature without any constitutional constraint. Several recent budget acts have included transfers of funds from the transportation fund to the general fund for non-transportation purposes. The 2003 budget used \$675 million for general fund school aids. The 2005 budget transferred \$427 million to the general fund. The 2007 and 2009 biennial budgets authorized the secretary of administration to lapse funds from the transportation fund to the general fund, without specifying an amount. This resulted in more transfers from the transportation fund during the period 2007 to 2011.

The first attempt to codify the transportation fund and the department of transportation as constitutional entities whose function could not be interfered with statutorily occurred in 2009. More general constitutional amendments making it harder to transfer funds from statutorily created segregated funds were proposed as early as 2005.

Two joint resolutions were introduced to create a constitutional transportation fund and department of transportation in April 2011. Representative Jerry Petrowski introduced Assembly Joint Resolution 31, which failed to pass. Senator Randy Hopper introduced Senate Joint Resolution 23.

Legislative Action

2011 Senate Joint Resolution 23, the “first consideration” resolution, was introduced on April 20, 2011, by Senator Randy Hopper and 35 coauthors and cosponsors. It was adopted by the senate on May 17 and by the assembly on the same day. Assembly Joint Resolution 31 dealing with the same subject was laid on the table. SJR-23 became Enrolled Joint Resolution 4.

2013 Assembly Joint Resolution 2, the “second consideration” resolution, was introduced by Representative Keith Ripp on January 18, 2013. It was adopted by the assembly on February 14 as amended by Assembly Amendment 1, which modified the ballot question from its original form. The senate concurred in the assembly action on February 20. A proposed amendment similar or identical to AJR-2, Senate Joint Resolution 4, was not acted upon. AJR-2 became Enrolled Joint Resolution 1.