



Legislative Fiscal Bureau

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June 5, 2001

Joint Committee on Finance

Paper #121

Regulation of Cigarette Sales (General Fund Taxes -- Excise Taxes and Regulation of Alcohol and Tobacco)

[LFB 2001-03 Budget Summary: Page 48, #3]

CURRENT LAW

In general, all cigarettes received in this state for sale or distribution within this state are subject to the cigarette excise tax of \$.59 per pack. The tax is imposed at the time and place of the first taxable event occurring in this state. Cigarettes sold for shipment outside this state in interstate commerce are not subject to the tax.

The tax is paid through the purchase of tax stamps from the Department of Revenue (DOR), generally by a manufacturer or distributor. It is unlawful for most persons to possess more than 400 cigarettes unless the required tax stamps are properly affixed. This provision does not apply to cigarette manufacturers, distributors or warehouse operators possessing valid permits issued by DOR or to common carriers that are licensed to carry cigarettes in interstate commerce. No retailer may possess cigarettes purchased from any person except a manufacturer, distributor or jobber who holds a valid permit from DOR.

GOVERNOR

Modify provisions regulating the sale of cigarettes as follows:

Prohibit affixing cigarette tax stamps to: (a) a cigarette package on which a statement, label, stamp, sticker or notice indicates that the manufacturer did not intend the cigarettes to be sold, distributed or used in the U.S.; (b) a cigarette package that is labeled as required under federal law as not intended for consumption in the U.S.; (c) a package that is not labeled as provided under federal law; (d) a package that is modified by a person who is not the

manufacturer; or (e) cigarettes that are imported into the U.S. after December 31, 1999, in violation of federal law.

Prohibit altering cigarette packages before the sale or distribution to the ultimate consumer so as to remove, conceal or obscure any statement, label, stamp, sticker or notice described above or any warning that is specified or conforms with federal requirements regarding warnings prescribed by the U.S. Surgeon General for cigarette packages. Prohibit affixing cigarette tax stamps to any package that is so altered.

Specify that any person could bring an action for illegally affixing tax stamps or altering cigarette packages under the provisions outlined above for actual damages sustained as a result of the violation and for injunctive relief. The court could order the violator to pay the prevailing party's costs and reasonable attorney fees. The trier of fact could increase recovery to an amount not exceeding three times the actual damages if the trier determines that the violation was willful.

Prohibit the possession of more than 400 cigarettes on which tax stamps have been unlawfully affixed under the above provisions; and the sale and distribution of such cigarettes; except for cigarettes that may be brought into the U.S. for personal use and cigarettes that are sold or intended for sale by a duty-free enterprise, as provided under federal law. Provide the following penalties for violations of this provision: (a) for fewer than 6,000 cigarettes, a fine of up to \$200, imprisonment for up to six months or both; (b) for 6,000 to 36,000 cigarettes, a fine of up to \$1,000, imprisonment for up to one year or both; or (c) for more than 36,000 cigarettes, a fine of up to \$10,000, imprisonment for up to three years or both. These penalties currently apply to unlawful possession of untaxed cigarettes.

Prohibit distributors from affixing tax stamps to cigarette packages unless the distributor certifies to DOR, in a manner prescribed by the Department, that the distributor purchases cigarettes directly from a manufacturer. In addition, specify that the definition of "manufacturer" under the cigarette tax statutes would include an authorized agent of a cigarette manufacturer.

DISCUSSION POINTS

1. Gray-market cigarettes are cigarettes manufactured in the U.S. for export that have been brought back into the U.S. for sale, generally at prices well below the prevailing U.S. prices. Gray-market cigarettes also include cigarettes manufactured abroad that are intended for sale in non-U.S. markets but are then diverted for sale in the U.S. In many instances, the required taxes and duties have not been paid on the cigarettes, and they typically do not incorporate the required health warnings for cigarettes.

2. Federal law bans the re-importation of cigarettes manufactured for export. However, according to DOR, enforcement of the gray market cigarette provisions is not a high priority for the federal government relative to enforcement of restrictions on firearms and narcotics. Current state law imposes penalties for the possession of cigarettes if the state excise tax has not been paid (as evidenced by a tax stamp), but state law does not impose penalties for the possession or distribution of gray-market cigarettes if a valid tax stamp has been affixed to the cigarette package. The Governor's recommendation would make the possession and distribution of gray-

market cigarettes a violation of state law, as well as federal law. According to the National Conference of State Legislatures, most states have statutory anti-gray market cigarette provisions.

3. DOR indicates that U.S. cigarette manufacturers are not party to their exported cigarettes being returned to the U.S. for sale. Manufacturers have advised their distributors and large retailers that, if they sell gray-market cigarettes, they will stop selling cigarettes to them.

4. Since Wisconsin's payments under the tobacco Master Settlement Agreement are tied to nationwide volume-shipments by the participating manufacturers, the potential loss of market share to sellers of gray-market cigarettes by the participating manufacturers could result in reduced payments to the state under the agreement. The banning of gray-market cigarettes and the implementation of appropriate enforcement efforts are intended to help circumvent this potential problem.

5. Several changes to the gray-market cigarette provisions incorporated in the bill [and current law] have been suggested with the goal of strengthening enforcement of the bill's provisions. These changes would: (a) expand authority for state enforcement action by allowing the state to take action against every person in the gray-market distribution chain rather than against only the tax stampers or against tax stamped product; (b) prohibit the sale of cigarettes for which the manufacturer has not submitted ingredient information to the federal government, as required by law; (c) revise the Governor's proposal to reflect the provisions of the new federal gray market law and the federal labeling law, that requires cigarettes sold in the U.S. to bear the Surgeon General's warning; (d) clarify that the prohibitions on gray market cigarettes would not apply to cigarettes imported into the U.S. for personal use or to cigarettes sold at duty free stores, unless the cigarettes are brought into the U.S. for resale; (e) eliminate the provision in the bill that would allow possession of up to 400 [20 cartons] of gray-market cigarettes; (f) narrow the right to bring an action for appropriate injunctive relief from "any person" to any person who sells, distributes or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation; (g) require the destruction of all gray-market cigarettes seized by the state; and (h) incorporate several cross-references to update language in the bill and current statute with provisions that would accomplish the steps described above.

6. The Department of Revenue believes these modifications would improve the provisions of the bill.

ALTERNATIVES TO BILL

1. Approve the Governor's recommended language regarding gray-market cigarettes.
2. Approve the Governor's recommendation with the revisions identified above.
3. Maintain current law.

Prepared by: Drew B. Larson

GENERAL FUND TAXES

Excise Taxes and Regulation of Alcohol and Tobacco

Bill Agency

LFB Summary Item for Which No Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	Cigarette Tax Refunds -- Current Law Reestimate

General Fund Taxes

Excise Taxes and Regulation of Alcohol and Tobacco

Bill Agency

(LFB Budget Summary Document: Page 45)

LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
2	Regulation of Alcoholic Beverages (Paper #120)
3	Regulation of Cigarette Sales (Paper #121)

General Fund Taxes

Other Items

Bill Agency

LFB Summary Items for Which Issue Papers Have Been Prepared

Item #

Title

-

Impact of Federal Tax Legislation (Paper #122)

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Sales Tax Rebate Expenditure Adjustment (Paper #123)



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June 5, 2001

Joint Committee on Finance

Paper #122

Impact of Federal Tax Legislation (General Fund Taxes -- Other Items)

CURRENT LAW

The federal government imposes an estate and gift tax on the privilege of transferring property at death and during life. A credit is provided against federal estate taxes for death taxes paid to a state government. Currently, the credit is equal to state death taxes paid, up to a maximum of 80% of the federal estate tax liability as defined under 1926 federal law. The federal credit is based on the federal adjusted taxable estate, which is the federal taxable estate reduced by \$60,000.

Wisconsin imposes an estate tax that is equal to the federal credit for death taxes paid to a state government. Under such a tax, commonly known as a "gap" or "pick-up" tax, the state death tax results in a dollar-for-dollar reduction of federal estate tax liability and does not lead to an increase in total taxes due on an estate.

The federal and state estate taxes are due and payable nine months after the date of a decedent's death. Under current law, state general fund revenues from estate tax collections are estimated at \$110.0 million in 2001-02 and \$120.0 million in 2002-03, for a biennial total of \$230.0 million.

GOVERNOR

No provision.

DISCUSSION POINTS

Estate Tax

1. Most state tax provisions that are referenced to federal law refer to the Internal Revenue Code (IRC) in effect at a particular point in time. For example, current state individual and corporate income tax provisions refer to the IRC in effect as of December 31, 1999. [LFB Paper #107 addresses the issue of updating IRC references to reflect the code in effect as of December 31, 2000.] However, the state estate tax does not refer to federal law in effect at a particular point in time. Therefore, changes in the federal estate tax provisions will automatically impact state revenues unless legislation is passed to not adopt the new federal provisions.

2. On May 26, 2001, the House of Representatives and the United States Senate approved H.R. 1836, the Economic Growth and Tax Relief Reconciliation Act of 2001. As of this writing, President Bush is expected to sign H.R. 1836 into law during the first week of June, 2001.

3. The federal legislation includes multiple changes to the federal individual income tax, some of which would result in state revenue losses if adopted by the state under a future update of statutory references to the Internal Revenue Code for state income tax purposes. Of more immediate consequence, however, are the provisions in H.R. 1836 that would phase out the federal estate tax, beginning with taxes on decedents dying after December 31, 2001, and ending with complete repeal for decedents dying after December 31, 2009. H.R. 1836 would also reduce the state death tax credit from the amounts under current law as follows: (a) by 25% for decedents dying during calendar year 2002; (b) by 50% for decedents dying during calendar year 2003; (c) by 75% for decedents dying during calendar year 2004; and (d) complete repeal of the state death tax credit for decedents dying after December 31, 2005.

4. The state estate tax is due and payable nine months after the date of the decedent's death, with extensions of the due date granted in some cases. Therefore, for decedents dying during calendar year 2002, the losses in state revenue would begin to occur in October, 2002.

5. Based on estimated state estate tax revenues in 2002-03 and the provisions under H.R. 1836, it is anticipated that state general fund tax revenues will decrease by \$29.0 million during 2002-03.

6. The effects in subsequent years would be more significant. Based on 2002-03 dollars, the estimated loss in state tax revenues after the 2001-03 biennium would be as follows: (a) \$58.0 million in 2003-04; (b) \$86.0 million in 2004-05; (c) \$113.0 million in 2005-06; and (d) \$120.0 million in 2006-07 and beyond. [The estimates provided for these years assume that settlements are dispersed evenly throughout each year and that the total for each fiscal year would be equal to that estimated for 2002-03 under current law. However, estate tax collections are significantly affected by the settlement, or lack thereof, of a small number of large estates. Collections may vary considerably from year to year. Therefore, the actual annual losses that would be experienced under H.R. 1836 could also vary considerably from the estimates shown above.]

7. If the Committee wished to prevent the state revenue loss from the federal changes to the estate tax, including the phase-out and elimination of the state death tax credit, the state estate tax statutes could be revised to reference federal law in effect on a specified date prior to passage of the changes under H.R. 1836. Under this option, Wisconsin estate taxes would remain as they are under current law and there would be no loss in state revenues.

Federal Tax Rebates -- Offset of Delinquent State Taxes

8. An additional federal tax change under H.R. 1836 is a reduction in the lowest income tax bracket from 15% to 10%, effective with tax year 2001. To accelerate the effect of the rate change, taxpayers that filed taxes for tax year 2000 will receive rebate checks, rather than having to wait until filing for tax year 2001. The amount of the rebate will be based on filing status and amounts taxed at the 15% bracket for tax year 2000, up to the following maximum rebate amounts; (a) \$300 for a single individual; (b) \$500 for the head of a household; and (c) \$600 for a married couple filing a joint return. It is anticipated that most rebate checks will be issued in the first quarter of 2001-02. The rebate is in lieu of the 10% rate bracket for 2001. Individuals filing in 2001 that did not receive a rebate check will instead receive a credit against the tax liability for 2001.

9. Tax rebates under H.R. 1836 are to be offset against certain delinquent accounts before being distributed to taxpayers. Under these provisions, a taxpayer's rebate would first be applied to federal tax debts and debts to other federal agencies. After settling the federal debts, remaining rebate amounts could be used to offset delinquent state income tax liabilities. The Department of Revenue estimates that the state can expect to receive about \$4,500,000 towards payment of delinquent accounts.

ALTERNATIVES TO BILL

1. Maintain current law. Reestimate general fund tax revenues from estate tax collections for 2002-03 at \$91.0 million, which is \$29.0 million less than the \$120.0 million estimated under current law. This estimate assumes H.R. 1836 will be signed into law,

Alternative 1	GPR
2001-03 REVENUE (Change to Bill)	- \$29,000,000

2. Modify the state estate tax statutes to reference the federal law in effect on December 31, 2000. Under this alternative, there would be no change from estimated revenues under the bill.

MODIFICATION

In addition to either of the first two alternatives, modify the bill to increase estimated general fund revenues by \$4,500,000 in 2001-02.

Explanation: The increased revenues in 2001-02 would reflect the anticipated offsets toward delinquent accounts as a result of the federal rebate under H.R. 1836.

<u>Modification</u>	<u>GPR</u>
2001-03 REVENUE (Change to Bill)	\$4,500,000

Prepared by: Faith Russell



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June 5, 2001

Joint Committee on Finance

Paper #123

Sales Tax Rebate Expenditure Adjustment (General Fund Taxes -- Other Items)

CURRENT LAW

1999 Wisconsin Act 10 provided a one-time rebate of nonbusiness consumer sales tax paid by individuals in Wisconsin. Funding for the rebate was provided in a sum sufficient GPR appropriation.

GOVERNOR

No provision.

MODIFICATION

Modify the bill to increase the estimated general fund opening balance for the 2001-03 biennium by \$11,700,000.

Explanation: The amount recorded as being expended for the sales tax rebate during 1999-00 was approximately \$11,700,000 higher than actual expenditures. According to the Department of Administration and the Department of Revenue, an adjustment to be made during 2000-01 will increase the amounts available in the general fund by \$11,700,000.

<u>Modification</u>	<u>GPR</u>
2001-03 REVENUE (Change to Bill)	\$11,700,000

Prepared by: Faith Russell

Tobacco Settlement Securitization

Bill Agency

(LFB Budget Summary Document: Page 637)

LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
1	Tobacco Settlement Revenue Reestimate (Paper #886)
1 & 2	Tobacco Securitization Proposal (Paper #887)



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June 5, 2001

Joint Committee on Finance

Paper #886

Tobacco Settlement Revenue Reestimate (Tobacco Settlement Securitization)

[LFB 2001-03 Budget Summary: Page 637, #1]

CURRENT LAW

In 1998, Wisconsin and 45 other states, Puerto Rico, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands, Guam and the District of Columbia entered into the Master Settlement Agreement (MSA) with certain tobacco manufacturers (the "original participating manufacturers"). The settlement agreement also allows for tobacco manufacturers, in addition to the original participating manufacturers, to join the MSA ("subsequent participating manufacturers"). Under the MSA, Wisconsin will receive initial payments through 2003, strategic contribution payments from 2008 through 2017, and annual payments in perpetuity.

GOVERNOR

Estimate the settlement monies to be received under the MSA at \$153,414,000 in 2001-02 and \$155,440,800 in 2002-03. These monies could either be directly deposited into the general fund or flow through the permanent endowment fund, depending on the timing of the proposed sale of bonds under the tobacco settlement securitization recommendation.

MODIFICATION TO BILL

Reestimate the settlement monies to be received under the MSA and deposited into the general fund or flowing through the permanent endowment fund, depending on whether the Governor's tobacco settlement securitization recommendation is adopted and, if so, the timing of the sale of bonds, by an additional \$2,112,000 in 2001-02 and \$2,162,000 in 2002-03.

Explanation: Based on higher operating income for the original participating manufacturers that increased actual 2001 settlement payments to the states under the MSA, it is estimated that settlement monies will be \$155.5 million in 2001-02 and \$157.6 million in 2002-03. This represents an increase to the bill of \$2.1 million in 2001-02 and \$2.2 million in 2002-03.

<u>Modification</u>	<u>GPR</u>
2001-03 REVENUE (Change to Bill)	\$4,274,000

Prepared by: Paul Onsager



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June 5, 2001

Joint Committee on Finance

Paper #887

Tobacco Securitization Proposal (Tobacco Settlement Securitization)

[LFB 2001-03 Budget Summary: Page 53, #6, Page 637, #1 and Page 638, #2]

CURRENT LAW

As a participant in the Attorneys General Master Tobacco Settlement Agreement of November, 1998, the state receives settlement payments from tobacco manufacturers participating in the agreement. These settlement payments are estimated to be \$155.5 million in 2001-02 and \$157.6 million in 2002-03. Through 2032, these payments are projected to total \$5.57 billion according to the WEFA, Inc., study, which is the leading study used by state and local governments and financial markets in analyzing the tobacco settlement payments. Effectively, all of these settlement payment revenues are deposited to the general fund, with the first \$21.5 million in 1999-00 having been transferred to the tobacco control fund to fund the Tobacco Control Board's activities.

GOVERNOR

The Governor's 2001-03 budget recommendation would allow the DOA Secretary to use the authority provided under the bill to sell, transfer or assign the state's rights to the tobacco settlement payments to the Wisconsin Health and Educational Facilities Authority (WHEFA) or to a nonstock, nonprofit corporation formed by WHEFA or the state. The bill does not specify the number of years of settlement payments the DOA Secretary would be allowed to sell, transfer or assign to the corporation. The transaction would occur in 2001-02, but would not involve the \$155.5 million in 2001-02 and \$157.6 million in 2002-03 projected to be received in the biennium. These funds could either be directly deposited into the general fund or flow through the permanent endowment fund and then be deposited to the general fund, depending on when in 2001-02 the proposed sale would occur. The funds provided to the Tobacco Control Board would also be unaffected by the securitization transaction.

After receiving the rights to the state's tobacco settlement payments, the corporation would use the newly-acquired revenue stream to back the issuance of revenue bonds. In return for the tobacco settlement payment revenue, the corporation would provide the state with the proceeds from those bonds. Under the budget bill, \$350 million of the proceeds would be deposited to the general fund in 2001-02. Proceeds from the bonds would also be deposited to an endowment fund to be invested by the State of Wisconsin Investment Board (SWIB), if the provisions of the bill would be clarified to accomplish this intent. The bill would also require that a portion of the investment earnings of the endowment fund would flow back to the general fund annually. In addition, the state could receive any annual residual tobacco settlement payments in excess of the annual debt service on the obligations issued and the ongoing transaction costs.

The DOA Secretary would be allowed to enter into a contract with any firm or individual engaged in providing financial services for the performance of any of his or her functions relating to the sale, assignment or transfer of the state's tobacco settlement rights using selection and procurement procedures established by the Secretary. The awarding of any such contract would not be subject to the state's competitive, public notice and minority-owned business bidding requirements for state contracts. Further, such contracts would not be subject to the requirements for state contracts for contractual services, including the requirement that DOA prepare a written justification that the contract for services are necessary and the Department of Employee Relations review the contracts to ensure that the services of state employees are being utilized and to review the possible use of the limited-term employees of the state in lieu of the contract.

The bill would provide \$500,000 GPR in 2001-02 from a sum sufficient appropriation created under the bill to pay the costs incurred by the DOA Secretary in any sale of the state's rights to receive any payments under the tobacco settlement agreement and in organizing and initially capitalizing any corporation or company relating to sale of the state's rights to tobacco settlement payments

DISCUSSION POINTS

Background

1. On April 24, 2001, this office issued a paper that provided an extensive analysis of the Governor's proposed tobacco securitization (See Legislative Fiscal Bureau budget paper #885) for an April 26, 2001, Joint Committee on Finance briefing. The paper outlined the tobacco master settlement agreement and the potential impacts to the states payments under that agreement and provided information on the characteristics of other tobacco securitization that have occurred across the country. The paper also outlined the Governor's proposed securitization transaction and addressed policy issues surrounding the proposed sale of the state's rights to its tobacco settlement payments.

2. DOA indicates that 30 years of the state's tobacco payments could secure a total of \$1.257 billion in tobacco revenue bond proceeds. The proceeds would be available for the following purposes:

TABLE 1

**Use of Revenue Obligation Proceeds
(In Millions)**

<u>Purpose</u>	<u>Amount</u>
Deposit to General Fund	\$350.0
Deposit to Endowment Fund	570.0
Interest Paid from Proceeds	187.9
Debt Reserve Trust Fund	136.7
Administrative Cost of Issuance	<u>12.6</u>
Total	\$1,257.2

3. As indicated in the table, the proposal would deposit \$350 million of the bonds proceed associated with the state's sale, assignment or transfer of the state's rights to its tobacco settlement payments to the general fund in 2001-02. With the remaining funds at the state's disposal from the transaction, the Governor propose establishing a \$570 million endowment fund.

4. SWIB would invest the assets of the permanent endowment fund created under the bill. The DOA Secretary would be provided the authority to direct SWIB to invest in: (a) evidences of indebtedness, including subordinated obligations, that are secured by tobacco settlement revenues, and that are issued by any nonstock corporations or limited liability companies or by the Wisconsin Health and Educational Facilities Authority (WHEFA); and (b) certificates or other evidences of ownership interest in all or any portion of tobacco settlement revenues. SWIB would be required to invest these assets subject to any terms and conditions specified by the DOA Secretary. In investing these assets, SWIB would not be subject the general standards of fiduciary responsibility that apply to the Board when it otherwise invests money or property.

5. In securitizing its tobacco settlement payments, the state would be reducing revenues to the general fund by the projected tobacco settlement payment amounts. However, a portion of these revenues would be replaced annual under the securitization transaction outlined by DOA. Annually, after June 1, but not later than June 15, beginning in SWIB would be required to calculate monies that are available for transfer from the permanent endowment fund to the general fund. Those monies would be as follows.

- a. 8.5% of the market value of the endowment fund on June 1 of each year:
- b. all proceeds of, and investment earnings on, investments of the permanent

endowment fund made at the direction the DOA Secretary that are received in the fiscal year; and

c. all other amounts identified by the DOA Secretary as payments of residual interests to the state from the sale of the state's right to receive payments under the tobacco settlement agreement that are received in the fiscal year.

Legislative Oversight of the Proposed Securitization Transaction

6. Under the bill, most of the authority relating to the sale, transfer or assignment of the state's tobacco settlement payment is provided to the DOA Secretary. Specifically, the DOA Secretary would have the authority to do the following: (a) sell for cash or other considerations the state's right to receive any of the payments under the tobacco settlement agreement; (b) organize one or more nonstock corporations or limited liability companies in accordance with state statutes for any purpose related to the sale of the state's right to receive any of the payments under the tobacco settlement agreement; and (c) take any action necessary to facilitate and complete the sale. The DOA Secretary would also be provided authority to make various pledges and agreements on behalf of the state relating to the proposed securitization, including claims against the state.

7. As proposed, the sale, assignment or transfer of state's tobacco settlement payment stream would have a significant impact on general fund revenues of the state and the finances of the state for several biennia. Since revenue creation and the appropriation of those revenues is primarily a function of the Legislature, it may be desirable to provide more legislative oversight over this undertaking than what is provided in the bill.

8. If the Committee is concerned about the amount of authority provided the DOA Secretary under a transaction that involves such a large amount of state funds and that will impact the finances of the state for years to come, the Committee could require that before the DOA Secretary could enter into any contract to sell, assign or transfer the state's tobacco settlement payment rights the Secretary would have to submit the proposed transaction, including the structure of the transaction, estimates of the bond proceeds that would be generated from the transaction and any state pledges relating to the transaction, to the Joint Committee on Finance for approval. Because of the issues and concerns related to the timing and entry into the bond market that are associated with any borrowing transaction, the Committee could require that the transaction be submitted for approval under a 14-day passive review.

9. Conversely, because the tobacco securitization involves a complex transaction, and its exact structure would depend on the investment market as well as federal tax law, the flexibility provided the Secretary under the bill may be needed. In addition, DOA staff is involved in structuring the state's general obligation and revenue obligation programs, which also have impact on future available revenues and expenditures.

10. When the securitization transaction is complete, the DOA Secretary would deposit the bond proceeds associated with the sale in the general fund and the permanent endowment fund. However, because any Committee approval of a proposed securitization transaction would occur

before the actual transaction took place and the bonds secured by the state's tobacco payments are issued, the size of the transaction would not be known. Because the depositing and transferring of revenues among funds is typically a legislative function, in order to develop a better oversight of the deposit of the bond proceeds from the transaction, the Committee could require that after any bonds secured by the state's tobacco payments are sold, the DOA Secretary must submit a report to the Committee on the transaction and on the distribution of the bond proceeds.

Legislative Oversight of the Annual Transfers of Funds

11. As mentioned earlier, the bill also provides the DOA Secretary the authority to direct SWIB to annually, after June 1, but before June 15, transfer funds from the permanent endowment fund to the general fund. Aside from the passage of this enabling legislation, no legislative oversight relating to these transfers would be provided. Because these transfers would affect general fund revenues and expenditures beyond the 2001-03 biennium, to ensure a legislative role in determining revenue and expenditure levels, additional legislative oversight could be provided.

12. To increase legislative oversight of these annual transfers, the Committee could delete the authority provided to the DOA Secretary and instead provide the Committee the authority to transfer these amounts at its fourth quarterly meeting in each fiscal year under s. 13.10 of the statutes.

SWIB Fiduciary Responsibilities

13. The bill would provide the DOA Secretary authority to direct SWIB on the types of assets in which the Board could invest the permanent endowment fund. The Board would be required to invest these assets subject to any terms and conditions specified by the DOA Secretary. In investing these assets, SWIB would not be subject the general standards of fiduciary responsibility that apply to the Board when it otherwise invests money or property.

14. DOA has indicated that under these provisions, the DOA Secretary would direct SWIB to receive and hold certificates for any amounts of residual tobacco settlement payments in excess of annual debt service payments in the endowment fund. DOA contends that under its fiduciary responsibilities, SWIB could not currently hold these certificates as an asset of the fund. DOA has indicated that these provisions would need to be modified to more effectively capture this intent.

15. SWIB's investment of assets is generally subject to standards of fiduciary responsibility that apply to the Board when it otherwise invests money or property. However, SWIB's fiduciary responsibilities exist within the statutory limitations placed on the allowable investments of each fund under SWIB's control. That is, SWIB may invest assets of a fund in lower earning investments and still be within its fiduciary responsibilities, if SWIB is statutorily required to invest the assets of that fund in that type of investment.

DOA Contracting for Financial Services

16. No funding detail has been developed that would support the current \$500,000 GPR expenditure estimate under a new GPR sum sufficient appropriation in DOA to fund costs incurred by the Secretary of DOA in implementing the tobacco securitization proposal. However, it could be argued that the development of a tobacco securitization agreement may be sufficiently complex that additional funding should be provided so that DOA has sufficient resources to structure this transaction advantageously. Alternatively, funding could be reserved on a contingent basis for this purpose. Under this alternative, the new GPR-funded appropriation under DOA to fund costs incurred by the Secretary of DOA in implementing the tobacco securitization proposal could be created as a biennial appropriation. The \$500,000 GPR provided under the bill in 2001-02 could be placed in reserve in the Committee's s. 20.865(4)(a) appropriation for possible release to DOA, once the Department has identified its funding needs and demonstrated that these additional costs cannot be funded from any other source.

17. The bill would allow DOA to enter into a contract with any firm or individual engaged in providing financial services for the performance of any of his or her functions relating to the sale, assignment or transfer of the state's tobacco settlement rights using selection and procurement procedures established by the Secretary. The awarding of any such contract would not be subject to the state's competitive, public notice and minority-owned business bidding requirements for state contracts.

18. The state's competitive, public notice and minority-owned business bidding requirements for state contracts are designed to foster competition for state contracts, which can reduce the costs the state pays for the services contracted for. Given the size of the securitization transaction and the value of the contract that would be entered into, the Committee could consider deleting the provisions that would exempt the contracting of financial service related to the proposed tobacco transaction from the state's competitive, public notice and minority-owned business bidding requirements for state contracts.

19. However, it could be argued that because the timing of the securitization may be crucial to state's ability to maximize its financial position in the financial markets, these state contracting requirements could hinder the state's position.

ALTERNATIVES TO BILL

A. Securitization

1. Approve the Governor's recommendations to securitize the state's annual tobacco settlement payments and deposit the proceeds from the transaction into a newly created segregated permanent endowment fund. Further transfer \$350 million SEG from the endowment fund to the general fund.

2. Delete the Governor's recommendation. No funding would be available from securitization and no authority would be provided to carry out a securitization of the state's tobacco payments.

<u>Alternative A2</u>	<u>GPR</u>	<u>SEG</u>	<u>TOTAL</u>
2001-03 REVENUE (Change to Bill)	- \$350,000,000	- \$350,000,000	- \$700,000,000
2001-03 FUNDING (Change to Bill)	- \$500,000	- \$350,000,000	- \$350,500,000

B. Legislative Oversight

1. Approve the Governor's recommendation.
2. Require that before the DOA Secretary could enter into any contract to sell, assign or transfer the state's tobacco settlement payment rights the Secretary would have to submit the proposed transaction, including the structure of the transaction, the estimated bond proceed that would be generated from the sale and any state pledges relating to the sale, to the Joint Committee on Finance for approval under a 14-day passive review.
3. Require that after any bonds secured by the state's tobacco payments are issued, the DOA Secretary must submit a report to the Committee on the transaction and on the distribution of the bond proceeds.
4. Delete the authority provided to DOA Secretary to annually direct SWIB to transfer amounts from the permanent endowment fund and, instead, provide the Committee the authority to transfer these amounts at its fourth quarter meeting under s. 13.10 of the statutes.

C. SWIB's Fiduciary Responsibilities

1. Approve the Governor's recommendation.
2. Delete the authority of the DOA Secretary to direct SWIB on the types of assets in which the Board could invest the permanent endowment fund and the exemption of SWIB's fiduciary responsibilities in the investments of those assets. Specify that SWIB could hold: (a) evidences of indebtedness, including subordinated obligations, that are secured by tobacco settlement revenues, and that are issued by nonstock corporations or limited liability companies or by the Wisconsin Health and Educational Facilities Authority (WHEFA); and (b) certificates or other evidences of ownership interest in all or any portion of tobacco settlement revenues.

D. DOA Contracting for Financial Services

1. Approve the Governor's recommendation to provide \$500,000 GPR in 2001-02 from a sum sufficient appropriation created under the bill to pay the costs incurred by the DOA Secretary

in any sale of the state's rights to receive any payments under the tobacco settlement agreement and in organizing and initially capitalizing any corporation or company relating to sale of the state's rights to tobacco settlement payments.

2. Modify the Governor's recommendation to, instead, provide \$500,000 GPR in 2001-02 in the Joint Committee on Finance s. 20.865(4)(a) appropriation for possible release to DOA, once the Department has identified its funding needs to pay the costs incurred by the DOA Secretary in any sale of the state's rights to receive any payments under the tobacco settlement agreement and in organizing and initially capitalizing any corporation or company relating to sale of the state's rights to tobacco settlement payments. The funding could be provided when DOA demonstrates that these additional costs cannot be funded from any other source.

3. Delete the Governor's recommendation to provide \$500,000 GPR in 2001-02 for contracting for financial services related to tobacco securitization.

Alternative D3	GPR
2001-03 FUNDING (Change to Bill)	- \$500,000

E. Purchasing Requirements

1. Approve the Governor's recommendations.
2. Delete the provisions that would exempt the contracting of financial service related to the proposed tobacco transaction from the state's competitive, public notice and minority-owned business bidding requirements for state contracts

Prepared by: Al Runde

Tobacco Settlement Securitization

Bill Agency

LFB Paper Presented at the Committee's April 26, 2001, Budget Briefing

<u>Paper #</u>	<u>Title</u>
885	Discussion of Tobacco Securitization

WRAP-UP MOTION AND ADOPTION OF THE SUBSTITUTE AMENDMENT

Motion:

Move to adopt a substitute amendment incorporating all the Committee's changes to Senate Bill 55. Direct the Legislative Fiscal Bureau to have the substitute amendment drafted. Provide that the Fiscal Bureau may, in the process of having the substitute amendment drafted, incorporate any necessary corrections in funding, statutory language or cross references required to reconcile the various actions of the Committee and correctly reflect the Committee's intent.

Further, move to recommend the bill for passage as amended.

MO#			
2	BURKE	Y	N A
	DECKER	Y	N A
	MOORE	Y	N A
	SHIBILSKI	Y	N A
	PLACHE	Y	N A
	WIRCH	Y	N A
	DARLING	Y	N A
	WELCH	Y	N A
	GARD	Y	N A
	KAU'ERT	Y	N A
	ALBERS	Y	N A
	DUFF	Y	N A
	WARD	Y	N A
	HUEBSCH	Y	N A
	HUBER	Y	N A
	COGGS	Y	N A
	AYE	12	NO 4 ABS

Senator Burke
Representative Gard
Senator Decker
Representative Kaufert

GENERAL FUND TAXES AND BUDGET BALANCE

Motion:

Move to incorporate the Governor's recommendations in LFB Issue Papers #100 through #107, #110, #111, #115, #121, #122, #123, #886 and #887 with the following modifications:

1. LFB Paper #100. Modification. Reestimate the fiscal effect of the indexing provision to be a reduction of \$750,000 in 2002-03. Compared to the bill, the revised estimates would reduce general fund tax collections by \$300,000 in 2002-03.
2. LFB Paper #101. Modification. Reestimate funding for the EITC under current law for 2002-03 at \$64,700,000 (\$12,500,000 GPR and \$52,200,000 PR). Compared to the bill, the revised estimate reduces funding for the second year by \$334,500 GPR and \$1,465,500 PR, for a total reduction of \$1,800,000. Federal TANF funding in DWD would also be reduced by \$1,465,500.
3. LFB Paper #102. Modification. Reduce the amounts in the appropriation for the Illinois-Wisconsin income tax benchmark study by \$11,750,000 GPR in 2001-02 and \$12,500,000 GPR in 2002-03 and specify that these amounts would, instead, be provided under the sum sufficient appropriation for Illinois income tax reciprocity payments. In addition, eliminate base funding of \$50,700 GPR in each year for the Illinois-Wisconsin income tax benchmark appropriation.
4. LFB Paper #103. Delay the starting date for the phase-in of single sales factor apportionment to tax years beginning after December 31, 2003. Compared to the Governor's recommendation this would increase general fund taxes by \$8.0 million in 2002-03. Adopt technical changes to address computation of the sales factor when the numerator or denominator in the apportionment formula is negative or zero.
5. LFB Paper #104. Alt. 2. Modify the Governor's recommendation to specify that owning an LLC would be considered doing business in the state only if the LLC is treated as a partnership for federal income tax purposes and include a severability provision in the definition of "doing business."
6. LFB Paper #106. Modify provisions as follows: (a) authorize the Department of Commerce to create up to nine technology zones but provide that the Department could not designate more than three zones without approval of the Joint Committee on Finance; and (b) limit the total amount of technology zones tax credits that could be claimed in a zone to \$3.0 million.

Also, provide that partnerships, limited liability companies and S corporations could pass the technology zones credit on to partners and members.

7. LFB Paper #107. Alt. 2. Update state tax references to the federal IRC in effect as of December 31, 2000, except for provisions relating to: (a) environmental remediation costs; (b) corporate donations of computer technology; and (c) foreign sales corporations. This option would not adopt the new federal provisions that would result in decreased state tax revenues. This would increase revenues by an estimated \$100,000 annually.

8. LFB Paper #110. Alt. 1. Reestimate the fiscal effect of the Governor's recommendation to subject custom computer programs to the sales and use tax to be an increase in revenues of \$20.5 million in 2001-02 and \$31.0 million in 2002-03. This estimate assumes that the change would take effect on October 1, 2001. These amounts are higher than the Governor's estimates by \$4.5 million in 2001-02 and lower by \$5.0 million in 2002-03.

9. LFB Paper #111. Alt. 1. Adopt the Governor's recommendation regarding the sales tax on tangible personal property with technical modifications recommended by DOR.

10. LFB Paper #115. Alt. 2. Reduce the gross revenues tax rate for wholesale electricity sales to 1.59%. However, specify that the reduced rate would apply to tax assessments starting May 1, 2005, and ending with the assessment on May 1, 2010 (these assessments would be based on gross revenues from calendar years 2004 through 2009). Provide that the tax rate would return to 3.19% of gross revenues earned starting January 1, 2010.

11. LFB Paper #121. Alt. 2. Approve the Governor's recommendations regarding the regulation of cigarette sales with the following modifications: (a) expand authority for state enforcement action by allowing the state to take action against every person in the gray-market distribution chain rather than against only the tax stampers or against tax stamped product; (b) prohibit the sale of cigarettes for which the manufacturer has not submitted ingredient information to the federal government, as required by law; (c) revise the Governor's proposal to reflect the provisions of the new federal gray market law and the federal labeling law, that requires cigarettes sold in the U.S. to bear the Surgeon General's warning; (d) clarify that the prohibitions on gray-market cigarettes would not apply to cigarettes imported into the U.S. for personal use or to cigarettes sold at duty free stores, unless the cigarettes are brought into the U.S. for resale; (e) eliminate the provision in the bill that would allow possession of up to 400 [20 cartons] of gray-market cigarettes; (f) narrow the right to bring an action for appropriate injunctive relief from "any person" to any person who sells, distributes or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation; and (g) require the destruction of all gray-market cigarettes seized by the state.

12. LFB Paper #122. For deaths occurring prior to October 1, 2002, modify the state estate tax statutes to reference the federal law in effect on December 31, 2000. For deaths occurring on or after October 1, 2002, reference the federal law in effect at that time.

13. LFB Paper #122. Modification. Modify the bill to increase estimated general fund revenues by \$4,500,000 in 2001-02 to reflect offsets of delinquent state taxes from federal income

tax rebates.

14. LFB Paper #123. Modification. Increase the estimated general fund opening balance for the 2001-03 biennium by \$11,700,000 to correctly account for expenditures on the sales tax rebate.

15. Motion #1640. Create an Artistic Endowment Foundation and require DOT to issue Arts Board license plates as a funding mechanism for the foundation.

16. Increase the cigarette tax by 9 cents per pack (from 59 cents to 68 cents), effective October 1, 2001. This would increase general fund tax revenues by an estimated \$29.8 million in 2001-02 and \$33.8 million in 2002-03.

17. Increase the tobacco products tax from 20% of the manufacturer's selling price to 30% effective October 1, 2001. This would increase general fund tax revenues by an estimated \$4.6 million in 2001-02 and \$6.5 million in 2002-03.

18. LFB Paper #886. Modification. Reestimate the settlement monies to be received under the MSA and deposited into the general fund or flowing through the permanent endowment fund, depending on the timing of the sale of bonds, by an additional \$2,112,000 in 2001-02 and \$2,162,000 in 2002-03.

19. LFB Paper #887. Alt. A1 (modified). Modify the Governor's recommendations to securitize the state's annual tobacco settlement payments and deposit the proceeds from the transaction into a newly-created segregated permanent endowment fund and transfer \$450 million SEG from the endowment fund to the general fund.

20. LFB Paper #887. Alt. B3 and B4. Require that after any bonds secured by the state's tobacco payments are issued, the DOA Secretary must submit a report to the Committee on the transaction and on the distribution of the bond proceeds. Delete the authority provided to the DOA Secretary to annually direct SWIB to transfer amounts from the permanent endowment fund and, instead, provide the Committee the authority to transfer these amounts at its fourth quarter meeting under s. 13.10 of the statutes.

21. LFB Paper #887. Alt. C2. Delete the authority of the DOA Secretary to direct SWIB on the types of assets in which the Board could invest the permanent endowment fund and the exemption of SWIB's fiduciary responsibilities in the investments of those assets. Specify that SWIB could hold: (a) evidences of indebtedness, including subordinated obligations, that are secured by tobacco settlement revenues, and that are issued by nonstock corporations or limited liability companies or by the Wisconsin Health and Educational Facilities Authority (WHEFA); and (b) certificates or other evidences of ownership interest in all or any portion of tobacco settlement revenues.

22. LFB Paper #887. Alt. D3. Delete the Governor's recommendation to provide \$500,000 GPR in 2001-02 for contracting for financial services related to tobacco securitization.

23. LFB Paper #887. Alt. E2. Delete the provisions that would exempt the contracting of financial service related to the proposed tobacco securitization transaction from the state's competitive, public notice and minority-owned business bidding requirements for state contracts

24. Direct DOA to convert the principal payment amounts of state general fund supported commercial paper short term borrowing program that are due in the 2001-03 biennium to long-term general obligation borrowing. Estimated lapses to the general fund would increase by \$25 million annually.

25. Provide \$75 million of general obligation bonding in a new bonding appropriation for refunding tax-supported and self-amortizing general obligation bonds. Specify that no bonds could be issued after June 30, 2003. Increase estimated GPR-Lapses by \$50 million in 2002-03 to reflect projected savings from refunding \$50 million of general fund supported bonds that otherwise would be paid off in that year.

26. Delay the payment of \$115,000,000 GPR of general school aids scheduled to be made on the third Monday in June 2003 until the fourth Monday in July, 2003. Provide \$700,000 GPR in 2002-03 in a separate sum sufficient appropriation created for this purpose to pay interest to school districts for their portion of the delayed payment. Specify that this interest payment for each school district would be calculated using the annualized state investment fund earnings rate for April 2003, to provide each school district with the amount of interest it would have earned using that earnings rate on its portion of the payment delay for the period of the delay. Provide that this payment of interest would be made by DPI on the third Monday in June, 2003. Specify that this payment of interest would be outside of revenue limits and would not count towards two-thirds funding of partial school revenues.

27. Specify that the statutory balance only for 2002-03 would be \$50 million.

28. Modify the proposed tax relief fund and tax relief credit to specify that the first \$115 million of monies received that otherwise would be deposited in the tax relief fund, would instead be used to buy back the \$115 million school aid payment delay.

29. Reserve \$44 million in 2002-03 for prescription drug legislation.

30. Exclude community service levies from the limited levy under revenue limits. Specify that the community service levy would be excluded from a district's prior year base revenues and from a district's current year revenue limit beginning with revenue limits calculated for the 2001-02 school year. Exclude these levies from the definition of partial school revenues. Delete \$11,333,900 GPR annually in general school aids to adjust two-thirds funding.

31. Eliminate the December 31, 2003, scheduled termination of the sales tax exemption on gross receipts from the sale or use of a one-time seat license for Green Bay Packers football games.

32. Create an individual income tax checkoff for donations to a local professional baseball park district (Baseball District). Provide that the revenues from the individual income tax

checkoff would be distributed to the Baseball District for the repayment of bonds. Specify that provisions parallel to the current law provisions for a local professional football stadium district (Stadium District) would apply in the case of the proposed Baseball District checkoff, including the following: (a) voluntary payments; (b) errors; (c) conditions; (d) void designation; (e) tax return; (f) certification; and (g) amounts subject to refund. Specify that these provisions would first apply to taxable years beginning on January 1 of the year of the general effective date of the bill, unless the bill's general effective date is after July 31. In that case, the provisions would first apply to taxable years beginning January 1 of the year following the year in which the bill generally takes effect.

33. Require DOR to work with the Internal Revenue Service and the University of Wisconsin Extension to undertake a program to: (a) promote volunteering among the state's financial and legal professionals in the Volunteer Income Tax Assistance program; (b) provide training for the volunteers; and (c) assist with creating mobile sites offering assistance to rural and underserved areas. Require the Department to provide reasonable access for Wisconsin working families to free help preparing and filing their state income tax returns by January 1, 2002.

34. Restore dislocated workers in the definition of target group members used for the development zones tax credit.

35. Delete \$2,001,900 GPR and \$51,700 PR, and 10.0 GPR and 1.0 PR positions annually and eliminate the Division of International and Export Services and its functions from the Department of Commerce.

[Change to Bill: \$190,874,000 GPR-REV, -\$141,907,500 GPR, \$11,700,000 GPR-Balance, -\$83,000,000 GPR-Required Balance, \$100,000,000 GPR-Lapse, \$44,000,000 GPR-Reserve, -\$1,465,500 FED, -\$1,568,900 PR, \$100,000,000 SEG, -10.00 GPR positions and -1.00 PR position]

MO# _____

2 BURKE	Y	N	A
DECKER	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
WIRCH	Y	N	A
DARLING	Y	N	A
WELCH	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUEBSCH	Y	N	A
HUBER	Y	N	A
COGGS	Y	N	A

**GENERAL FUND TAXES -- EXCISE TAXES AND REGULATION
OF ALCOHOL AND TOBACCO**

Regulation of Alcoholic Beverages

Motion:

Move to modify the provisions of the bill relating to the regulation of alcoholic beverages as follows:

a. Reduce the period during which a secured third party may sell beer without a license from 30 days to 15 days.

b. Modify the provisions regarding gifts provided by brewers or wholesalers to retailers so that the aggregate value of signs, clocks, or menu boards given by a brewer or wholesaler may not exceed \$2,500 at "any given time" rather than "during any calendar year."

c. Modify the record-keeping requirements under the provisions regarding gifts by brewers or wholesalers to retailers so that only the recipient, not the donor and the recipient, must keep written records of the number of and value of items received, subject to inspection by the Department of Revenue.

d. Modify the provisions regarding gifts of signs made by brewers or wholesalers to retailers to allow signs made of plastic, vinyl "or other like material" rather than plastic, vinyl or "signs made from other materials with a useful life of less than one year."

e. Delete the bill's provisions regarding advertising and promotional events held on retailers' premises. Instead, allow brewers and wholesalers to purchase advertising from a non-licensed third party, such as a radio station or promoter, which conducts national or regional sweepstakes, contests or promotions at the premises of retailers which sell the brewer's or wholesaler's products. In general, specify that the non-licensed third party could promote the event or activity, including the location of the event or activity, if the advertisement lists four or more unaffiliated retail licensees, and if no money is given to the retail licensee for the privilege of conducting the sweepstakes, contest or promotion. For brewers that produce less than 30,000 barrels of beer annually, allow such promotion if only one retailer is listed in the advertisement. Specify that brewers and wholesalers could conduct their own national or regional sweepstakes, contests or promotions on the premises of retailers if the conditions specified above are satisfied.

f. Establish the provisions of the bill relating to compensation provided to beer wholesalers following the assumption of a dealership that has been terminated, cancelled or not renewed in Chapter 125 of the Statutes (relating to alcoholic beverages) rather than Chapter 135 (relating to dealership practices). In addition, specify that the compensation provisions would not apply in cases where the wholesaler has terminated its relationship with the brewer. Provide that termination would occur if: (a) the wholesaler has quit the business, whether due to death, retirement or sale of the business; or (b) the wholesaler has not placed an order within the previous 30 days.

g. Modify the bill's provisions regarding the provision of entertainment by brewers and wholesalers to retailers to provide that entertainment would be limited to no more than eight days annually, rather than 12 days annually.

h. Specify that no Class "A" or Class "B" licensee may condition the purchase of beer from a brewer or wholesaler upon the furnishing of anything of value by the brewer or wholesaler to the licensee or to any person for the use, benefit or relief of any licensee.

Note:

Sales of Alcohol by Secured Third Parties. Under current law, no license or permit is required for the sale of alcohol by a secured third party in good faith under the terms of a security agreement if the sale is not for purpose of avoiding state alcoholic beverage regulations or the state excise taxes on alcoholic beverages. Such sales must be in the ordinary course of the business of lending money secured by a security interest in alcoholic beverages, warehouse receipts or other evidence of ownership.

The bill would specify that a sale of beer under this provision would have to be made within 30 days after the third party takes possession of the beer unless the third party demonstrates good cause why a sale in compliance with the statutes on secured transactions or the security agreement cannot be made within this time period. This motion would reduce the 30-day time limit under the bill to 15 days.

Gifts Provided by Brewers or Wholesalers to Retailers. Current law, with a number of exceptions, prohibits brewers or wholesalers from furnishing, giving, lending, leasing or selling furniture, fixtures, fittings, equipment, money or other things of value to any campus or person holding a Class "B" license or permit (for the retail sale of beer for on-premises consumption), or to any person for the use, benefit or relief of any campus or Class "B" retailer.

One exception to this provision is that a brewer or wholesaler may provide, for placement inside the premises, signs, clocks or menu boards with an aggregate value of not more than \$150. Each recipient must keep an invoice or credit memo containing the name of the donor and the

number and value of items received and must make these records available to DOR for inspection upon request. The bill would modify this provision by increasing the dollar limit from \$150 to \$2,500 during any calendar year. In addition, both the donor and the recipient would be required to keep written documentation containing the name of the recipient and donor and the number and value of items provided, and make these records available to DOR. This motion would modify the bill by: (a) specifying that the \$2,500 limit would apply to items provided "at any given time" rather than "during any calendar year"; and (b) requiring only the recipient to maintain records of such gifts.

Another exception under current law is that a brewer or wholesaler may provide signs made from paper or cardboard for placement inside the premises. The bill would modify this provision to include signs made from plastic or vinyl or from other materials with a useful life of less than one year. In addition, the bill would specify that signs could be provided without regard to the \$2,500 limit (\$150 under current law) on the aggregate value of items provided by brewers and wholesalers. This motion would replace the phrase "signs made from paper, cardboard, plastic, or vinyl, or signs made from other materials with a useful life of less than one year" with "signs made from paper, cardboard, plastic, vinyl or other like material." The useful life of the material would not be considered.

A third exception under current law permits brewers and wholesalers to purchase advertising for fair compensation from a bona fide national or statewide trade association which derives its principal income from membership dues of Class "B" retailers. The bill would also allow brewers and wholesalers to purchase advertising from any person who does not hold an alcoholic beverages license or permit and who conducts a bona fide advertising, promotional or media business, to promote brewer- or wholesaler-sponsored sweepstakes, contests or promotions on the premises of Class "B" retailers if: (a) the advertising or promotion includes at least five unaffiliated retailers; and (b) the retailer on whose premises the event will occur does not receive compensation, directly or indirectly, for hosting the event. In addition, the bill would allow brewers and wholesalers to conduct their own sweepstakes, contests or promotions on the premises of Class "B" retailers if the above conditions are satisfied. This motion would delete the provisions currently in the bill and replace them with the provisions described in point "e" above.

An additional provision of current law allows brewers and wholesalers to provide reasonable business entertainment that is deductible under federal tax law to a Class "B" retailer by: (a) providing tickets or free admissions to athletic events, concerts or similar activities; or (b) providing food and beverages and paying for local ground transportation in connection with such activities and business meetings. However, the value of business entertainment provided may not exceed \$75 per day. The bill would increase this limit to \$500 per day and specify that such business entertainment could be provided on no more than 12 days per year. This motion would, instead, specify that such business entertainment could be provided on no more than eight days per year.

Fair Dealership Provisions for Beer Wholesalers. Under current provisions of the Fair Dealership Law (Chapter 135 of the statutes), the grantor of a dealership may not (directly or through any officer, agent or employee) terminate, cancel, fail to renew or substantially change the

competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor of the dealership. In general, a "dealership" is a contract or agreement by which a person is granted the right to sell or distribute goods or services or use a trade name, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services. The bill would specify that a contract or agreement by which an alcoholic beverages wholesaler is granted the right to sell or distribute beer would be a dealership, even if no community of interest exists. Such agreements would be subject to the provision described above regarding the termination of a dealership. A similar provision exists under current law for wholesalers of intoxicating liquor, but not for beer wholesalers.

The bill would also create a separate provision in Chapter 135 for dealerships that involve beer wholesalers. Under the bill, any person who assumes, in whole or in part, such a dealership following the grantor's termination, cancellation, or nonrenewal in whole or in part of a prior dealership agreement would be required to compensate the prior dealer for the fair market value of that portion of the dealership unless the grantor terminated the dealership for any of the following reasons: (a) the prior dealer engaged in material fraudulent conduct or made material and substantial misrepresentations in its dealings with the grantor or with others related to the dealership; (b) the prior dealer was convicted of, or pleaded no contest to, a felony crime substantially related to the dealer's ability to operate the dealership; or (c) the prior dealer knowingly distributed dealership products outside the territory authorized by the grantor.

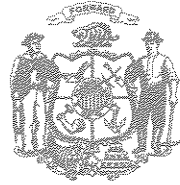
The grantor would be required to advise the person assuming the dealership of these obligations prior to the person's assumption of the dealership. If the person assuming the dealership and the prior dealer agree in writing to the fair market value of that portion of the dealership, the person assuming the dealership would have to pay the agreed upon sum within 30 days of the agreement. If no written agreement for compensation of the prior dealer is reached within 30 days after the grantor's termination of the prior dealership agreement, the prior dealer could submit the dispute for binding arbitration through a nationally recognized arbitration association. Unless the parties agree otherwise, the arbitration would be conducted on an expedited basis to the extent an expedited proceeding is reasonably available through the arbitration association, and each party would have to pay an equal share of the cost of the arbitration.

This motion would establish the provisions regarding compensation paid to wholesalers in Chapter 125 of the Statutes instead of Chapter 135, which would require the Department of Revenue to administer and enforce the compensation provisions. [No state agency is required to enforce the fair dealership provisions under Chapter 135.] The motion would also specify that the compensation requirements would not apply if the wholesaler terminates the dealership.

This motion would also add a provision specifying that beer retailers could not condition the purchase of beer from a brewer or wholesaler upon the furnishing of anything of value by the brewer or wholesaler to the retailer.

Motion #1293

MO#	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
BURKE																	
DECKER																	
MOCRE																	
SHIBILSKI																	
PLACHE																	
WIRCH																	
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GARD																	
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DUFF																	
WARD																	
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COGGS																	
	AYE 14 NO 1 ABS																



Judith B. Robson

Wisconsin State Senator

May 10, 2001

Honorable Brian Burke
Senate Co-Chair
Joint Committee on Finance
316 South, State Capitol

Dear Senator Burke:

Your presenting this budget amendment to the Joint Committee on Finance is appreciated.

Department of Commerce – Departmentwide and Economic Development

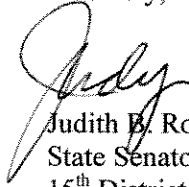
LFB Summary of Governor's Budget Recommendations, Pages 184-86 Item 21

Governor: Designate an area in the City of Milwaukee as a development opportunity zone. The Milwaukee development zone would exist for seven years, beginning with the effective date of the bill. Any corporation that conducted economic activity in the zone and that, in conjunction with the Common Council of the City of Milwaukee, submitted a project plan would be eligible to claim the development zone tax credit, the development zone investment credit and a development zone capital investment credit that would be created in the bill. The maximum amount of tax credits that could be claimed by businesses in the zone would be \$4.7 million.

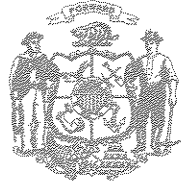
Motion: Amend the budget to create the Beloit Development Opportunity Zone with provisions identical to the Milwaukee Development Opportunity Zone. The maximum amount of tax credits that could be claimed by businesses in the zone would be \$4.7 million. The administration did not provide an estimate of the fiscal effect from the Milwaukee Zone. The Legislative Fiscal Bureau estimates that the Beloit Zone would have a minimal fiscal effect during the 2001-03 biennium due to the time it would take to designate the zone and for businesses to locate in the zone and claim credits based on economic activity.

Thank you for your assistance. If further information is needed, please let me know.

Sincerely,


Judith B. Robson
State Senator
15th District

JBR:kas



Judith B. Robson

Wisconsin State Senator

BUDGET AMENDMENT REQUEST
JOINT FINANCE COMMITTEE

Beloit Development Opportunity Zone Amend the budget to create the Beloit Development Opportunity Zone identical to the Milwaukee Development Opportunity Zone. The administration did not provide an estimate of the fiscal effect from the Milwaukee Zone. The Legislative Fiscal Bureau estimates that the Beloit Zone would have a minimal fiscal effect during the 2001-03 biennium due to the time it would take to designate the zone and for businesses to locate in the zone and claim credits based on economic activity.



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 26, 2001

TO: Senator Judy Robson
Room 15 South, State Capitol

FROM: Ron Shanovich, Fiscal Analyst

SUBJECT: Beloit Development Opportunity Zone

This memorandum provides a description of a proposed development opportunity zone that would be created in the City of Beloit.

An area in the City of Beloit would be designated as a development opportunity zone that would exist for seven years. Any corporation that located and conducted economic activity in the zone would be eligible to claim the development zone tax credit and a development zone capital investment credit. The maximum amount of tax credits that could be claimed by businesses in the zone would be \$4,700,000. (This provision is designed to provide assistance to the Gateway Project in the City of Beloit.)

In order to claim tax credits, a corporation that conducts or intends to conduct economic activity in the Beloit development opportunity zone would have to submit a project plan to the Department of Commerce, in conjunction with the Common Council. Commerce would be required to revoke the entitlement for tax credits of a corporation that: (a) supplied false or misleading information to obtain the tax benefits; (b) left the zone to conduct substantially the same business outside the development opportunity zone; or (c) ceased operations in the zone and did not renew the same or similar operations within 12 months. The Department of Revenue (DOR) would have to be notified within 30 days of a revocation.

Annually, Commerce would be required to estimate the amount of revenue that would be forgone due to tax credits claimed by businesses in the development opportunity zone. The zone would expire 90 days after the day on which Commerce determined that the amount of forgone revenue equaled or exceeded the tax credit limit. Commerce would be required to notify the Common Council of any change in the expiration date. Commerce would also be required to notify DOR of corporations entitled to claim the tax credits and to verify information submitted by claimants.

A business in the Beloit development opportunity zone would be eligible to claim the development zone credit provided under current law and a development zone capital investment credit.

Development Zone Capital Investment Credit. A capital investment tax credit would be available to a business in the development opportunity zone. The credit would equal 3% of the following:

a. *The purchase price of depreciable, tangible personal property.* To be eligible for the credit, the property would have to be purchased after the claimant was certified as eligible for tax benefits and the personal property would have to have at least 50% of its use in the claimant's business at a location in the development opportunity zone. If the property was mobile, the base of operations for at least 50% its use would have to be in the development opportunity zone.

b. *The amount expended to acquire, construct, rehabilitate, remodel, or repair real property in the development opportunity zone.* Expenses would be eligible for the credit if the claimant began the physical work of construction, rehabilitation, remodeling or repair, or any demolition or destruction in preparation for the physical work, after the place where the property is located was designated a development opportunity zone. Expenses could be claimed for the credit if the completed project was placed in service after the claimant was certified as eligible for tax benefits. A credit could not be claimed for expenses for preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing the property to prevent deterioration. A claimant could also claim a tax credit for amounts expended to acquire real property, if the property was not previously owned and the claimant acquired the property after the place where the property was located was designated a development opportunity zone or if the completed project was placed in service after the claimant was certified as eligible for tax benefits. Credits that were not entirely used to offset income or franchise taxes in the current year could be carried forward up to 15 years to offset future tax liabilities.

Development Zone Tax Credit. Under current law, eligible businesses which conduct economic activity in development or enterprise development zones may claim the development zone tax credit. A business in the Beloit development opportunity zone would be eligible for this tax credit. The credit is based on amounts spent on environmental remediation and the number of full-time jobs created or retained.

a. *Environmental Remediation Component.* A credit against income taxes due can be claimed for 50% of the amount expended for environmental remediation in a development, or enterprise development zone.

b. *Full-Time Jobs Component.* A credit of up to \$8,000 against income and franchise taxes can be claimed for: (a) each full-time job created in a development or enterprise development zone and filled by a member of a targeted group (public assistance recipients and other economically-disadvantaged individuals); and (b) retaining a full-time job in an enterprise development zone if Commerce determines that a significant capital investment was made to retain

the full-time job. In addition, a credit of up to \$6,000 can be claimed for each full-time job created or retained in a development or enterprise development zone that is filled by a Wisconsin resident who is not a member of a targeted group.

Tax Credits Claimed Based on the Economic Activity of Another. Commerce would be authorized to certify a person that was conducting economic activity in the development opportunity zone as eligible for claiming the available tax credits based on the economic activity of another person. In order for Commerce to certify a person as eligible for credits based on the economic activity of another person, the following would have to apply:

- a. The person's (to be certified) economic activity was instrumental in enabling another person to conduct economic activity in the development opportunity zone.
- b. Commerce determined that the economic activity of the other person would not occur without the involvement of the person to be certified.
- c. The person to be certified for tax benefits would pass the tax benefits through to the other person conducting economic activity in the development opportunity zone.
- d. The other person conducting economic activity in the zone would not claim tax benefits.

A person that intended to claim tax benefits based on the economic activity of another would be required to submit an application to Commerce, in the form prescribed by the Department, with information required by Commerce and by DOR. Commerce would be required to verify information submitted for tax credits and to notify DOR of all persons that were certified to claim tax credits.

Commerce would be required to revoke the certification for tax credits under this provision if it determined that the person: (a) supplied false or misleading information; (b) ceased operations in the development opportunity zone; or (c) did not pass tax benefits through to the other person conducting economic activity in the zone, as determined by Commerce. The Department would be required to notify DOR within 30 days of the revocation.

Due to the time it would take to designate the development opportunity zone and for businesses to locate in the zone and claim credits based on economic activity, it is estimated that establishing the proposed development opportunity zone would have a minimal fiscal effect during the 2001-03 biennium.

There is currently one development opportunity zone in the City of Kenosha. The 2001-03 budget bill includes provisions that would create a development opportunity zone in Milwaukee.

RS/bh/sas