

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: **06/21/99**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Dake**

This file may be shown to any legislator: **NO**

Drafter: **yacketa**

May Contact:

Alt. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK, RPN**

**Pre Topic:**

ARC:.....Dakc - # 79,

**Topic:**

Tobacco settlement

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	yacketa 06/21/99	wjackson 06/22/99		_____			
/1			martykr 06/22/99	_____	gretskl 06/22/99		
/2	yacketa 06/25/99	wjackson 06/25/99	kfollet 06/26/99	_____	lrb_docadmin 06/26/99		

FE Sent For:

<END>

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/?	yacketa 06/21/99	wjackson 06/22/99		_____			
/1		1/2 6/25 WLJ	martykr 06/22/99	_____	gretskl 06/22/99		
FE Sent For:			KJf 6/25	KJf/Kh 6/26 <ENDS>			

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1?	yacketa	1 wlj 6/22	km 6/22	cb 6/22			

FE Sent For:

<END>

# Budget Amendments 1999- 2000

## Statement of Intent

**Legislator**

Urban, et.al

**Amendment#**

79

**Staff contact**

Sara

**Status**

**Agency**

Tobacco Settlement

**Tax Cut**

**Summary**

Tobacco Settlement Package

## Fiscal Impact

**ARC Analyst**

Brian Dake

**Request#:**

3669

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**C.U.R.E. Fund**  
***Cigarette Use Resistance Education Fund***

**Background**

In February, 1997, the Wisconsin Department of Justice filed a lawsuit against the tobacco industry to recoup Medical Assistance costs, as well as damages for violations of consumer protection, anti-trust, nuisance and other laws. On November 23, 1998, Wisconsin signed a settlement agreement with the tobacco industry. Under the agreement, Governor Thompson estimated that Wisconsin would receive \$5.9 billion in tobacco settlement revenue through the year 2025. According to the Legislative Fiscal Bureau, Wisconsin will receive \$185 million in 1999-00 and \$149 million in 2000-01.

Although the Governor's budget did not specifically direct the use of the \$334 million in anticipated tobacco settlement revenues, it indicated that funds should be used for a variety of state health programs and to provide partial reimbursement to state taxpayers for past costs associated with tobacco-related illnesses. The Joint Committee on Finance acted upon a variety of motions relating to the use of future tobacco settlement revenues. The C.U.R.E. Fund proposal is based upon the Committee's recommendations.

**Provision #1 – Tobacco Control Advisory Council**

**JFC Action:**

Create a 20-member Tobacco Control Advisory Council. The Council would meet at least four times a year, 11 members would constitute a quorum and a majority vote of the Council would be required to conduct council business and exercise its power. The Council would be authorized to create subcommittees and if elects to do so, one subcommittee would address the issue of populations most adversely affected by tobacco.

The Governor would appoint 13 members of the Council to three-year terms and also have the authority to appoint a member of the Council to serve as the chairperson. Members of the council would include: a) the Attorney General or designee; b) the DHFS Secretary or designee; c) the Superintendent of Public Instruction or designee; d) one member from each of the majority and minority parties in both houses of the legislature; e) one physician specializing in oncology, smoking cessation or public health; f) one member of the Wisconsin Health and Hospital Association; g) one public health officer; h) five representatives of organizations whose primary mission is to reduce tobacco use and/or its health consequences; i) one UW System student; j) two high school students, including at least one minority student; k) one person who is a member of a minority group; and l) one member of the Wisconsin Grocers Association.

**Motion:**

Adopt the Joint Finance Committee's recommendation relating to the Tobacco Control Advisory Council.

**Fiscal Effect:**

None.

## **Provision #2 – Segregated Tobacco Control Fund**

### **JFC Action:**

The Joint Committee on Finance established a segregated, nonlapsible Tobacco Control Fund to support activities related to a statewide comprehensive tobacco control program. The Fund would be a segregated aids appropriation and a program operations appropriation in the DHFS Division of Public Health. The funds would support grants and administration of a statewide tobacco control program.

### **Motion:**

Adopt the Joint Finance Committee's recommendation relating to the Tobacco Control Fund except that the fund will be entitled the "Cigarette Use Resistance Education Fund."

### **Fiscal Effect:**

None

## **Provision #3 – Statewide Tobacco Control Program**

### **JFC Action:**

The Joint Finance Committee required the DHFS to develop a statewide tobacco control program in consultation with the Council. DHFS and the Council would be required to consider successful tobacco control programs in other states in developing their recommendations. The Council's recommendations for the tobacco control program would be submitted to the DHFS Secretary by February 1, annually, beginning on February 1, 2000. In turn, DHFS would review the Council's recommendations and prepare a detailed annual budget for submission by March 1, annually, beginning on March 1, 2000, and approval under a 14-day passive review process by the Joint Committee on Finance.

The Committee also specified the distribution of funding between the components of the statewide tobacco control program budget would be based on the U.S. Centers for Disease Control's funding allocation recommendations for comprehensive tobacco control programs. Furthermore, the Committee specified that money deposited in the fund could only be used to support: a) community programs to reduce tobacco use and the burden of tobacco-related diseases; b) school programs; c) enforcement of policies restricting access to tobacco products and reducing exposure to second-hand smoke; d) partnership grants with statewide organizations and businesses; e) counter-marketing; f) cessation programs; g) surveillance and evaluation; h) administration and management; and i) projects designed to reduce tobacco use among minorities and pregnant women. DHFS would be required to solicit input from the Council regarding the selection of specific program or activities to be funded under the tobacco control program.

The Committee indicated that notwithstanding these provisions, tobacco control funds could be used to support minority health programs and federally qualified health centers (FQHCs).

**Motion:**

Adopt the Joint Finance Committee's recommendation relating to the statewide tobacco control program with the exception that tobacco control funds could not be used to support minority health programs and federally qualified health centers.

*D-N?*

*already not part  
of bill*

**Fiscal Effect:**

None.

**Provision #4 -- Reporting Requirements**

**JFC Action:**

The Joint Finance Committee requires DHFS to submit to the Governor and Legislature no later than July 1, 2002, and annually, thereafter, a report that evaluates the success of the program. The report must include the number of grants awarded during the preceding fiscal year, the purpose for which each grant was made and the donations and grants accepted by the Board.

**Motion:**

Adopt the Joint Finance Committee's recommendations relating to the reporting requirements.

**Fiscal Effect:**

None.

**Provision #5 – Funding for the Tobacco Control Fund**

**JFC Action:**

The Joint Committee on Finance specified that the first \$6,292,000 of tobacco settlement revenues received in 1999-00 would be deposited in the tobacco control fund. In 2000-01, \$30.9 million would be placed in the Joint Finance Committee's SEG appropriation for release once the Joint Finance Committee has reviewed and approved the annual budget for the program. In future years, deposit the first \$30.9 million of tobacco settlement revenues received in that fiscal year to the tobacco control fund.

In 1999-00, the Joint Finance Committee allocated; a) \$400,000 (SEG) to the Division of Public Health's (DPH) tobacco control program operations appropriation to support 2.0 positions and tobacco-related surveillance activities. The \$5,892,000 (SEG) would be provided in the DPH tobacco control aids appropriation to support: a) \$1 million for the UW Center for Tobacco Research and Intervention (CTRI); b) \$1 million for the Thomas T. Melvin program; c) \$92,000 for a smokeless tobacco campaign; d) \$300,000 for a minority health program; and e) \$3.5 million to support federally qualified health centers (FQHCs).

Beginning in 2000-01, the following activities would be supported with funds provided in the tobacco control aids appropriation: a) \$1 million for the CTRI; b) \$1 million for the Thomas T. Melvin program; c) \$500,000 for the Medical College of Wisconsin to support smoking prevention and cessation activities; and d) \$4 million to support FQHCs; and e) \$300,000 for a minority health program. The Committee specified that up to \$150,000 in 2000-01 would be allocated for grants to schools offering instruction in the smoking/tobacco component of the Body Awareness Resource Network (BARN) software.

*delete?*  
*14-day passive?*

**Motion:**

→ The first \$15 million of tobacco settlement revenues received would be deposited in the "CURE" Fund. In 2000-01 place \$13 million (SEG) in the Joint Finance Committee's SEG appropriation for release once the Joint Finance Committee has reviewed and approved the annual budget for the program. In future years, deposit the first \$13 million of tobacco settlement revenues received in that fiscal year to the "CURE" Fund.

Adopt the Joint Finance Committee's recommendations relating to allocation of \$400,000 (SEG) to the Division of Public Health's (DPH) tobacco control program operations appropriation to support 2.0 positions and tobacco-related surveillance activities.

*6-21 1:30*

*py/Brown*

Beginning in 2000-01, the following activities would be supported with funds provided in the tobacco control aids appropriation: a) \$500,000 for the CTRI; b) \$500,000 for the Thomas T. Melvin program; c) \$500,000 for the Medical College of Wisconsin (MCW) to support smoking prevention and cessation activities; and d) \$100,000 for the Agricultural Diversification Grant Program to provide assistance to tobacco farmers.

*Delete FQHC & Minority Health programs & BARN*

Adopt the Joint Finance Committee's recommendation directing the Legislative Audit Bureau to conduct audits of the MCW and the CTRI tobacco control programs twelve months after they have received funding from the state under the biennial budget.

Adopt the Joint Finance Committee's recommendation that for tobacco settlement revenues deposited in the CURE Fund, the state could not expend more than 5 percent of these amounts on state administration and management costs and could not award grants with administration costs that exceed 10 percent of the total grant.

Direct the Department of Administration to study the idea of selling and transferring the state's rights to the tobacco settlement fund in order to create a permanent endowment fund. Specify the study be submitted to the Legislature no later than January 1, 2000.

**Fiscal Effect:**

The motion would reduce funding to the CURE Fund by \$15.9 million (SEG) in 2000-01. The \$15.9 million (SEG) appropriated by the Joint Finance Committee would be placed in the general fund.

*2000-01 (u)  
P. 275  
line 11  
2000-01  
ncr. by 13,000,000  
Feb  
decr. by \$13.6M*



---

## **Provision #6 – Occupation Tax on Attorney Fees**

### **Background:**

The law firms hired to represent the state in its case against the tobacco companies have requested a total of \$847 million in fees from the tobacco industry as their contingency fee. Open records requests to determine the total number of hours worked on the case have been denied. However, an attorney with one of the firms is reported to have stated that lawyers put in 50,000 hours on the case. Utilizing the \$847 million contingency fee, the firm's hourly fee would be around \$17,000 per hour.

### **Motion:**

Impose an 80 percent occupational tax on attorney fees for legal services provided to the state at the rate of 80 percent of the amount of attorney fees which exceed the rate of \$500 per hour. Specify that the revenue from the occupational tax on attorney fees be used for property tax relief.

### **Fiscal Effect:**

According to the Legislative Fiscal Bureau, if the hourly fee for the law firms hired to represent the state in its case against the tobacco companies was \$17,000, the motion would increase general purpose revenues by \$613 million.

1999

Date (time) needed

soon

LRB b 0777 / 1

P 1 of 3

CAUCUS BUDGET AMENDMENT [ONLY FOR CAUCUS]

TAY : WLJ :

R NOT RUN

See form AMENDMENTS — COMPONENTS & ITEMS.

WPO: Inserts are out of order.

CAUCUS AMENDMENT TO ASSEMBLY SUBSTITUTE AMENDMENT 1 TO 1999 ASSEMBLY BILL 133

D-NOTE

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

MSBET 1-1 ↓

At the locations indicated, amend the substitute amendment as follows:

#. page 340, line 6: delete "from" and substitute "Biennially, from"

#. Page 340, line 7: delete "tobacco control fund" and substitute "cigarette use resistance education fund".

#. Page 352, line 15: delete that line and substitute: "20,435 (b) (c) Statewide tobacco control program. As a continuing appropriation, from the cigarette use resistance education".

#. Page 464, line 10: delete "Tobacco control" and substitute "Cigarette use resistance education".

#. Page 470, line 6: delete "Tobacco control" and substitute "Cigarette use resistance education".

#. Page 470, line 7: delete "tobacco control" and substitute "cigarette use resistance education".

#. Page 470, line 8: delete "\$2,492,000" and substitute "\$15,000,000".

1999

Date (time) needed Soon

LRB b 0777 1

P 2 of 3

**CAUCUS BUDGET AMENDMENT  
[ONLY FOR CAUCUS]**

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 1999 ASSEMBLY BILL 133**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

- √ #. Page 470, line 7: delete "tobacco control" and substitute "cigarette use resistance education".
- √ #. Page 470, line 8: delete that line and substitute: #"(a) The first 15,000,000 of the moneys received in fiscal year 2000-01 under".
- √ #. Page 470, line 10: delete that line and substitute: #"(b) Beginning in fiscal year 2001-02, the first \$13,000,000 of the moneys".
- √ #. Page 1234, line 14: after "may" insert ", beginning July 1, 2000".
- √ #. Page 1234, line 24: delete that line and substitute "\$500,000 in fiscal year 2000-01 and in each fiscal year thereafter".
- √ #. Page 1235, line 2: delete that line and substitute "under 5. 255.10, \$500,000 in".
- √ #. Page 1235, line 4: delete lines 4 to 6.
- √ #. page 470, line 14: delete that line and substitute "ss. 20.115(4)(e) and 255.15".

INSERT B

1999

Date (time) needed

P 3 of 3  
(plus add in LRB 2873 as converted)

LRB b 0777 1

CAUCUS BUDGET AMENDMENT  
[ONLY FOR CAUCUS]

See form AMENDMENTS — COMPONENTS & ITEMS.

CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 1999 ASSEMBLY BILL 133

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

✓ #. Page 1235, line 11: delete lines 11 to 15

→ #. Page 1236, line 12: delete "beginning in fiscal year 2000-01,"

✓ #. Page 1529, line 16: delete "2000" and substitute "2001"

✓ #. Page 1529, line 20: delete "2001" and substitute "2002"

✓ #. Page 1542, line 9: delete lines 9 to 13.

→ INSERT C

(END)

✓ #. Page 1480, line 25: after that line insert:

Non Stat Sub

(19v) ~~STATUTE~~ <sup>(CS)</sup> SELLING AND TRANSFERRING RIGHTS TO TOBACCO LITIGATION  
(CS) [FUNDS] The department of administration shall study the idea of selling and transferring Wisconsin's rights to the

#. Page ..., line ... moneys due to Wisconsin under the Attorneys General Master Tobacco Settlement agreement of November 23, 1998, for the purpose of creating a permanent endowment fund. The department shall submit the study to the legislature in the manner provided under [rev: 6/14/99 1999DF15Caucus(fm)].2

1999 BILL

INSERT B

1 AN ACT *to amend* 73.01 (4) (a) and chapter 139 (title); and *to create* subchapter  
2 V of chapter 139 [precedes 139.97] of the statutes; **relating to:** an occupational  
3 tax on attorney fees and providing a penalty.

*Analysis by the Legislative Reference Bureau*

This bill imposes an occupational tax on attorney fees received for legal services that are provided to the state at the rate of 80% of the amount of attorney fees that exceed the rate of \$500 an hour. The bill requires that the revenue from the occupational tax on attorney fees be used for property tax relief.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

#. Page 948, line 6: after that line insert!

4 (SECTION) 73.01 (4) (a) of the statutes is amended to read:

5 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,  
6 the commission shall be the final authority for the hearing and determination of all  
7 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.

17885  
17885

**BILL**

1 70.11 (21), 70.38 (4) (a), 70.397, 70.64 and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss.  
 2 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40, 78.555,  
 3 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78 and 139.97,  
 4 subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending  
 5 appeal there is filed with the commission a stipulation signed by the department of  
 6 revenue and the adverse party, under s. 73.03 (25), agreeing to an affirmance,  
 7 modification or reversal of the department's position with respect to some or all of the  
 8 issues raised in the appeal, the commission shall enter an order affirming or  
 9 modifying in whole or in part, or canceling the assessment appealed from, or allowing  
 10 in whole or in part or denying the petitioner's refund claim, as the case may be,  
 11 pursuant to and in accordance with the stipulation filed. No responsibility shall  
 12 devolve upon the commission, respecting the signing of an order of dismissal as to  
 13 any pending appeal settled by the department without the approval of the

14 commission." <sup>2169V</sup>  
 → # page 1139, line 23: after that line insert:

15 "SECTION 1. Chapter 139 (title) of the statutes is amended to read:

2169V

**CHAPTER 139**

**BEVERAGE, CONTROLLED SUBSTANCES AND TOBACCO AND**

**ATTORNEY FEES TAXES"**

*Hard Return*

18 → # page 1144, line 23: after that line insert:

19 "SECTION 2. Subchapter V of chapter 139 [precedes 139.97] of the statutes is  
 20 created to read: <sup>2182j</sup>

**CHAPTER 139**

**SUBCHAPTER V**

**ATTORNEY FEES TAX**

24 **139.97 Imposition.** (1) (a) In this subsection "attorney fees" means fees for  
 25 legal services, not including the reimbursement of out-of-pocket expenses, paid to

**BILL**

1 a private attorney or a law firm under a contract with the state to provide legal  
2 services for the state and awarded to a private attorney or a law firm by a court order,  
3 settlement agreement, contingency fee arrangement, arbitration procedure or  
4 alternative dispute resolution procedure.

5 (b) An occupational tax is imposed on attorney fees at the rate of 80% of the  
6 amount of attorney fees that exceeds the rate of \$500 an hour for legal services  
7 provided to the state, regardless of the basis on which the attorney fees are paid.

8 **139.98 Administration. (1)** The department of revenue shall administer the  
9 tax under this subchapter and may take any action, conduct any proceeding and  
10 impose interest and penalties related to the tax under this subchapter.

11 (2) Sections 77.51 (4) (a), (b) 1., 2. and 4., (c) 1. to 3., (d) and (17), 77.52 (3), (6),  
12 (13), (14), (18) and (19), 77.58 (1) to (5) and (7), 77.59, 77.60, 77.61 (2), (5), (8), (9) and  
13 (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to  
14 the tax under this subchapter.

15 (3) A person who is subject to the tax under this subchapter shall provide the  
16 department of revenue with documentation of the actual hours worked by the person  
17 or the person's employes that are related to the attorney fees on which the tax under  
18 this subchapter is imposed. A person who is subject to the tax under this subchapter  
19 and who fails to provide such documentation is guilty of a misdemeanor.

20 (4) The department of revenue shall deposit the taxes collected under this  
21 subchapter in the fund under s. 25.62." ①

**END OF INSERT B**

*#. Page 1600, line 20! after that line insert!*

~~SECTION 4, Initial applicability~~

**23xc**

22  
23 ATTORNEY FEES TAX. This act first applies to attorney fees that are paid on  
24 the effective date of this subsection." ①

**INSERT C**

**INIT APP**

**(END OF INSERT C)**

25

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBb0777/lins  
TAY.....

INSERT 1-1

1 1. Page 101, line 4: after that line insert:

2 (t) Tobacco farmer assistance SEG A -0- 100,000<sup>11</sup>

3 2. Page 137, line 15: decrease the dollar amount for fiscal year 1999-00 by  
4 \$1,000,000 and decrease the dollar amount for fiscal year 2000-01 by \$500,000 for  
5 the purpose of decreasing funding for the tobacco research and intervention center.

6 3. Page 193, line 17: decrease the dollar amount for fiscal year 1999-00 by  
7 \$400,000 and increase the dollar amount for fiscal year 2000-01 by \$400,000 for the  
8 purpose of delaying the implementation of the statewide tobacco control program by  
9 one year.

10 4. Page 202, line 14: decrease the dollar amount for fiscal year 1999-00 by  
11 \$2,092,000 and increase the dollar amount for fiscal year 2000-01 by \$1,500,000 for  
12 the purpose of delaying the implementation of the statewide tobacco control program  
13 by one year.

14 5. Page 275, line 11: decrease the dollar amount for fiscal year 2000-01 by  
15 \$13,600,000 for the purpose of decreasing funding for the statewide tobacco control  
16 program.

17 6. Page 283, line 6: after that line insert:

18 " SECTION 183m. 20.115 (4) (t) of the statutes is created to read:

19 20.115 (4) (t) From the cigarette use resistance education fund, the amounts  
20 in the schedule to provide assistance under s. 93.46 to tobacco farmers. <sup>11</sup>

SCHED



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

60777/1 dn  
LRB-2873/PL dr  
JK:wlj:km

June 1, 1999

Representative Stone:

This drafter's note is meant to alert you to the possibility that the attorney fees tax created by this bill could be challenged as a violation of the contract clause of article I, section 12 of the Wisconsin Constitution and the contract clause of article I, section 10 of the U. S. Constitution. The contract clause prohibits the state legislature from enacting laws that impair the obligation of contracts. A contract obligation is impaired when the consideration agreed upon by the parties to the contract is altered by legislation. See *Allied Structural Steel Co. v. Spannaus*, 438 U. S. 234 (1978) and *State ex rel Cannon v. Moran*, 111 Wis.2d 544 (1982). A court can strike down an otherwise lawful tax if the "interpretation and effect [of the tax] be such as plainly to demonstrate that the form of taxation was adopted as a mere disguise, under which there was exercised, in reality, another and different power denied by the Federal Constitution to the state." *A Magnano Co. v. Hamilton*, 292 U. S. 40, 44-45, 54 S. Ct. 599 (1934). Because the attorney fees tax under the bill is imposed on fees awarded under existing contracts, at a rate of 100% of the amount exceeding \$500 an hour (a rate that a court could find grossly excessive), and the tax is primarily aimed at attorney fees that are collected as part of the tobacco settlement, a court could find that the bill violates the contract clause because the bill alters the consideration agreed upon by attorneys and the state under the terms of a contract.

In addition, a court could find that the 100% tax rate violates the due process clause of the 14th Amendment to the U. S. Constitution, which prohibits the state from taking a person's property without due process of law, because the tax rate is grossly excessive and because attorneys received no notice of the 100% tax rate before contracting with the state for legal services, but now are obligated to remit to the state a substantial part of the fees that are collected as part of such contracts. See *Great Northern R. Co. v. Weeks*, 297 U. S. 135, 56 S. Ct. 426 (1926). In *Weeks*, the U. S. Supreme Court held that a grossly excessive property tax assessment violated a taxpayer's rights under the due process clause.

Finally, the bill also raises an issue regarding separation of powers. For example, the executive branch of our state government negotiated contracts, presumably in good faith, with private attorneys for legal services related to the tobacco litigation. The bill could be construed by a court as a constitutionally impermissible attempt by the legislature to rewrite a contract entered into by the executive branch, after one party to the contract (i.e., the attorneys) has fulfilled its obligation under the contract.

Although I am not at all certain how a court would rule on a constitutional challenge to the bill, should it become law, you should be aware of possible challenges to the bill. Please review this bill carefully to ensure that it is consistent with your intent. If you have any questions, please do not hesitate to contact me.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: Joseph.Kreye@legis.state.wi.us

I did not adjust the dollar amounts in S. 20.285<sup>(1)(1)(1)</sup> or 20.865(4)(u) because those appropriations are not sum certain appropriations.  
I created a SEG appropriation for the department of agriculture, trade and consumer protection <sup>(DATEP)</sup> for the tobacco farmer assistance under the agriculture diversification program, <sup>which is a DATEP program</sup>. This is more straightforward than appropriating the money to DHFS and then transferring it to DATEP if you have any questions, please contact me.

TJK

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb0777/1dn  
JK&TAY:wlj:km

June 22, 1999

This drafter's note is meant to alert you to the possibility that the attorney fees tax created by this bill could be challenged as a violation of the contract clause of article I, section 12 of the Wisconsin Constitution and the contract clause of article I, section 10 of the U. S. Constitution. The contract clause prohibits the state legislature from enacting laws that impair the obligation of contracts. A contract obligation is impaired when the consideration agreed upon by the parties to the contract is altered by legislation. See *Allied Structural Steel Co. v. Spannaus*, 438 U. S. 234 (1978) and *State ex rel Cannon v. Moran*, 111 Wis.2d 544 (1982). A court can strike down an otherwise lawful tax if the "interpretation and effect [of the tax] be such as plainly to demonstrate that the form of taxation was adopted as a mere disguise, under which there was exercised, in reality, another and different power denied by the Federal Constitution to the state." *A Magnano Co. v. Hamilton*, 292 U. S. 40, 44-45, 54 S. Ct. 599 (1934). Because the attorney fees tax under the bill is imposed on fees awarded under existing contracts, at a rate of 80% of the amount exceeding \$500 an hour (a rate that a court could find grossly excessive), and the tax is primarily aimed at attorney fees that are collected as part of the tobacco settlement, a court could find that the bill violates the contract clause because the bill alters the consideration agreed upon by attorneys and the state under the terms of a contract.

In addition, a court could find that the 80% tax rate violates the due process clause of the 14th Amendment to the U. S. Constitution, which prohibits the state from taking a person's property without due process of law, because the tax rate is grossly excessive and because attorneys received no notice of the 80% tax rate before contracting with the state for legal services, but now are obligated to remit to the state a substantial part of the fees that are collected as part of such contracts. See *Great Northern R. Co. v. Weeks*, 297 U. S. 135, 56 S. Ct. 426 (1926). In *Weeks*, the U. S. Supreme Court held that a grossly excessive property tax assessment violated a taxpayer's rights under the due process clause.

Finally, the bill also raises an issue regarding separation of powers. For example, the executive branch of our state government negotiated contracts, presumably in good faith, with private attorneys for legal services related to the tobacco litigation. The bill could be construed by a court as a constitutionally impermissible attempt by the legislature to rewrite a contract entered into by the executive branch, after one party to the contract (i.e., the attorneys) has fulfilled its obligation under the contract.

Although I am not at all certain how a court would rule on a constitutional challenge to the bill, should it become law, you should be aware of possible challenges to the bill.

Please review this bill carefully to ensure that it is consistent with your intent. If you have any questions, please do not hesitate to contact me.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: Joseph.Kreye@legis.state.wi.us

I did not adjust the dollar amounts in s. 20.285 (1)(kr) or 20.865 (4)(u) because those appropriations are not sum certain appropriations.

I created a SEG appropriation for the department of agriculture, trade and consumer protection (DATCP) for tobacco farmer assistance under the agriculture diversification program, which is a DATCP program. This is more straightforward than appropriating the money to DHFS and then transferring it to DATCP. If you have any questions, please contact me.

Tina A. Yacker  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: Tina.Yacker@legis.state.wi.us



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb0777/12  
TAY:wlj:km

R m R

ARC:.....Dake - # 79, Tobacco settlement

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 101, line 4: after that line insert:

3 “(t) Tobacco farmer assistance SEG A -0- 100,000”.

4 2. Page 193, line 17: decrease the dollar amount for fiscal year 1999-00 by  
5 \$400,000 and increase the dollar amount for fiscal year 2000-01 by \$400,000 for the  
6 purpose of delaying the implementation of the statewide tobacco control program by  
7 one year.

8 3. Page 202, line 14: decrease the dollar amount for fiscal year 1999-00 by  
9 \$2,092,000 and increase the dollar amount for fiscal year 2000-01 by \$1,500,000 for

1 the purpose of delaying the implementation of the statewide tobacco control program  
2 by one year.

3 **4.** Page 283, line 6: after that line insert:

4 **“SECTION 183m.** 20.115 (4) (t) of the statutes is created to read:

5 20.115 (4) (t) From the cigarette use resistance education fund, the amounts  
6 in the schedule to provide assistance under s. 93.46 to tobacco farmers.”.

7 **5.** Page 340, line 6: delete “From” and substitute “Biennially, from”.

8 **6.** Page 340, line 7: delete “tobacco control fund” and substitute “cigarette use  
9 resistance education fund”.

10 **7.** Page 352, line 15: delete that line and substitute:

11 “20.435 (5) (tc) *Statewide tobacco control program.* As a continuing  
12 appropriation, from the cigarette use resistance education”.

13 **8.** Page 464, line 10: delete “Tobacco control” and substitute “Cigarette use  
14 resistance education”.

15 **9.** Page 470, line 6: delete “**Tobacco control**” and substitute “**Cigarette use**  
16 **resistance education**”.

17 **10.** Page 470, line 7: delete “tobacco control” and substitute “cigarette use  
18 resistance education”.

19 **11.** Page 470, line 8: delete that line and substitute:

20 “(a) The first ~~15,000,000~~ of the moneys received in fiscal year 2000–01 under”.

21 **12.** Page 470, line 10: delete that line and substitute:

22 “(b) Beginning in fiscal year 2001–02, the first \$13,000,000 of the moneys”.

1           **13.** Page 470, line 14: delete that line and substitute “ss. 20.115 (4) (t) and  
2           255.15.”.

3           **14.** Page 948, line 6: after that line insert:

4           “SECTION 1788s. 73.01 (4) (a) of the statutes is amended to read:

5           73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,  
6           the commission shall be the final authority for the hearing and determination of all  
7           questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.  
8           70.11 (21), 70.38 (4) (a), 70.397, 70.64 and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss.  
9           76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40, 78.555,  
10          139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and, 139.78 and 139.97,  
11          subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending  
12          appeal there is filed with the commission a stipulation signed by the department of  
13          revenue and the adverse party, under s. 73.03 (25), agreeing to an affirmance,  
14          modification or reversal of the department’s position with respect to some or all of the  
15          issues raised in the appeal, the commission shall enter an order affirming or  
16          modifying in whole or in part, or canceling the assessment appealed from, or allowing  
17          in whole or in part or denying the petitioner’s refund claim, as the case may be,  
18          pursuant to and in accordance with the stipulation filed. No responsibility shall  
19          devolve upon the commission, respecting the signing of an order of dismissal as to  
20          any pending appeal settled by the department without the approval of the  
21          commission.”.

22          **15.** Page 1139, line 23: after that line insert:

23          “SECTION 2169v. Chapter 139 (title) of the statutes is amended to read:





1 (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to  
2 the tax under this subchapter.

3 (3) A person who is subject to the tax under this subchapter shall provide the  
4 department of revenue with documentation of the actual hours worked by the person  
5 or the person's employes that are related to the attorney fees on which the tax under  
6 this subchapter is imposed. A person who is subject to the tax under this subchapter  
7 and who fails to provide such documentation is guilty of a misdemeanor.

8 (4) The department of revenue shall deposit the taxes collected under this  
9 subchapter in the fund under s. 25.62.”.

10 **17.** Page 1234, line 14: after “may” insert “, beginning July 1, 2000,”.

11 **18.** Page 1234, line 24: delete that line and substitute “\$500,000 in fiscal year  
12 2000–01 and in each fiscal year thereafter.”.

13 **19.** Page 1235, line 2: delete that line and substitute “under s. 255.10,  
14 \$500,000 in”.

15 **20.** Page 1235, line 4: delete lines 4 to 6.

16 **21.** Page 1235, line 11: delete lines 11 to 15.

17 **22.** Page 1236, line 12: delete “beginning in fiscal year 2000–01,”.

18 **23.** Page 1480, line 25: after that line insert:

19 “(19v) SELLING AND TRANSFERRING RIGHTS TO TOBACCO LITIGATION FUNDS. The  
20 department of administration shall study the idea of selling and transferring  
21 Wisconsin's rights to the moneys due to Wisconsin under the Attorneys General  
22 Master Tobacco Settlement Agreement of November 23, 1998, for the purpose of

No later than January 1, 2000

1 creating a permanent endowment fund. The department shall submit the study to  
2 the legislature in the manner provided under section 13.172 (2) of the statutes.”.

3 **24.** Page 1529, line 16: delete “2000” and substitute “2001”.

4 **25.** Page 1529, line 20: delete “2001” and substitute “2002”.

5 **26.** Page 1542, line 9: delete lines 9 to 13.

6 **27.** Page 1600, line 20: after that line insert:

7 “(23xc) ATTORNEY FEES TAX. ~~This act first applies~~ to attorney fees that are paid  
8 on the effective date of this subsection.”.

9 (END)

The treatment of <sup>Section</sup> 73.01 <sup>and</sup> chapter  
139 (title) <sup>of the statutes</sup> and the creation  
of Subchapter I of chapter 139  
of the statutes



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb0777/2  
TAY:wlj:kjf

ARC:.....Dake - # 79, Tobacco settlement

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS AMENDMENT**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 1999 ASSEMBLY BILL 133**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 101, line 4: after that line insert:

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4 **2.** Page 193, line 17: decrease the dollar amount for fiscal year 1999-00 by  
5 \$400,000 and increase the dollar amount for fiscal year 2000-01 by \$400,000 for the  
6 purpose of delaying the implementation of the statewide tobacco control program by  
7 one year.

8 **3.** Page 202, line 14: decrease the dollar amount for fiscal year 1999-00 by  
9 \$2,092,000 and increase the dollar amount for fiscal year 2000-01 by \$1,500,000 for

1 the purpose of delaying the implementation of the statewide tobacco control program  
2 by one year.

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4 **25.** Page 1529, line 20: delete “2001” and substitute “2002”.

5 **26.** Page 1542, line 9: delete lines 9 to 13.

6 **27.** Page 1600, line 20: after that line insert:

7 “(23xc) ATTORNEY FEES TAX. The treatment of section 73.01 and chapter 139  
8 (title) of the statutes and the creation of subchapter V of chapter 139 of the statutes  
9 first apply to attorney fees that are paid on the effective date of this subsection.”.

10 (END)