2011 Jr1 DRAFTING REQUEST

Bill

Received: **12/17/2010**

Received By: **rchampag**

Wanted: **Today**

Companion to LRB:

For: **Administration**

By/Representing: **Grinde**

May Contact:

Drafter: **rchampag**

Subject: **Legislature - miscellaneous**
State Finance - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **kirsten.grinde@doa.state.wi.us**

Carbon copy (CC:) to: **jennifer.kraus@doa.state.wi.us**
david.schmiedicke@doa.state.wi.us
ryan.murray@wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Supermajority for tax increases

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?							
/1	rchampag 12/17/2010	kfollett 12/17/2010	jfrantze 12/17/2010	_____ _____	sbasford 12/17/2010	sbasford 01/03/2011	

FE Sent For:

None

<END>

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/?	rchampag	/lkf 12/17	12/17				

FE Sent For:

<END>

Champagne, Rick

From: Hanaman, Cathlene
Sent: Thursday, December 16, 2010 4:55 PM
To: Champagne, Rick; Kreye, Joseph
Subject: FW: Drafting Request - Jobs Bill

Enter for Administration (not Administration Budget). Cc Jenny, Dave, and Kevin. Jobs bills should be done by Christmas!

I don't know which one of you wants to do this.

From: DOADLBBASADMININTERNETSHAREPOINT@WI.GOV [mailto:DOADLBBASADMININTERNETSHAREPOINT@WI.GOV]
Sent: Thursday, December 16, 2010 4:34 PM
To: Hanaman, Cathlene
Cc: Kraus, Jennifer - DOA; Thornton, Scott - DOA; Grinde, Kirsten - DOA
Subject: Drafting Request - Jobs Bill

Topic: Vote to pass tax changes

Tracking Code: JB0015

SBO Team: TTO

SBO Analyst: Grinde, Kirsten - DOA
Phone: (608) 266-1040
E-mail: Kirsten.Grinde@Wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: High

Intent:
Require a super majority of 66% of each house of the Legislature to increase a rate under the the individual income, corporate and franchise, or sales tax. In place of a super majority, the Legislature may pass a resolution by simple majority to take a binding referendum on the increase to the voters.

Attachments: False

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0753/1dn
RAC:...kjf

Date

Please note that s. 13.085 of the bill, which requires a two-thirds majority to pass bills that increase the rate of the state sales tax or that increase any of the rates of the income tax or franchise tax, is not legally enforceable. Even though the provision is contained in the statutes, this provision is a rule of proceeding under article IV, section 8, of the Wisconsin Constitution. As such, the legislature is free to follow this rule or not follow the rule. The Wisconsin Supreme Court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision if the legislature does not follow it.

Also, per your request, the bill permits the legislature to avoid the two-thirds requirement if it passes a joint resolution requiring an advisory referendum on the tax increase and the voters approve the tax increase. You may wish to consider having the legislature pass a bill, instead of a joint resolution, in order to ensure that the requirement for localities to hold a statewide referendum is legally enforceable. It is not certain that a joint resolution would be legally enforceable in this instance.

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

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-0753/1
RAC:

2011 BILL

AN ACT ...; **relating to:** requiring a supermajority for passage of tax increase legislation.

Analysis by the Legislative Reference Bureau

This bill prohibits either house of the legislature from passing a bill that increases the rate of the state sales tax or that increases any of the rates of the income tax or franchise tax unless the bill is approved by two-thirds of those members present and voting. The bill, however, specifies that this prohibition does not apply if the legislature passes a joint resolution requiring a statewide advisory referendum on the question of whether the legislature should authorize the tax increase provided in the bill and a majority of voters voting at the referendum vote to approve the tax increase.

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

SECTION 1. 13.085 of the statutes is created to read:

13.085 Bills increasing certain tax rates. (1) Except as provided in sub. (2), no house of the legislature may pass a bill that increases the rate of the state sales tax or that increases any of the rates of the income tax or franchise tax unless the bill is approved by two-thirds of those members present and voting.

✓

1 **(2)** Subsection (1) shall not apply if the legislature passes a joint resolution
2 requiring a statewide advisory referendum on the question of whether the
3 legislature should authorize the tax increase provided in the bill and a majority of
4 voters voting at the referendum vote to approve the tax increase.

5 **(END)**

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0753/1dn
RAC:kjf:jf

December 17, 2010

Please note that s. 13.085 of the bill, which requires a two-thirds majority to pass bills that increase the rate of the state sales tax or that increase any of the rates of the income tax or franchise tax, is not legally enforceable. Even though the provision is contained in the statutes, this provision is a rule of proceeding under article IV, section 8, of the Wisconsin Constitution. As such, the legislature is free to follow this rule or not follow the rule. The Wisconsin Supreme Court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision if the legislature does not follow it.

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

Barman, Mike

From: Hanaman, Cathlene
Sent: Monday, January 03, 2011 2:19 PM
To: Christina Duerst; Lori Northrop; Mike Barman; Sarah Basford

Please jacket as companions (when they come through):

0832, 0357
0831, 0388
0761, 0834
0755, 0833
0753, 0835

Senate

DOA will fetch.

Assembly

Mike - Weds. 4:28pm

Jeryn called - the 5 bills that I introduced last night need to be corrected copies. They needed to add a Senator to all of them I guess. She said it could wait til morning (there was a little confusion - she said she had done "their part" but in the instructions it seems that we are supposed to do some of the process before they do ???) Sorry to unload it on you - Please call Jeryn when you get in 6-2545 - Lori

State of Wisconsin
2011 – 2012 LEGISLATURE
January 2011 Special Session

LRB–0753/1
RAC:kjf:jf

ASSEMBLY BILL 5

Before changes

January 4, 2011 – Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION, by request of Governor Scott Walker and Representative August. Referred to Committee on Ways and Means.

AN ACT *to create* 13.085 of the statutes; **relating to:** requiring a supermajority for passage of tax increase legislation.

Analysis by the Legislative Reference Bureau

This bill prohibits either house of the legislature from passing a bill that increases the rate of the state sales tax or that increases any of the rates of the income tax or franchise tax unless the bill is approved by two–thirds of those members present and voting. The bill, however, specifies that this prohibition does not apply if the legislature passes a joint resolution requiring a statewide advisory referendum on the question of whether the legislature should authorize the tax increase provided in the bill and a majority of voters voting at the referendum vote to approve the tax increase.

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

SECTION 1. 13.085 of the statutes is created to read:

13.085 Bills increasing certain tax rates. (1) Except as provided in sub. (2), no house of the legislature may pass a bill that increases the rate of the state sales tax or that increases any of the rates of the income tax or franchise tax unless the bill is approved by two–thirds of those members present and voting.

"Corrected Copy" Info.

All Bills

REVISION REPORT

INTRODUCTION, FIRST READING AND REFERENCE OF PROPOSALS

Under Assembly Rule 17d,

Tuesday, January 04, 2011 at 4:47 PM

is considered the official date and time of introduction for the proposals listed in this document.

* *

ASSEMBLY BILL 1, JANUARY 2011 SPECIAL SESSION (LRB -0831)

Relating to: limiting noneconomic damages awarded in actions against long-term care providers; actions against manufacturers, distributors, sellers, and promoters of certain products; confidentiality of health care services reviews; use as evidence of information regarding health care providers; reporting of quality indicators identifying individual hospitals; homicide or injury by negligent handling of a dangerous weapon, explosives, or fire; criminal abuse of individuals at risk; criminal abuse and neglect of patients and residents; evidence of lay and expert witnesses; damages for frivolous claims; and punitive damage awards.

By Committee on Assembly Organization, by request of Governor Scott Walker, Representative J. Ott, and Senator Zipperer.

Referred to Committee on **JUDICIARY AND ETHICS**.

ASSEMBLY BILL 2, JANUARY 2011 SPECIAL SESSION (LRB -0832)

Relating to: creating a nonrefundable individual income tax credit for certain amounts relating to health savings accounts that may be deducted from, or are exempt from, federal income taxes.

By Committee on Assembly Organization, by request of Governor Scott Walker, Representative Kaufert, and Senator Darling.

Referred to Committee on **HEALTH**.

ASSEMBLY BILL 3, JANUARY 2011 SPECIAL SESSION (LRB -0755)

Relating to: an income and franchise tax credit for businesses that relocate to this state.

By Committee on Assembly Organization, by request of Governor Scott Walker, Representative Knilans, and Senator Wanggaard.

Referred to Committee on **RURAL ECONOMIC DEVELOPMENT AND RURAL AFFAIRS**.

ASSEMBLY BILL 4, JANUARY 2011 SPECIAL SESSION (LRB -0761)

Relating to: increasing the amount of the credits under the economic development tax credit program.

By Committee on Assembly Organization, by request of Governor Scott Walker, Representative Klenke, and Senator Lazich.

Referred to Committee on **JOBS, ECONOMY AND SMALL BUSINESS**.

ASSEMBLY BILL 5, JANUARY 2011 SPECIAL SESSION (LRB -0753)

Relating to: requiring a supermajority for passage of tax increase legislation.

By Committee on Assembly Organization, by request of Governor Scott Walker, Representative August, and Senator Vukmir.

Referred to Committee on **WAYS AND MEANS**.

Rec. from Kay (Acc office) 01-06-2011