

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2065/P1dn
MES:wlj:pg

February 11, 2005

Senator Kanavas:

Please review this draft carefully to ensure that it is consistent with your intent. As soon as you let me know that the draft does meet your intent, I'll prepare an analysis and produce an introducible version of the bill.

I also want to alert you to the possibility that, should this bill 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).

In this bill, taxes raised in a city or village could be spent on project costs for a tax incremental district (TID) that is located in another unit of government -- a town with which the city or village has entered into a cooperative plan, and a contract to create a TID. If the bill is enacted, a public purpose doctrine challenge could be raised on the grounds that tax dollars that are imposed on and collected from city or village residents are being spent to benefit another unit of government. On the other hand, the city or village could argue that the city or village revenues that it spends on project costs for a TID in the town are for a public purpose that benefits the city or village as well as the town.

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

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