



1995 SENATE BILL 643

March 21, 1996 - Introduced by Senator WEEDEN, cosponsored by Representative BRANCEL. Referred to Joint committee on Finance.

1 **AN ACT relating to:** the expenditure of \$775,000 from the general fund for
2 payment of a claim against the state made by the city of Superior.

Analysis by the Legislative Reference Bureau

This bill directs expenditure of \$775,000 from the general fund in payment of a claim made by the city of Superior against the state. Under s. 70.40, 1977 stats., the state imposed a tax on iron ore concentrates handled by or over docks in this state. The tax was collected by municipalities. In *Burlington Northern Railroad Co. v. City of Superior*, 131 Wis.2d 564 (1986), the Wisconsin supreme court held that this tax violated the commerce clause (art. I, sec. 8) of the U.S. constitution and required the city to refund all taxes paid by the railroad to the city, plus interest from the date of payment. Under this statute, the city was required to transfer 30% of its tax collections to the state. In 1987 Wisconsin Act 414, the legislature reimbursed the city for the refunded amount that the city transferred to the state through June 1, 1988, plus 5% interest to that date. The act provided that acceptance of that payment releases this state from any claim resulting from the invalidity of s. 70.40, 1977 stats., or expenses incurred by the city in defending its validity. In 1985, s. 70.40, stats., was amended and the city again began collecting the tax. In *Burlington Northern Railroad Co. v. City of Superior*, 932 F.2d 1185 (7th Cir., 1991), the U.S. court of appeals held that s. 70.40, 1985 stats., was unenforceable under the federal railroad revitalization and regulation reform act [49 USC 11503 (b) (4)], which prohibits states and municipalities from imposing a tax that discriminates against certain rail carriers. The city was again required to refund all taxes paid by the railroad, plus interest from the date of payment. The city then sought to challenge the constitutionality of the federal act. Its suit was dismissed and it was required to pay the railroad's defense costs. *Burlington Northern Railroad Co. v. City of Superior*, 962 F.2d 619 (7th Cir., 1992). In addition, the railroad contended that it was entitled to 12% interest on all refundable taxes paid since 1977, and in *Burlington Northern Railroad Co. v. City of Superior*, 159 Wis.2d 434 (1991), the

