

Catch-all budget motions are a controversial Wisconsin Joint Finance Committee tradition

Last-minute legislating

by Judith Davidoff

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Around the Capitol it's sometimes called the Christmas Tree amendment. The omnibus motion that wraps up Joint Finance Committee action on the state's proposed biennial budget gets its nickname because it often delivers presents (a.k.a. "pork") to lawmakers' districts or takes up wish-list items, even if non-fiscal in nature.

This year's Motion 999, introduced by the Joint Finance Committee's Republican co-chairs, was approved a bit before 6 a.m. on June 5. It threw a few bones to minority Democrats who lost virtually every other budget battle -- kringle is now Wisconsin's official pastry, thanks to Rep. Cory Mason of Racine -- and threw some punches as well.

The surprise move to kick the Wisconsin Center for Investigative Journalism off the University of Wisconsin-Madison campus and prevent university professors from collaborating with the center has probably drawn the most attention as well as condemnation. It was a bit of a self-sabotage, since these last-minute budget motions are designed to fly under the radar -- introduced when most people are sleeping and usually without the name of a specific lawmaker attached to them.

"It's always the worst motion, and people should look very closely at it," says U.S. Rep. Mark Pocan (D-Madison), who spent six years on Joint Finance when he was in the state Assembly. "Sometimes it's relatively innocuous stuff that people need to get done for their district. But sometimes it's stuff that people held back for a reason, because the scrutiny from the light of day should be on it but it probably wouldn't pass if it were a stand-alone motion."

Case in point: the budget proposal to allow commercial bail bonding was previously a stand-alone bill vetoed last year by Gov. Scott Walker.

Under the budget motion, for-profit bail bondsmen, bounty hunters and bail bond companies would be allowed to operate in five Wisconsin counties, including Dane. After five years, the pilot program would be expanded statewide. Licensed bail bond agents could charge 10% interest on the total amount of bail posted for incarcerated individuals. The agents would then be responsible for making sure those out on bond show up for their court appearances.

The practice has been banned by Wisconsin since 1979 and continues to be opposed by more than 650 prosecutors, judges and criminal defense lawyers in the state. So what's to explain this latest attempt to squeeze through a change? It's hard to know when no legislator's name is attached to the motion. But, as others have reported, the industry has spent heavily in Wisconsin lobbying for the change.

Jon Peacock, director of the Wisconsin Budget Project, an initiative of the Wisconsin Council on Children and Families, says the last-minute, catch-all motions in Joint Finance reduce "transparency in the budget process," since they receive little public or legislative scrutiny over the remainder of the budget process. Moreover, he adds, "many of them are non-fiscal policy items that have gotten little or no debate and have no business being in a budget bill."

For instance, one of this year's proposals calls for retroactively applying a 2011 law to product liability cases filed before the statutory change. Sen. Glenn Grothman (R-West Bend), a member of the Joint Finance Committee, introduced a similar bill in 2012.

Jeff Pitman of the Wisconsin Association for Justice, which represents trial lawyers, points out in a news release this week that a staff attorney with the Legislative Council concluded at the time that the retroactive elements in Grothman's bill raised "significant constitutional concerns."

Other controversial elements of the omnibus motion include a move to redefine the Lake Michigan shoreline " a legislative effort that could undercut a threatened lawsuit aimed at stopping a private development project from proceeding.

Peacock predicts that once the Legislature takes up the entire budget, Democrats will complain about the non-fiscal policy items. Their influence will be limited, however, and not just because they're the minority party. Says Peacock: "They don't have the moral authority to argue persuasively about the procedural concerns because both parties have been guilty of this practice over many sessions."