

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/25/2001

Received By: grantpr

Wanted: As time permits

Identical to LRB:

For: Johnnie Morris-Tatum (608) 266-3756

By/Representing:

This file may be shown to any legislator: NO

Drafter: grantpr

May Contact:

Addl. Drafters: jkreye  
champra  
shoveme

Subject: Education - MPS  
Munis - miscellaneous  
State Finance - miscellaneous

Extra Copies:

Submit via email: NO

Requester's email:

---

Pre Topic:

No specific pre topic given

---

Topic:

Baseball district sales tax to pay for Milwaukee choice program

---

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>
/?	grantpr 06/26/2001 shoveme			_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofcd</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	06/26/2001			_____			
/1	champra 06/27/2001	jdyer 06/29/2001	rschluet 06/29/2001	_____	lrb_docadmin 06/29/2001	lrb_docadmin 06/29/2001	

FE Sent For:

<END>

**2001 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-SB55)**

Received: 06/25/2001

Received By: grantpr

Wanted: As time permits

Identical to LRB:

For: Johnnie Morris-Tatum (608) 266-3756

By/Representing:

This file may be shown to any legislator: NO

Drafter: grantpr

May Contact:

Addl. Drafters: jkreye  
shoveme  
champra

Subject: Education - MPS  
Munis - miscellaneous  
State Finance - miscellaneous

Extra Copies:

Submit via email: NO

Requester's email:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Baseball district sales tax to pay for Milwaukee choicek program

---

**Instructions:**

See Attached

---

**Drafting History:**

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

1?      grantpr      1 6/29/01      DS      \_\_\_\_\_  
11 MES 6/29/01      6.29-1

FE Sent For:

<END>

6/25/69

Juanita Morris-Tatum

tax pd for Miller Stadium -

transfer \$ to pay for MP CP.

I.

AM 121.08 (4) (a) 2, & 3: del. (c)

RP 121.08 (4) (b) & (c)

AM 121.08 (4) (d) : del. (c)

(fn) a sum will be made the payments ~~under~~ <sup>under</sup> - OK  
 119.23 (4) & (4m)

= N 8M 01-02 N 68M 02-03

II. DEPOSIT TAXES IN GEN'L FUND?

A. If taxes = less than amt received ~~to pay~~  
 appropriated under (2) (fn) : ?

B. If taxes > amt approp. under (2) (fn)  
 only amt ~~received~~ = to (2) (fn) → GF  
 balance goes to baseball

	01-02	02-03
(2)(fn) = SLES	71M	95M

taxes  
 25M 98 99

reduce by

1/2 amt.

amt. per ch. sch. = 58  
- tax 20

---

+ 38

annually

DOE shall determine the amt. of  
the taxes ~~paid~~ <sup>collected</sup> under s. 77.705  
& notify DOI.

in the premises  
F4

2001

Date (time) needed \_\_\_\_\_

LRB b 181511

AMDT TO BUDGET SUB AMDT PG & JFLA MRS : \_\_\_\_\_

See form AMENDMENTS — COMPONENTS & ITEMS.

~~A SENATE AMENDMENT  
TO SENATE AMENDMENT  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO 2001 SENATE BILL 55~~

At the locations indicated, amend the substitute amendment [~~amendment~~] as follows:

~~#. Page . . . . , line . . . .~~

~~#. Page . . . . , line . . . . :~~

~~#. Page . . . . , line . . . . :~~

~~#. Page . . . . , line . . . . :~~

~~#. Page . . . . , line . . . . :~~

~~#. Page . . . . , line . . . . :~~





State of Wisconsin  
2001 - 2002 LEGISLATURE

JJK  
LRBb1815/1  
PG&RAC&MES: A:....  
h  
Jld

NOW

**ASSEMBLY AMENDMENT ,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2001 SENATE BILL 55**

# Page 848, line 9: after that line insert:

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

2 SECTION <sup>2247C</sup> ~~77.76~~ (3m) of the statutes is amended to read: ✓

3 77.76 (3m) From the appropriation under s. 20.835 (4) (gb) the department, for

4 the first 2 years of collection, shall distribute 97% of the taxes reported for each local

5 professional baseball park district that has imposed taxes under this subchapter,

6 minus the district portion of the retailers' discounts, to the local professional baseball

7 park district no later than the end of the 3rd month following the end of the calendar

8 quarter in which such amounts were reported. From the appropriation under s.

9 20.835 (4) (gb) the department, after the first 2 years of collection, shall distribute

10 98.5% of the taxes reported for each local professional baseball park district that has

11 imposed taxes under this subchapter, minus the district portion of the retailers'

12 discount, to the local professional baseball park district no later than the end of the

# Page 1003, line 24: after that line insert:

INSERT PG

1 3rd month following the end of the calendar quarter in which such amounts were  
 2 reported. At the time of distribution the department shall indicate the taxes reported  
 3 by each taxpayer. In this subsection, the " district portion of the retailers' discount"  
 4 is the amount determined by multiplying the total retailers' discount by a fraction  
 5 the numerator of which is the gross local professional baseball park district sales and  
 6 use taxes payable and the denominator of which is the sum of the gross state and local  
 7 professional baseball park district sales and use taxes payable. The local  
 8 professional baseball park district taxes distributed shall be increased or decreased  
 9 to reflect subsequent refunds, audit adjustments and all other adjustments of the  
 10 local professional baseball park district taxes previously distributed. Interest paid  
 11 on refunds of local professional baseball park district sales and use taxes shall be  
 12 paid from the appropriation under s. 20.835 (4) (gb) at the rate paid by this state  
 13 under s. 77.60 (1) (a). Any local professional baseball park district receiving a report  
 14 under this subsection is subject to the duties of confidentiality to which the  
 15 department of revenue is subject under s. 77.61 (5).

History: 1985 a. 29, 41; 1991 a. 37, 269; 1995 a. 56; 1999 a. 87.

SECTION 229.75 (3) of the statutes is amended to read:

17 229.75 (3) Bonds issued by the district shall be secured only by the district's  
 18 interest in any baseball park facilities, including any interest in a lease with the  
 19 department of administration under s. 16.82 (7); by income from these facilities; <sup>and</sup> by  
 20 proceeds of bonds issued by the district and other amounts placed in a special  
 21 redemption fund and investment earnings on such amounts; ~~and by the revenue~~  
 22 ~~received from the department of revenue that is derived from the taxes imposed by~~

NO This subsection does not apply after the effective date of this subsection.... [revisor inserts date]. "

INS PG #. Page 1, 926, line 2: after that line insert:  
2767 h x  
renumbered 121.08 (4)(b) (intro) and

Section #. 121.08 (4) (b) of the statutes is amended to read:

121.08 (4) (b) (intro) The amount of state aid that the school district operating under ch. 119 is eligible to be paid from the appropriation under s. 20.255 (2) (ac) shall also be reduced by 50% of the ~~amounts paid under s. 119.23 (4) and (4m) in the current school year.~~

History: 1973 c. 90; 1977 c. 29; 1983 a. 509; 1985 a. 29; 1987 a. 27, 399; 1995 a. 27; 1999 a. 9, 185.

Amount calculated as follows:

SEC. 2767j. CR; 121.08 (4)(b) 1. ✓ and 2.

121.08 (4)(b) 1. Determine the amounts paid under s. 119.23 (4) and (4m) ✓ in the current fiscal year.

# 2. Subtract from the result obtained under subd. 1. ✓ the amount of taxes collected under s. 77.705 ✓ in the current fiscal year, as estimated by the department of revenue.



INSERT PG CONT

Section 121.08 (4) (c) 1. of the statutes is amended to read:

121.08 (4) (c) 1. Add the amounts paid under s. 119.23 (4) and (4m) in the current school year and divide the sum by 2.

History: 1973 c. 90; 1977 c. 29; 1983 a. 509; 1985 a. 29; 1987 a. 27, 399; 1995 a. 27; 1999 a. 9, 185.

remainder

subtract from the sum the amount of taxes collected under s. 77.705 in the current fiscal year, as estimated by the department of revenue,

(end ins PG)

WEMOH

A-note

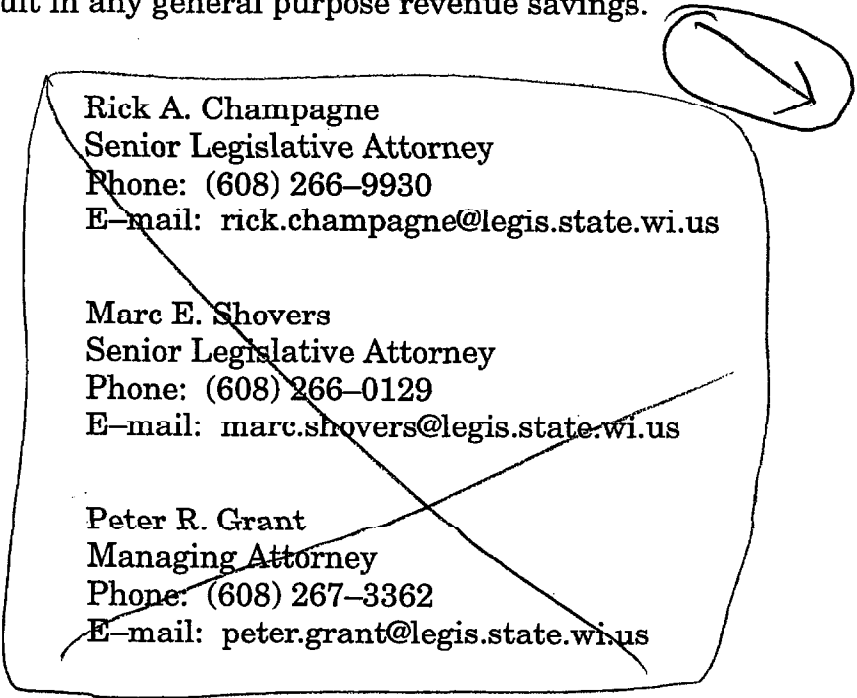
**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

*date*

LRBb1815/1dn  
PG&RAC&MES:.....

*Jld*

\* Please note that <sup>the</sup> if the department of revenue does not return to the professional baseball district ~~a sufficient amount of~~ sales tax money to fund the district's special debt service reserve fund requirement under s. 229.74 (5), then the legislature, under s. 229.74 (7), is "morally obligated" to appropriate sufficient moneys to fund this requirement. If the legislature chooses to carry out this "moral obligation" and fund the special debt service reserve fund requirement from general purpose revenue, then this amendment would not result in any general purpose revenue savings.



Rick A. Champagne  
Senior Legislative Attorney  
Phone: (608) 266-9930  
E-mail: rick.champagne@legis.state.wi.us

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

Peter R. Grant  
Managing Attorney  
Phone: (608) 267-3362  
E-mail: peter.grant@legis.state.wi.us

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

a 2029  
MBS:cmh/jr

March 24, 2006

the tax imposed <sup>by</sup> one local level of government, the professional baseball park district, will be spent by another local level of government, the ~~public school district~~ state ✓

You may wish to have this amendment reviewed by the department of revenue.

This drafter's note is to alert you to the possibility that, should this amendment become law, it could be challenged as a violation of that part of the public purpose doctrine which requires that "[A] tax must be spent at the level at which it is raised." *State ex. rel. Wisconsin Dev. Authority v. Dammann*, 228 Wis. 147, 183 (1938). "Wisconsin has long recognized this rule of constitutional interpretation, i.e., the purpose of the tax must be one which pertains to the public purpose of the district within which the tax is to be levied and raised." *Buse v. Smith*, 97 Wis. 3d 550, 577 (1976). Under this amendment, ~~a statewide income tax surcharge is funneled into a special fund to pay off debt incurred by a special purpose district which is a local level of government.~~

Certainly, the principle that a tax must be spent at the level at which it is raised "does not mean that one unit of government may not collect tax revenue, commingle it with other funds, and then make payments to other units of government" as the state annually does by distributing "billions of dollars in aid to other units of government." See Jack Stark, *The Authority to Tax in Wisconsin*, in Vol. 77, number 3 of the *Marquette Law Review*, 457, 467. Money is fungible, and as the state distributes aid to local units of governments it "cannot plausibly be argued that aid programs violate the principle that the taxing unit and the spending unit must be identical" *Id.* In this case, however, ~~it seems to me that there is some danger of a court finding that the income tax surcharge violates the public purpose doctrine of the constitution because the money is not really fungible nor is it being commingled; collections from the surcharge are deposited directly into a special fund that is dedicated to paying debt and other expenses of a local unit of government.~~

It is difficult to predict how a court would rule on this question should your amendment become law, but I thought you should at least be aware of the issues raised in this drafter's note.

J K  
Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: Marc.Shovers@legis.state.wi.us  
→ PAC, PG 5

to offset <sup>OPR</sup> for the purpose of funding the choice program

although the tax money from the district is commingled with other money in the general fund, the tax money from the district is designated specifically for use by the Milwaukee public school district

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

LRBb1815/1dn  
JK/MES/RAC/PG;jld:jf

June 29, 2001

Please note that, if the department of revenue does not return to the professional baseball district the sales tax money to fund the district's special debt service reserve fund requirement under s. 229.74 (5), then the legislature, under s. 229.74 (7), is "morally obligated" to appropriate sufficient moneys to fund this requirement. If the legislature chooses to carry out this "moral obligation" and fund the special debt service reserve fund requirement from general purpose revenue, then this amendment would not result in any general purpose revenue savings.

This drafter's note is to alert you to the possibility that, should this amendment become law, it could be challenged as a violation of that part of the public purpose doctrine which requires that "[A] tax must be spent at the level at which it is raised." *State ex. rel. Wisconsin Dev. Authority v. Dammann*, 228 Wis. 147, 183 (1938). "Wisconsin has long recognized this rule of constitutional interpretation, *i.e.*, the purpose of the tax must be one which pertains to the public purpose of the district within which the tax is to be levied and raised." *Busc v. Smith*, 97 Wis. 3d 550, 577 (1976). Under this amendment, the tax imposed by one local level of government, the professional baseball park district, will be spent by another level of government, the state.

Certainly, the principle that a tax must be spent at the level at which it is raised "does not mean that one unit of government may not collect tax revenue, commingle it with other funds, and then make payments to other units of government" as the state annually does by distributing "billions of dollars in aid to other units of government." See Jack Stark, *The Authority to Tax in Wisconsin*, in Vol. 77, number 3 of the *Marquette Law Review*, 457, 467. Money is fungible, and as the state distributes aid to local units of governments it "cannot plausibly be argued that aid programs violate the principle that the taxing unit and the spending unit must be identical" *Id.* In this case, however, although the tax money from the district is comingled with other money in the general fund, the tax money from the district is designated to offset GPR for the purpose of funding the choice program.

It is difficult to predict how a court would rule on this question should your amendment become law, but I thought you should at least be aware of the issues raised in this drafter's note.

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

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: Marc.Shovers@legis.state.wi.us

Rick A. Champagne  
Senior Legislative Attorney  
Phone: (608) 266-9930  
E-mail: rick.champagne@legis.state.wi.us

Peter R. Grant  
Managing Attorney  
Phone: (608) 267-3362  
E-mail: peter.grant@legis.state.wi.us