

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3933/P1dn
RCT:kmg:hmh

December 27, 1999

Representative Staskunas:

This is a preliminary version of a draft to change the governance of State Fair Park. The draft changes the makeup of state fair park board (SFPB) and makes SFPB an independent agency. The draft authorizes SFPB to create a private nonprofit corporation to raise funds and provide management services for the park. The draft repeals s. 42.06 and requires the legislative audit bureau to audit annually SFPB and the private corporation. Please let me know if you did not intend the audit to be performed by the audit bureau.

Any money that is received by a state agency must be appropriated by the legislature in order to be expended because of Art. VIII, section 7 of the Wisconsin Constitution. However, any funds that would be received by the private corporation and expended by that corporation without being turned over to SFPB would not come into the state treasury and would not be subject to the state budget process. The draft changes the SFPB program revenue annual appropriation into a program revenue continuing appropriation, which gives SFPB more flexibility by eliminating the dollar limit (set in each state budget) on the amount of revenue that the board may expend in a fiscal year. Note also that any purchasing done by the private corporation would not be covered by the laws relating to state purchasing.

There are several reasons that this draft retains SFPB as a state agency rather than providing only a private corporation to operate State Fair Park. Under current law, SFPB has rule-making authority and police powers. I do not believe that rule-making authority could be delegated to an entity that is not a state agency. I am not certain whether police powers may be delegated to an entity that is not state agency. It would be possible to eliminate rule making related to State Fair Park. It would also be possible to have private security personnel regulated under s. 440.26, rather than a State Fair Park police department, provide security for the park. However, the authority of an entity providing private security is more limited than the authority of a public law enforcement agency. If you wish to consider delegating police power to a private entity, I will do more research on the issue.

Under current law, state debt has been issued to fund facilities at State Fair Park (see ss. 20.190 (1) (c), (d), (i) and (j) and 20.866 (2) (zx), (zy) and (zz)). I do not think that this debt could be transferred to an entity that is not a state agency. The draft may need to contain language ensuring that sufficient funds are received by SFPB to pay the debt

service on the program revenue supported debt that has been issued for improvements at State Fair Park. It may be helpful to discuss this issue with individuals from DOA's capital finance office at some point. Note, also, that current law authorizes SFPB to award an annual grant to the city of West Allis. This would seem to be a function to be performed by a state agency, although it might be possible to require a corporation to make payments to the city.

You might wish to continue to have the state fund any future construction at State Fair Park. A private entity would be unable to obtain financing at as low a rate as the state can secure. There are some specific provisions in current law relating to construction at State Fair Park. Please review ss. 13.48 (12) (b) 2. and (13) (b) and 13.488 (7) to determine whether you want to make any changes in those provisions.

The Wisconsin Constitution prohibits the creation of corporations by special act, Art. XI, section 1, and prohibits the legislature from enacting any special or private laws granting corporate powers or privileges, except to cities, Art. IV, section 31 (7). These provisions limit the ability of the legislature to create corporations that have characteristics that differ from the characteristics of any other corporation created under ch. 180 or 181. The Bradley Center legislation, ch. 232, was enacted in 1985 and it is my understanding that the Bradley Center Sports and Entertainment Corporation never became functional. It seems possible that a court would find that ch. 232 violates the constitution's provisions concerning corporations. If you wish to create an entity that is public and has special powers or obligations, the existing model that we know will stand constitutional challenge is the authority, such as the Wisconsin Housing and Economic Development Authority. A draft creating an authority or similar public entity must address many issues about the applicability of laws that generally apply to governmental entities. The Bradley Center legislation failed to address many of these issues.

As we discussed briefly over the telephone, the legislature may impose significant requirements on a private corporation by providing state funding to the corporation contingent on the corporation doing certain things. The Medical College of Wisconsin is a good example of this approach. See s. 39.155. Of course, the legislature must offer to provide sufficient funds to the corporation to make it worth complying with the requirements. If you wish to provide GPR to the private corporation, please let me know how much you wish to provide and what conditions you would want to place on the receipt of the funds.

Section 42.11 authorizes SFPB to enter into a lease with a private nonprofit corporation to operate and maintain the Olympic ice training center. Do you want the draft to make any changes relating to this provision? If there is currently a lease, there may be constitutional limits on the changes that may be made before the lease expires. Also, please review the rest of ch. 42 to identify any other changes that you might wish to make.

Please note that this draft does not contain any provisions relating to the employes of SFPB. The budget act (Act 9) placed all of the employes in the unclassified service.

Please contact me with any questions or redraft instructions. I will continue to research the issues raised by your proposal and to draft the items from your drafting instructions that are not yet included in this draft.

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