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\*\*\* THIS SECTION IS CURRENT THROUGH CH. 331, 7/16/99 \*\*\*  
\*\*\* CASE NOTES CURRENT THRU JUNE 30, 1999 ACS \*\*\*

## CONSTITUTION OF THE STATE OF NEW HAMPSHIRE

### PART FIRST. BILL OF RIGHTS

N.H.R.S.A. Const. Pt. 1, Art. 28-a (1999)

[Art.] 28-a. [Mandated Programs]

The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

#### NOTES:

AMENDMENTS--1984. Added this article.

#### CROSS REFERENCES

#### PAGE 5

N.H.R.S.A. Const. Pt. 1, Art. 28-a

Stay of penalties and liens levied against towns pending resolution of suits involving state-mandated programs, see RSA 31:3-a.

#### ANNOTATIONS

##### 1. CONSTRUCTION.

Invoking constitutional prohibition against mandated programs requires both a mandate of responsibility to the political subdivision and a requirement of additional local political subdivision expenditures by virtue of the mandate. Opinion of Justices (Solid Waste Disposal) (1992) 135 N.H. 543, 608 A.2d 870.

Under this article, constitutionality of a particular state mandate does not hinge solely on whether or not it may be categorized as a new, expanded or modified program, but also on whether or not the mandate imposes upon local government an additional fiscal obligation. *New Hampshire Mun. Trust Workers' Comp. Fund v. Flynn* (1990) 133 N.H. 17, 573 A.2d 439.

This article refers to future acts of legislation. 1986 Op. Atty. Gen. 79.

##### 2. CONSTITUTIONAL REQUIREMENTS.

This article did not relieve the constitutional obligation of local officials to provide accessible voting and registration places. 1986 Op. Atty. Gen. 79.

### 3. ADMINISTRATIVE REGULATIONS.

This article neither abrogates the authority of the state board of education to amend or adopt regulations, nor absolves school districts and cooperative school districts from their duty to comply with such regulations, once promulgated. 1986 Op. Atty. Gen. 150.

Police standards and training council may amend the regulations establishing minimum educational and training standards for police officers without violating this article. 1986 Op. Atty. Gen. 34.

### 4. JUDICIARY.

This article does not apply to actions of state judiciary. *New Hampshire Mun. Trust Workers' Comp. Fund v. Flynn* (1990) 133 N.H. 17, 573 A.2d 439.

### 5. PROCEDURAL ADJUSTMENTS TO EXISTING PROGRAMS.

Argument was rejected that under this article legislature could make procedural adjustments to pre-existing legislative schemes regardless of the financial burden imposed upon local government. *New Hampshire Mun. Trust Workers' Comp. Fund v. Flynn* (1990) 133 N.H. 17, 573 A.2d 439.

### 6. WORKERS' COMPENSATION.

RSA 281-A:17, II, creating a prima facie presumption that a firefighter suffering from cancer incurred the disease while employed, and therefore imposing upon local government a new responsibility, held unconstitutional in those instances where the state had failed to either obtain the consent of local governments or provide them with the requisite funding. *New Hampshire Mun. Trust Workers' Comp. Fund v. Flynn* (1990) 133 N.H. 17, 573 A.2d 439.

### 7. WASTE MANAGEMENT.

Proposed legislation which would prohibit disposal of certain goods by a solid waste generator and prohibit acceptance of those goods by a landfill, composting facility or incinerator for disposal would not violate constitutional prohibition against mandated programs. *Opinion of Justices (Solid Waste Disposal)* (1992) 135 N.H. 543, 608 A.2d 870.

Proposed legislation which would provide municipalities with the option of

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N.H.R.S.A. Const. Pt. 1, Art. 28-a

either operating a recycling facility or of allowing its residents to make their own provisions for disposal of those materials outside of the solid waste stream would not constitute an illegally mandated state program or responsibility in violation of the state constitution. *Opinion of Justices (Solid Waste Disposal)* (1992) 135 N.H. 543, 608 A.2d 870.

The 1985 amendment to RSA 193:27, which has the effect of making a school district where a child is deemed to reside, the sending district, liable for all special education costs of a child placed in a residential school, does not create an unconstitutional, unfunded mandate because it does not represent a new, expanded, or modified program or responsibility to the school district in such a way as to necessitate additional local expenditures. *Nashua Sch. Dist. v. State* (1995) 140 N.H. 457, 667 A.2d 1036.

LIBRARY REFERENCES

NEW HAMPSHIRE PRACTICE

13 N.H.P. Local Government Law @ 67.

CJS

Municipal Corporations @ 1833 et seq.  
States @ 203 et seq.

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NEW MEXICO STATUTES ANNOTATED

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\*\*\* (FIRST SPECIAL SESSION OF THE 44TH LEGISLATURE) \*\*\*  
\*\*\* THIS SECTION IS CURRENT THROUGH THE 1999 SUPPLEMENT \*\*\*  
\*\*\* ANNOTATIONS CURRENT THRU 1999-NMCA-110 and 1999-NMSC-032 \*\*\*

CONSTITUTION OF NEW MEXICO

ADOPTED JANUARY 21, 1911

ARTICLE X. COUNTY AND MUNICIPAL CORPORATIONS

N.M. Const. art. X, @ 8 (1999)

Section 8. [New activity or service mandated by state rule or regulation.]

A state rule or regulation mandating any county or city to engage in any new activity, to provide any new service or to increase any current level of activity or to provide any service beyond that required by existing law, shall not have the force of law, unless, or until, the state provides sufficient new funding or a means of new funding to the county or city to pay the cost of performing the mandated activity or service for the period of time during which the activity or service is required to be performed. (As added November 6, 1984.)

NOTES:

THE 1984 AMENDMENT to Article X, which was proposed by S.J.R. 7 (Laws 1984) and

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N.M. Const. art. X, @ 8

adopted at the general election held on November 6, 1984, by a vote of 220,101 for and 64,684 against, added this section.

AM. JUR. 2D, A.L.R. AND C.J.S. REFERENCES. 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions @ 123.

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NEW YORK CONSOLIDATED LAWS SERVICES

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\*\*\* THIS SECTION IS CURRENT THROUGH 1999 CH. 557, 10/5/99 \*\*\*  
\*\*\* WITH THE EXCEPTION OF CHS. 1-3, 40 and 407 \*\*\*

GENERAL CONSTRUCTION LAW

ARTICLE 2. MEANING OF TERMS

NY CLS Gen Const @ 28-a (1999)

@ 28-a. Mandate

"Mandate" includes a writ, process or other written direction, issued pursuant to law, out of a court, or made pursuant to law, by a court, a judge or person acting as a judicial officer, and commanding a court, board or other body, or an officer or other person, named or otherwise designated therein, to do or to refrain from doing an act therein specified.

HISTORY: Add, L 1920, ch 917, eff Apr 15, 1921.

Substance transferred from Code Civ Proc @ 3343, sub 2.

NOTES:

RESEARCH REFERENCES AND PRACTICE AIDS:

- 9 NY Jur, Contempt @@ 13, 19
- 21 NY Jur 2d, Contempt @ 25
- 21 NY Jur 2d, Contempt @ 45
- 28 NY Jur 2d, Courts and Judges @ 134
- 85 NY Jur 2d, Police, Sheriffs, and Related Officers @ 107
- 54 NY Jur, Sheriffs, Constables, and Police @ 79
- 56 NY Jur, Statutes @ 160
- 97 NY Jur 2d, Statutes @ 144
- 1 Carmody-Wait 2d, Officers of the Court @ 3:236
- 1A Carmody-Wait 2d (Rev ed), Officers of Court @@ 3:458, 3:466
- 7 Carmody-Wait 2d, Subpoenas, Notice to Produce @ 54:37
- 22 Carmody-Wait 2d, Habeas Corpus @@ 139:36, 139:65
- 22 Carmody-Wait 2d (Rev ed), Habeas Corpus @@ 139:91, 139:117, 139:124
- 22 Carmody-Wait 2d (Rev ed), Arbitration @ 141:113
- 23A Carmody-Wait 2d (Rev ed), Actions By and Against Public Bodies and Public Officers @ 144:202
- 25 Carmody-Wait 2d, Fundamentals of Practice in the Surrogate's Court @ 149:29
- 25 Carmody-Wait 2d, Fundamentals of Practice in the Surrogate's Court @@

149:22, 149:25

25 Carmody-Wait 2d (Rev ed), Fundamental of Practice in the Surrogate's Court  
@@ 149:44, 149:150

TEXTS:

Weinstein, Korn, Miller, CPLR Manual (Matthew Bender) @ 29.05

CASE NOTES

An oral direction of the court during pendency of habeas corpus proceedings is not a lawful mandate as defined by this section. *People ex rel. Donnelly v Miller* (1925) 213 AD 88, 209 NYS 717.

The word "mandate," does not preclude an oral command, order or injunction, and, under this section, a mandate is not necessarily a formal written order of court. *Silverman v Seneca Realty Co.* (1934) 154 Misc 35, 276 NYS 466.

A notice of probate is not a mandate since such nomenclature is universally accorded a connotation of a command to do or refrain from doing some specified act. *Re Smith's Will* (1940) 175 Misc 688, 24 NYS2d 704.

Where a defense-issued subpoena is valid, it becomes a mandate of the court. *Application of Davis* (1976) 88 Misc 2d 938, 389 NYS2d 1015.

For a defense-issued subpoena to be a lawful mandate of the courts, defendant must be entitled by law to call that individual. *Application of Davis* (1976) 88 Misc 2d 938, 389 NYS2d 1015.

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OREGON REVISED STATUTES

\*\*\* THIS SECTION IS CURRENT THROUGH THE 1997 SUPPLEMENT (1997 SESSIONS) \*\*\*

CONSTITUTION OF THE STATE OF OREGON

ARTICLE XI CORPORATIONS AND INTERNAL IMPROVEMENTS

Ore. Const. Art. 11, @ 15 (1997)

Section 15. Funding of programs imposed upon local governments; exceptions.

(1) Except as provided in subsection (7) of this section, when the Legislative Assembly or any state agency requires any local government to establish a new program or provide an increased level of service for an existing program, the State of Oregon shall appropriate and allocate to the local government moneys sufficient to pay the ongoing, usual and reasonable costs of performing the mandated service or activity.

(2) As used in this section:

(a) "Enterprise activity" means a program under which a local government sells products or services in competition with a nongovernment entity.

(b) "Local government" means a city, county, municipal corporation or municipal utility operated by a board or commission.

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Ore. Const. Art. 11, @ 15

(c) "Program" means a program or project imposed by enactment of the Legislative Assembly or by rule or order of a state agency under which a local government must provide administrative, financial, social, health or other specified services to persons, government agencies or to the public generally.

(d) "Usual and reasonable costs" by the affected local governments for a specific program using generally accepted methods of service delivery and administrative practice.

(3) A local government is not required to comply with any state law or administrative rule or order enacted or adopted after January 1, 1997, that requires the expenditure of money by the local government for a new program or increased level of service for an existing program until the state appropriates and allocates to the local government reimbursement for any costs incurred to carry out the law, rule or order and unless the Legislative Assembly provides, by appropriation, reimbursement in each succeeding year for such costs. However, a local government may refuse to comply with a state law or administrative rule or order under this subsection only if the amount appropriated and allocated to the local government by the Legislative Assembly for a program in a fiscal year:

(a) Is less than 95 percent of the usual and reasonable costs incurred by the local government in conducting the program at the same level of service in the preceding fiscal year; or

(b) Requires the local government to spend for the program, in addition to the amount appropriated and allocated by the Legislative Assembly, an amount that exceeds one-hundredth of one percent of the annual budget adopted by the governing body of the local government for that fiscal year.

(4) When a local government determines that a program is a program for which moneys are required to be appropriated and allocated under subsection (1) of this section, if the local government expended moneys to conduct the program and was not reimbursed under this section for the usual and reasonable costs of the program, the local government may submit the issue of reimbursement to nonbinding arbitration by a panel of three arbitrators. The panel shall consist of one representative from the Oregon Department of Administrative Services, the League of Oregon Cities and the Association of Oregon Counties. The panel shall determine whether the costs incurred by the local government are required to be reimbursed under this section and the amount of reimbursement. The decision of the arbitration panel is not binding upon the parties and may not be enforced by

any court in this state.

(5) In any legal proceeding or arbitration proceeding under this section, the local government shall bear the burden of proving by a preponderance of the evidence that moneys appropriated by the Legislative Assembly are not sufficient to reimburse the local government for the usual and reasonable costs of a program.

(6) Except upon approval by three-fifths of the membership of each house of the Legislative Assembly, the Legislative Assembly shall not enact, amend or repeal any law if the anticipated effect of the action is to reduce the amount of state revenues derived from a specific state tax and distributed to local governments as an aggregate during the distribution period for such revenues immediately preceding January 1, 1997.

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Ore. Const. Art. 11, @ 15

(7) This section shall not apply to:

(a) Any law that is approved by three-fifths of the membership of each house of the Legislative Assembly.

(b) Any costs resulting from a law creating or changing the definition of a crime or a law establishing sentences for conviction of a crime.

(c) An existing program as enacted by legislation prior to January 1, 1997, except for legislation withdrawing state funds for programs required prior to January 1, 1997, unless the program is made optional.

(d) A new program or an increased level of program services established pursuant to action of the Federal Government so long as the program or increased level of program services imposes costs on local governments that are no greater than the usual and reasonable costs to local governments resulting from compliance with the minimum program standards required under federal law or regulations.

(e) Any requirement imposed by the judicial branch of government.

(f) Legislation enacted or approved by electors in this state under the initiative and referendum powers reserved to the people under section 1, Article IV of this Constitution.

(g) Programs that are intended to inform citizens about the activities of local governments.

(8) When a local government is not required under subsection (3) of this section to comply with a state law or administrative rule or order relating to an enterprise activity, if a nongovernment entity competes with the local government by selling products or services that are similar to the products and

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services sold under the enterprise activity, the nongovernment entity is not required to comply with the state law or administrative rule or order relating to that enterprise activity.

(9) Nothing in this section shall give rise to a claim by a private person against the State of Oregon based on the establishment of a new program or an increased level of service for an existing program without sufficient appropriation and allocation of funds to pay the ongoing, usual and reasonable costs of performing the mandated service or activity.

(10) Subsection (4) of this section does not apply to a local government when the local government is voluntarily providing a program four years after the effective date of the enactment, rule or order that imposed the program.

(11) In lieu of appropriating and allocating funds under this section, the Legislative Assembly may identify and direct the imposition of a fee or charge to be used by a local government to recover the actual cost of the program.

HISTORY: [Created through H.J.R. 2, 1995, and adopted by the people Nov. 5, 1996]

---

Attorney Peter Dykman  
Wisconsin Legislative Reference Bureau  
100 N. Hamilton Street, Fifth Floor  
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Madison, Wisconsin 53701-2037  
Tel: (608) 266-7098  
Fax: (608) 264-8522  
Email: Peter.Dykman@legis.state.wi.us



## Dykman, Peter

---

**From:** Wadium, Mark  
**Sent:** Tuesday, January 04, 2000 9:12 AM  
**To:** Dykman, Peter  
**Subject:** FW: TABOR

Peter:  
FYI, TABOR notes from Frank for you.

Mark Wadium  
Office of Representative Frank Lasee  
State Capitol Room 7 North  
P.O. Box 8952  
Madison, WI 53708-8952  
(608) 266-9871

-----Original Message-----

From: Frank Lasee  
Sent: Tuesday, January 04, 2000 2:26 AM  
To: Mark.Wadium@legis.state.wi.us  
Subject: Re: TABOR FW: Colo. Const. Art. X, Section 20 (9) on state  
mandate s

Mark,

I would like for local governments to be able to end mandates if they want to maybe we need to add a longer horizon than 3 years that I believe is included in Tabor. If a mandate is important then the state will do it and take back the money. But it should also allow locals to not accept another new one if they choose.

If a service is important enough the state can do it just as well as a local government. The fact is that local governments like to complain about the mandates but they like the power to do and to act.

Frank

>From: "Wadium, Mark" <Mark.Wadium@legis.state.wi.us>  
>To: "franklasee@hotmail.com" <franklasee@hotmail.com>  
>Subject: TABOR FW: Colo. Const. Art. X, Section 20 (9) on state mandate s  
>Date: Mon, 27 Dec 1999 09:29:58 -0600  
>  
>FYI  
>I need to send Peter an e-mail with our changes needed for TABOR. Please  
>clarify if I'm on the right track but I thought the Mandate Relief section  
>was only to apply to NEW or EXPANDED programs, services, or other mandates.  
>The way I read this and what happened in CO. is that the opponents of TABOR  
>tried to use the mandator relief to end existing programs and services.  
>  
>  
>Mark Wadium  
>Office of Representative Frank Lasee  
>State Capitol Room 7 North  
>P.O. Box 8952  
>Madison, WI 53708-8952  
>(608) 266-9871  
>

>> -----Original Message-----  
>> From: Dykman, Peter  
>> Sent: Friday, December 24, 1999 1:43 PM  
>> To: Rep.Lasee; Wadium, Mark  
>> Subject: Colo. Const. Art. X, Section 20 (9) on state mandates  
>>  
>> You discussed including Colo. Const. Art. X, Section 20 (9) on state  
>> mandates in your request LRB-3986. If something like that provision is  
>> included, it would need to be included in the relating clause and would  
>be  
>> a separate ballot question submitted to the voters. It reads: Colo.  
>Const.  
>> Art. X, Section 20 (9) State mandates. Except for public education  
>through  
>> grade 12 or as required of a local district by federal law, a local  
>> district may reduce or end its subsidy to any program delegated to it by  
>> the general assembly for administration. For current programs, the state  
>> may require 90 days notice and that the adjustment occur in a maximum of  
>> three equal annual installments.  
>> The annotations for that provision are:  
>> V. STATE MANDATES.  
>> "Subsidy" of state by county is legally impossible. Attempted turnback  
>by  
>> county of its responsibilities under human services code pursuant to  
>> subsection (9) was invalid because when a county (itself a political  
>> subdivision of the state) attempts to subsidize the state, the state,  
>> through the county, contributes to itself. Therefore, county's  
>> contribution to cost of social services program is not a "subsidy" and  
>> subsection (9) does not apply. Romer v. Board of County Comm'rs, Weld  
>> County, 897 P.2d 779 (Colo. 1995).  
>> This section did not change the mixed state and local character of  
>social  
>> services. Romer v. Board of County Comm'rs, Weld County, 897 P.2d 779  
>> (Colo. 1995).  
>> A county's duties to the state court system, including security, may not  
>> be reduced or ended pursuant to subsection (9). State v. Board of County  
>> Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).  
>>  
>  
>  
>>  
>  
>>  
>> \_\_\_\_\_  
>> \_\_\_\_\_  
>> 29-1-304.8 (turnback of programs delegated to local governments by the  
>> general assembly) is a statute that was enacted by the Colorado  
>> legislature to implement <<...>> Colo. Const. Art. X, Section 20 (9)  
>> on state mandates:  
>> COLORADO REVISED STATUTES  
>> TITLE 29. GOVERNMENT - LOCAL  
>> GENERAL PROVISIONS  
>> ARTICLE 1. BUDGET AND SERVICES  
>> PART 3. ANNUAL LEVY - INCREASE OR REDUCTION - LIMITATION  
>> C.R.S. 29-1-304.8 (1998)  
>> 29-1-304.8. Programs not delegated by the general assembly  
>>  
>> (1) A local district, within the meaning of section 20 (2) of article X  
>of  
>> the state constitution, shall not reduce or end its subsidy pursuant to  
>> section 20 (9) of said article to any program if:  
>>  
>> (a) The program is one of the inherent powers, duties, or functions of  
>an  
>> officer whose office is created as a county office by the state  
>> constitution, including but not limited to the county clerk and

> recorder,  
>> the county sheriff, the county coroner, the county treasurer, the county  
>> surveyor, the county assessor, and the county attorney; or  
>>  
>> (b) The program is required by the state constitution to be administered  
>> by the local district, including but not limited to duties related to  
> the  
>> maintenance of the state court system and the equalization of property  
> tax  
>> assessments.  
>>  
>> (2) Nothing in the general assembly's enactment of a requirement that a  
>> local district contribute toward the funding of a program operated by an  
>> agency or officer which is not under the jurisdiction of that local  
>> district, including but not limited to the requirement that counties pay  
> a  
>> portion of the costs of maintaining the office of the district attorney,  
>> shall imply that the general assembly has delegated the program to the  
>> local district for administration within the meaning of section 20 (9)  
> of  
>> article X of the state constitution.  
>>  
>> (3) A board of county commissioners shall not cease exercising or  
>> performing its inherent legislative, executive, or quasi-judicial  
> powers,  
>> duties, or functions in the guise of reducing or ending its subsidy to a  
>> program pursuant to the provisions of section 20 (9) of article X of the  
>> state constitution.  
>> (4) As used in this section:  
>> (a) "Administration" means the executive management or superintendence  
> of  
>> public affairs, as distinguished from policy-making.  
>> (b) "Inherent" means in the essential character of or belonging by  
> nature  
>> or settled habit to.  
>> HISTORY: Source: L. 93: Entire section added, p. 1517, § 21, effective  
>> June 6.  
>>  
> \_

## Dykman, Peter

---

**From:** Wadium, Mark  
**Sent:** Monday, February 07, 2000 3:33 PM  
**To:** Dykman, Peter  
**Subject:** RE: TABOR P/7

Answers from Frank for the following questions.

1. Yes Change
2. OK
3. Please replace December 31st with "next fiscal year" or "first fiscal year beginning after radificaation"
4. Frank wants Locals to pay back overaqges by local estimate of population compounded spending If the U.S. Census says less growth have to not get any population boosts for as long as it takes to get it paid back to same level etc. during that repayment period they would be granted CPI ONLY increases.
5. Frank still wants a hold harmless for declining populations.

I hope this helps.

And Frank would like to know your estimated time for turnaround.

Thanks,  
Mark Wadium  
Office of Representative Frank Lasee  
State Capitol Room 7 North  
P.O. Box 8952  
Madison, WI 53708-8952  
(608) 266-9871

-----Original Message-----

**From:** Dykman, Peter  
**Sent:** Monday, January 31, 2000 4:51 PM  
**To:** Wadium, Mark  
**Cc:** Rep.Lasee  
**Subject:** RE: TABOR P/7

-----Original Message-----

**From:** Wadium, Mark  
**Sent:** Monday, January 31, 2000 4:22 PM  
**To:** Dykman, Peter  
**Subject:** TABOR P/7

Peter:  
Thanks for the P/7. You work fast.  
However, there are a couple of items that need to be addressed.

1. I didn't see any section referring to "for the State professional drafting agencies as designated by the State Legislature. For other governmental units the drafting agency or its designee shall be determined by that governmental units legislative body, or if none by that units election officer." Please check with Rep. Lasee on whether he wants to put this in the constitution, even for the state. He told me directly that he didn't want it, but I have no problem if he changes his mind.
2. /P7 page 3, line 23, replace the word "election" with "referendum." I know we changed the title of the information sent to the voters. I don't think that is necessary to change it in the text because the definition of "ballot issue" covers it. The constitution does not use the term "referendum" or "referenda" and does use election. I think election is the better term because it is the broader term and encompasses referenda. The statutes define referendum as: "5.02(16s)  
(16s) "Referendum" means an election at which an advisory, validating or ratifying question is submitted to the electorate."
3. /P7 page 3, line 5, I'm still checking on weather the date should be "December 31" or if it should read "the day after ratification." I'll wait for your research.

---

4. I think we will have to try other language for the section of the /P7, on page 7, section "(e)" that deals with adjustment method for population errors. I'll wait for your additional information. What policy is Rep. Lasee trying accomplish that is not accomplished by the /P7 language? This is drafted along the lines of the approach that the three of us discussed at last Thursday's meeting. It leaves, as we discussed, the details to the legislature.

5. I think we still need the hold harmless for declining population. I'll wait for your additional information. This is drafted along the lines of the approach that the three of us discussed at last Thursday's meeting. It leaves, as we discussed, the details to the legislature.

Mark Wadium  
Office of Representative Frank Lasee  
State Capitol Room 7 North  
P.O. Box 8952  
Madison, WI 53708-8952  
(608) 266-9871

## Dykman, Peter

---

**From:** Wadium, Mark  
**Sent:** Tuesday, February 08, 2000 1:16 PM  
**To:** Dykman, Peter  
**Subject:** FW: FW: TABOR P/7

Peter:  
Please take a look at this.  
Thanks,  
Mark Wadium  
Office of Representative Frank Lasee  
State Capitol Room 7 North  
P.O. Box 8952  
Madison, WI 53708-8952  
(608) 266-9871

Mark,

In answer to his question. Where does it say that in the event of negative population growth only cpi will apply. simply put no legislation involved.

What about the phase in of over estimates of population for local governments. No population increases until the compounded growth of spending caused by the over estimate is made up even if it takes forever.

Keep on top of him. I want this soon. Are they working on the rest of it for an analysis.

Frank

>> -----Original Message-----  
>> From: Dykman, Peter  
>> Sent: Tuesday, February 08, 2000 9:16 AM  
>> To: Wadium, Mark; Rep.Lasee  
>> Subject: RE: TABOR P/7  
>>  
>> In regard to : "5. Frank still wants a hold harmless for declining  
>> populations.", how does it need to differ from (7) (e) to (g)?  
>>  
>>  
>> (7) (e) The legislature, by law, shall provide an adjustment method to  
>> phase in over a 10-year period the effect of a decline in population of  
>a  
>> governmental unit on a limitation under this section. The adjustment  
>> method provided for in this paragraph shall be used in determining a  
>> limitation under this section beginning with the fiscal year immediately  
>> following the decline.  
>>  
>> (f) The legislature, by law, shall provide an adjustment method to  
>reflect  
>> any subsequent transfer of all or any part of the cost of providing a  
>> governmental function. The adjustment method provided for in this  
>> paragraph shall be used in determining a limitation under this section  
>> beginning with the fiscal year immediately following the transfer.  
>>  
>> (g) The legislature, by law, shall provide an adjustment method to  
>reflect  
>> any subsequent annexation, creation of a new governmental unit,

> > consolidation or change in the boundaries of a governmental unit. The  
> > adjustment method provided for in this paragraph shall be used in  
> > determining a limitation under this section beginning with the fiscal  
> year  
> > immediately following the annexation, creation of a new governmental  
> unit,  
> > consolidation or change in the boundaries of a governmental unit.

> >  
> > -----Original Message-----  
> > From: Wadium, Mark  
> > Sent: Monday, February 07, 2000 3:33 PM  
> > To: Dykman, Peter  
> > Subject: RE: TABOR P/7

> >  
> > Answers from Frank for the following questions.  
> > 1. Yes Change  
> > 2. OK  
> > 3. Please replace December 31st with "next fiscal year" or "first fiscal  
> > year beginning after radification"  
> > 4. Frank wants Locals to pay back overages by local estimate of  
> > population compounded spending If the U.S. Census says less growth  
> have  
> > to not get any population boosts for as long as it takes to get it paid  
> > back to same level etc. during that repayment period they would be  
> > granted CPI ONLY increases.  
> > 5. Frank still wants a hold harmless for declining populations.

> >  
> > I hope this helps.  
> >  
> > And Frank would like to know your estimated time for turnaround.  
> > Thanks,  
> > Mark Wadium  
> > Office of Representative Frank Lasee  
> > State Capitol Room 7 North  
> > P.O. Box 8952  
> > Madison, WI 53708-8952  
> > (608) 266-9871

> >  
> > -----Original Message-----  
> > From: Dykman, Peter  
> > Sent: Monday, January 31, 2000 4:51 PM  
> > To: Wadium, Mark  
> > Cc: Rep.Lasee  
> > Subject: RE: TABOR P/7

> >  
> >  
> > -----Original Message-----  
> > From: Wadium, Mark  
> > Sent: Monday, January 31, 2000 4:22 PM  
> > To: Dykman, Peter  
> > Subject: TABOR P/7

> >  
> > Peter:  
> > Thanks for the P/7. You work fast.  
> > However, there are a couple of items that need to be  
> > addressed.

> >  
> > 1. I didn't see any section referring to "for the State  
> > professional drafting agencies as designated by the State Legislature.  
> > For other governmental units the drafting agency or its designee shall  
> be  
> > determined by that governmental units legislative body, or if none by  
> that

> > units election officer." Please check with Rep. Lasee on whether he  
>wants  
> > to put this in the constitution, even for the state. He told me  
>directly  
> > that he didn't want it, but I have no problem if he changes his mind.  
> > 2. /P7 page 3, line 23, replace the word "election" with  
> > "referendum." I know we changed the title of the information sent to the  
> > voters. I don't think that is necessary to change it in the text  
>because  
> > the definition of "ballot issue" covers it. The constitution does not  
>use  
> > the term "referendum" or "referenda" and does use election. I think  
> > election is the better term because it is the broader term and  
>encompasses  
> > referenda. The statutes define referendum as: "5.02(16s)  
> > (16s) "Referendum" means an election at which an advisory,  
> > validating or ratifying question is submitted to the electorate."  
> > 3. /P7 page 3, line 5, I'm still checking on whether the  
> > date should be "December 31" or if it should read "the day after  
> > ratification." I'll wait for your research.  
> > 4. I think we will have to try other language for the  
> > section of the /P7, on page 7, section "(e)" that deals with adjustment  
> > method for population errors. I'll wait for your additional  
>information.  
> > What policy is Rep. Lasee trying accomplish that is not accomplished by  
> > the /P7 language? This is drafted along the lines of the approach that  
>the  
> > three of us discussed at last Thursday's meeting. It leaves, as we  
> > discussed, the details to the legislature.  
> > 5. I think we still need the hold harmless for declining  
> > population. I'll wait for your additional information. This is  
> > drafted along the lines of the approach that the three of us discussed  
>at  
> > last Thursday's meeting. It leaves, as we discussed, the details to the  
> > legislature.  
> >  
> > Mark Wadium  
> > Office of Representative Frank Lasee  
> > State Capitol Room 7 North  
> > P.O. Box 8952  
> > Madison, WI 53708-8952  
> > (608) 266-9871  
> >

---

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## Dykman, Peter

---

**From:** Wadium, Mark  
**Sent:** Wednesday, January 26, 2000 10:05 AM  
**To:** Dykman, Peter  
**Subject:** TABOR

Peter:

Please use parts of your TABOR draft P/4 covering emergency taxes.  
Use Page 12 line 21 (Section 6) through page 13 line 9 end (section 6C)  
Add those sections into the current draft.

OK

Thanks,

Mark Wadium

Office of Representative Frank Lasee

State Capitol Room 7 North

P.O. Box 8952

Madison, WI 53708-8952

(608) 266-9871

**Dykman, Peter**

---

**From:** Dykman, Peter  
**Sent:** Wednesday, January 26, 2000 3:36 PM  
**To:** Rep.Lasee; Wadium, Mark  
**Subject:** Emergency taxes

You requested putting back into your draft the emergency tax provisions from Colorado. I am including in this email the entire law review article, "The Authority to Tax in Wisconsin", and at the beginning, an excerpt from it on the authority of local governmental units to impose taxes. The article cites *Blue Top Motel, Inc. v. City of Stevens Point*, 107 Wis. 2d 392, 395, 320 N.W.2d 172, 173 (1982) for the holding that local units of government may enact only those taxes that the state government authorizes by legislation. As to emergency taxes levied by local units of governments, I can find only one emergency tax authorized in the statutes by the Wisconsin legislature. Colorado TABOR is drafted with the opposite assumption-that local governmental units can levy taxes (including emergency taxes) without authorization by the state. The effect of including the Colorado language in the Wisconsin constitution is to grant to local units the power to enact emergency taxes WITHOUT legislative authorization OR to imply that such a power already exists in Wisconsin local units. Do you want the effect of your draft to be that local units are given greater authority to tax? Instead, do you want subsection (6) to apply only to the state? I believe that the state would have the power to levy an emergency tax, but I don't know of a case where the state has done so. When the state has addressed a revenue shortfall by raising taxes, I think that, at least in the last 30 years, it has eliminated or reduced exemptions or deductions or raised rates of existing taxes, or increased fees, not levied emergency taxes. In Wisconsin, constitutional limits on that power have been drafted in the form shown by 1999 AJR 10 and AJR 28, as well as one you co-authored, 1999 AJR 83, not by restricting the power to levy emergency taxes. Do you want to rely on one of those joint resolution instead of adding back Colorado's emergency tax provisions?

"At first glance, the home rule section of the constitution grants broad authority, perhaps even taxing authority, to cities and villages. It states that home rule municipalities "may determine their local affairs ... subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village." n65 However, case law makes it clear that taxation is a matter of statewide concern. Two cases decided in a rather recent year established that principle. n66 A later case, which considered the validity of a county (as opposed to municipal) assessment system, echoed the view of the two earlier cases by stating, "equality in taxation is a matter of particular statewide concern." n67 An even more recent case stated the corollary of the holding that taxation is a matter of statewide concern - local units of government may enact only those taxes that the state government authorizes by legislation. n68

-----Footnotes-----

n65. Id. art. XI, 3(1).

n66. *Jordan v. Village of Menomonee Falls*, 28 Wis. 2d 608, 621, 137 N.W.2d 442, 449 (1965), appeal dismissed, 385 U.S. 4 (1966); *Plymouth v. Elsner*, 28 Wis. 2d 102, 107, 135 N.W.2d 799, 802 (1965).

n67. *Thompson v. Kenosha County*, 64 Wis. 2d 673, 686, 221 N.W.2d 845, 852 (1974).

n68. *Blue Top Motel, Inc. v. City of Stevens Point*, 107 Wis. 2d 392, 395, 320 N.W.2d 172, 173 (1982).

-----End Footnotes-----

Because the authority of local units of government to tax has no substantial

roots in the state constitution, it is necessary to look for statutory authorization. Before doing so, however, it is worth noting that two statutes prohibit certain taxes: a local income tax n69 and a local motor vehicle fuel tax. n70 The case law on the home rule section of the constitution makes it obvious that local units of government have no inherent taxing authority and must rely on state authorization; thus, the statutes are redundant. The same effect is attained by the failure to authorize, by statute, local income taxes and local motor vehicle fuel taxes. Another statute provides that, notwithstanding the statutory prohibition against local income taxes, municipalities may impose franchise fees on cable television companies based on income. n71"

Lexsee 77 Marq. L. Rev. 457

Note:

The Authority to Tax in Wisconsin 77 Marq Law Rev 457,464 (1994)

PAGE 1

LEXSEE 77 Marq. L. Rev. 457

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77 Marq. L. Rev. 457

LENGTH: 8697 words

ARTICLE: THE AUTHORITY TO TAX IN WISCONSIN

Jack Stark\*

\* Assistant Chief Counsel, Legislative Reference Bureau of the State of Wisconsin. B.A. 1961, Northland College; M.A. 1963, Claremont Graduate School; Ph.D. 1969, University of Wisconsin; J.D. 1979, University of Wisconsin.

#### SUMMARY:

... For several reasons it is important to identify precisely the taxing authority bestowed on Wisconsin units of government. ... The main purpose for the amendment was to permit a state income tax, the enactment of which would solve some of the difficulties of the property tax - especially the difficulty of applying property tax to intangible property. ... The tax that is available to most local units of government and provides by far the most local tax revenue is the property tax. ... This principle does not mean that one unit of government may not collect tax revenue, commingle it with other funds, and then make payments to other units of government. ... Common sense would also suggest that taxation is a function peculiar to units of government. ... Although identifying every entity that is not a unit of government is impossible, many entities employ the strategy of avoiding classification as a unit of government in order to avoid constitutional limitations. ...

TEXT:  
[\*457]

I. Introduction

authority bestowed on Wisconsin units of government. Because tax revenue is the lifeblood of governments, all tax questions have some significance, and the question of the authority to tax is the most fundamental of all. Its fundamental nature becomes obvious if one realizes that successfully challenging the authority of an entity to impose a certain tax discontinues that tax; whereas, other types of successful litigation by taxpayers merely reduce or eliminate liability for some persons who are subject to the tax or otherwise lessen the tax's effect.

The issue of the authority to tax is especially important in times like the present, when the public's resistance to taxes entices governmental officials to tax in novel ways, perhaps by going beyond their authority or shifting to another entity the responsibility for imposing a tax, which, as explained below, may be done in such a way that it violates one of the limits on taxing

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authority. Finally, if a bond issue is to be funded with a revenue stream that includes a tax that the issuer may not have the authority to impose, bond counsel who are aware of the difficulty will not approve the issuance and, if the bonds are issued, bond holders may litigate later if they discover the possible abuse of authority.

## II. The State's Authority to Tax

Wisconsin's authority to tax differs substantially from that of local units of government in the state. The most fundamental taxing authority of this state is derived from the state constitution. The finance article of the constitution includes a number of statements that indirectly grant to the state its taxing authority. For example, one statement requires that "the legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year." n1 This statement implies that there is also authority to enforce compliance with the requirement. An early case held that this edict was "simply intended as a regulation or [\*458] provision covering the levying of a direct tax upon property, if such a tax be necessary." n2 At the time that was an accurate statement, but since then the constitution has been amended to allow other taxes as well. n3

-----Footnotes-----

n1. Wis. Const. art. VIII, 5.

n2. Nunnemacher v. State, 129 Wis. 190, 223, 108 N.W. 627, 637 (1906).

n3. Wis. Const. art. VIII, 1.

-----End Footnotes-----

A second indirect conferral of taxing authority to the state by the constitution is the requirement that "every ... law [contracting debts] shall provide for levying an annual tax sufficient to pay the annual interest of such debt and the principal within five years from the passage of such law." n4 This provision is almost totally irrelevant today because it appears in a section that authorizes the state to incur a total debt of only \$ 100,000. Another portion of the constitution states that "the full faith, credit and taxing power of the state are pledged to the payment of all public debt created on behalf of the state pursuant to this section." n5 Another section requires that "any law which imposes, continues or renews a tax" must have been passed by the Legislature in a roll-call vote rather than a voice vote. n6 There also is a reference to money "raised by taxation." n7

-----Footnotes-----

n4. Id. art. VIII, 6.

n5. Id. art. VIII, 7(2)(f).

n6. Id. art. VIII, 8.

n7. Id. art. VIII, 10(2).

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-----End Footnotes-----

All of these statements stop short of actually authorizing a tax. However, there is a statement that explicitly authorizes a state tax: "Of the moneys appropriated under the authority of this subsection [for forestry purposes] in any one year an amount not to exceed two-tenths of one mill of the taxable property of the state ... may be raised by a tax on property." n8 This constitutional provision resulted in the enactment of a statute that imposes just such a tax; n9 this is the only state tax that applies to all taxable property.

-----Footnotes-----

n8. Id. art. VIII, 10(3).

n9. Wis. Stat. 70.58 (1991-92).

-----End Footnotes-----

The major constitutional source of the state's taxing authority is the section that includes the uniformity clause, a portion of which specifies that "taxes shall be levied upon such property ... as the legislature shall prescribe." n10 Beginning with the early days of statehood and lasting for many decades, a broad-based property tax was a major source of state [\*459] revenue. n11 Now, however, authorization of a broad-based tax merely duplicates the authorization of a property tax for forestation purposes. n12 However, the above statement also authorizes a more narrow tax - a state tax imposed at the statewide average rate on the property of certain utilities. n13 Utilities that pay this tax are railroads, sleeping car companies, air carriers, pipeline companies, and conservation and regulation companies (companies that regulate the height and flow of water in reservoirs). Beginning on May 10, 1997, telephone companies will also be subject to that tax rather than to the current license fee based on gross receipts.

-----Footnotes-----

n10. Wis. Const. art. VIII, 1. Occasionally the entire section is called the uniformity clause. I will distinguish between the statement that taxation shall be uniform (the uniformity clause in the strict sense) and the section as a whole.

n11. See Jack Stark, A History of the Property Tax and Property Tax Relief in Wisconsin, in 1991-92 Wisconsin Blue Book 99 (providing an account of the early broad-based property tax as well as a general history of the property tax in Wisconsin).

n12. Wis. Const. art. VIII, 10(3).

n13. Wis. Stat. 76.13(1) (1991-92).

-----End Footnotes-----

In 1908 a more significant authorization to tax was added to the section of the constitution that contains the uniformity clause. That year the people of

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the state ratified an amendment that stated "taxes may also be imposed on incomes, privileges and occupations." n14 The main purpose for the amendment was to permit a state income tax, the enactment of which would solve some of the difficulties of the property tax - especially the difficulty of applying property tax to intangible property. n15 The amendment's most important effect was a great expansion of the kinds of taxes that the constitution specifically authorizes. No longer did the state have to depend so heavily on the property tax.

-----Footnotes-----

n14. Wis. Const. art. VIII, 1.

n15. See John O. Stark, *The Establishment of Wisconsin's Income Tax*, Wis. Mag. of Hist., Autumn 1987, at 27.

-----End Footnotes-----

Some statutes explicitly impose taxes on incomes, authorization for which is clearly derived from the 1908 amendment to the uniformity clause of the Wisconsin Constitution. These taxes are the individual income tax; n16 the tax on fiduciaries, which applies to the income of trusts and estates; n17 the income tax applicable to partnerships; n18 the corporate income tax; n19 the tax on the income of tax-option corporations (which are referred to as S corporations in the Internal Revenue Code); n20 the [\*460] tax on the income of urban transit companies; n21 and the tax on the income of insurers. n22

-----Footnotes-----

n16. Wis. Stat. 71.02(1) (1991-92).

n17. Id. 71.02(1), 71.125.

n18. Id. 71.19 (imposing the tax indirectly by subjecting partnerships to the liabilities of other entities as set forth in chapter 71).

n19. Id. 71.23.

n20. Id. 71.32. Again the imposition is done indirectly, by making these entities subject to the liabilities that apply to other entities under chapter 71.

n21. Id. 71.37. This imposition is even more indirect than the impositions for partnerships and tax-option corporations: "urban transit corporations are subject to this chapter."

n22. Id. 71.43(1).

-----End Footnotes-----

A number of Wisconsin taxes are explicitly imposed in return for privileges. The franchise tax is imposed on corporations "for the privilege of exercising [their] franchise or doing business in this state in a corporate capacity." n23 Insurers are also subject to a franchise tax through a statute that is worded similarly to the statute that imposes the franchise tax on other corporations.

n24 Virtually every corporation (including insurance corporations) which may be subject either to an income tax or a franchise tax is subject to a franchise tax, because such tax allows the state to tax the income from certain federal securities.

-----Footnotes-----

n23. Id. 71.23(2).

n24. Id. 71.43(2).

-----End Footnotes-----

The distinction between the income tax and the franchise tax clearly indicates the formalism of tax law and the importance that labels often have in this area of the law. Assuming that "right" is a synonym of "privilege," as the Wisconsin Supreme Court held in an early case, n25 the forest cropland severance tax is a privilege tax because it is imposed "on the right to cut and remove wood products." n26 The sales tax is imposed twice, once for goods and once for services, and both imposition statutes make it clear that the sales tax is a privilege tax. The statute imposing the tax on goods begins: "for the privilege of selling, leasing or renting tangible personal property." n27 The statute imposing the tax on services begins: "for the privilege of selling, performing or furnishing ... services." n28 The temporary recycling surcharge, which is actually a tax because it is not regulatory and because for most taxpayers it is a percentage of their income tax or franchise tax, or is based on amounts calculated in determining liability for one of those taxes, is imposed "for the privilege of doing business in this state." n29

-----Footnotes-----

n25. State ex rel. Froedtert Grain & Malling Co. v. Tax Comm'n, 221 Wis. 225, 230-31, 265 N.W. 672, 674 (1936).

n26. Wis. Stat. 77.06(5) (1991-92).

n27. Id. 77.52(1) (emphasis added).

n28. Id. 77.52(2) (emphasis added).

n29. Id. 77.93 (emphasis added).

-----End Footnotes-----

Although several state taxes have the very narrow base characteristic of excise taxes, they are imposed as occupational taxes, thereby deriving their authority from the reference to occupational taxes in the constitutional section that includes the uniformity clause. n30 An example is the fermented malt beverages tax, which is referred to as an occupational tax in its imposition statute. n31 The same is true of the liquor tax, n32 the tobacco products tax, n33 the bingo gross receipts tax, n34 and the tax on controlled substances. n35

-----Footnotes-----

n30. Wis. Const. art. VIII, 1.

n31. Wis. Stat. 139.02(1).

n32. Id. 139.03.

n33. Id. 139.76(1).

n34. Id. 563.80.

n35. Id. 139.88.

-----End Footnotes-----

Other occupational taxes provide revenue for both the state and local units of government. Each is specifically identified as an occupational tax in the imposition statute. These occupational taxes include the mining tax, n36 the tax on operating an iron ore concentrates dock, n37 the tax on grain storage, n38 the tax on operating a coal dock, n39 the tax on refining petroleum and petroleum products, n40 and the tax on owners of domestic mink. n41

-----Footnotes-----

n36. Id. 70.375(2m).

n37. Id. 70.40(1).

n38. Id. 70.41(1).

n39. Id. 70.42(1).

n40. Id. 70.421(1).

n41. Id. 70.425(1).

-----End Footnotes-----

If these were the only state taxes, each state tax would be firmly anchored in Article VIII, section 1, the constitutional section that includes the uniformity clause. However, there are other state taxes. Among them are the oil and gas severance tax, which is called a "severance tax;" n42 the estate tax, which is simply referred to as a "tax;" n43 the license fee for light, heat and power companies, which is called "an annual license fee" n44 and which, despite its name, is a tax because it provides general revenue rather than merely being an imposition under the police power to fund the costs incurred to regulate the utilities; the "annual license fee" (another tax. for the same reasons) on telephone companies; n45 the car line tax, which is called "a gross earnings tax;" n46 the real estate transfer "fee" n47 (which probably would indeed be a fee if the state did not receive 80% of the proceeds); the use tax; n48 the motor vehicle [\*462] fuel tax; n49 the alternate fuels tax; n50 the general aviation fuel tax; n51 and the cigarette tax; n52 each of which is called an "excise tax"; the cigarette inventory tax, which is simply called a "tax"; n53 and the racing admissions tax, which has no label. n54 Oddly enough, the cigarette tax was changed from an occupational tax to an excise tax, n55 thereby losing its anchorage in the constitution, because a United States Supreme Court

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case provided that such a change would allow the state to tax certain sales of cigarettes by American Indians to non-Indians. n56

-----Footnotes-----

n42. Id. 70.397(2).



n43. Id. 72.02.

n44. Id. 76.28(2)(a).

n45. Id. 76.38(4)-(6).

n46. Id. 76.39(2).

n47. Id. 77.22(1).

n48. Id. 77.53(1).

n49. Id. 78.01(1).

n50. Id. 78.40(1).

n51. Id. 78.555.

n52. Id. 139.31(1).

n53. Id. 139.315(1).

n54. Id. 562.08.

n55. 1983 Wis. Laws 55.

n56. *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980).

-----End Footnotes-----

However, taxes that do not fit within the categories specified in Article VIII, section 1 are in no danger of being invalidated. One way to defend them is to assert that, despite their labels, each of them can be characterized as either a privilege tax or an occupational tax. "Privilege tax" is so broad that it would probably include all of these taxes and perhaps even include any tax the statutes would authorize. This strategy runs counter to the formalistic nature of tax law, as illustrated in the substantive effect of changing the cigarette tax's label. A second and probably more effective line of defense is to avoid dependence on constitutional authorization and to rely instead on a line of cases. The line of cases provides an interesting illustration of how a probable misreading of a vague statement, unsupported by authority, can change that statement into a more precise legal rule.

The line of cases begins with one in which a means of equalization n57 was at issue. In validating the challenged equalization process, the court stated that "this whole matter is within the control of the legislature." n58 Although the meaning of "this whole matter" is not completely clear, the most plausible

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interpretation is that the court was referring to equalization, not to every facet of taxation. Twenty years later the meaning of "this whole matter" changed, and the legislature's power was stated in [\*463] more sweeping terms when the court, citing the earlier case, wrote that "the legislature has plenary power over the whole subject of taxation within constitutional limitations." n59 In six cases that followed, the court again held that the legislature's authority to tax was bound only by the state constitution. n60 More recently, the court softened its position: "The courts have recognized that the state legislature has wide latitude to select the subjects of taxation and to grant exemptions." n61 Thus, despite the very insubstantial foundation on which these cases are built, there is considerable precedent for the view that the state

constitutional provision. Failure to denominate a tax as one of the types specified in the constitution is not a violation of the constitution. It will be evident later, however, that several non-constitutional limits on the state's authority to tax exist.

-----Footnotes-----

n57. Equalization is an adjustment by the Department of Revenue of property tax assessments made by various units of government so that all assessments are at full market value and so that, as a result of the adjustment, the taxes imposed by units of government (such as counties) that extend over several smaller units (such as municipalities) will be fairly apportioned among the smaller units.

n58. State ex rel. Brown County v. Myers, 52 Wis. 628, 632, 9 N.W. 777, 778 (1881).

n59. State ex rel. Ellis v. Thorne, 112 Wis. 81, 85, 87 N.W. 797, 798 (1901).

n60. Thompson v. Kenosha County, 64 Wis. 2d 673, 684, 221 N.W.2d 845, 851 (1974); City of West Allis v. Milwaukee County, 39 Wis. 2d 356, 369, 159 N.W.2d 36, 42 (1968), cert. denied, 393 U.S. 1064 (1969); City of Plymouth v. Elsner, 28 Wis. 2d 102, 106, 135 N.W.2d 799, 801 (1965); State ex rel. Thomson v. Giessel, 265 Wis. 207, 213, 60 N.W.2d 763, 766 (1953); Milwaukee County v. Dorsen, 208 Wis. 637, 640-41, 242 N.W. 515, 516 (1932); State ex rel. Hessey v. Daniels, 143 Wis. 649, 653, 128 N.W. 565, 566 (1910).

n61. WKBH Television, Inc. v. Dep't. of Revenue, 75 Wis. 2d 557, 566, 250 N.W.2d 290, 294 (1977).

-----End Footnotes-----

### III. The Constitutional Authority for Local Taxes

There is also constitutional authority for the imposition of local taxes. Several constitutional provisions recognize the existence of local taxes or command local units of government to tax. One provision states that "the legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods." n62 Presumably the legislature may also authorize units of government to impose taxes on real estate; however, this provision does not explicitly grant them the authority to do so.

-----Footnotes-----

n62. Wis. Const. art. VIII, 1.

-----End Footnotes-----

Another provision directs counties, cities, towns, villages, school districts, sewerage districts, and other municipal corporations to levy a direct annual tax to retire their debt. n63 In the constitution a "direct" tax is a property tax. As noted earlier, Article VIII, section 1 implicitly authorizes a property tax for a specific purpose; it stops short of authorizing a broad-based property tax or any other kind of tax. Another section directs, and therefore implicitly authorizes, towns and cities to raise a tax [\*464] for the schools equal to at least one-half of the amount that the town or city receives for school purposes from the income of the school fund. n64 That amount was

presently allocated entirely to libraries.

-----Footnotes-----

n63. Id. art. XI, 3(3).

n64. Id. art. X. 4.

-----End Footnotes-----

At first glance, the home rule section of the constitution grants broad authority, perhaps even taxing authority, to cities and villages. It states that home rule municipalities "may determine their local affairs ... subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village." n65 However, case law makes it clear that taxation is a matter of statewide concern. Two cases decided in a rather recent year established that principle. n66 A later case, which considered the validity of a county (as opposed to municipal) assessment system, echoed the view of the two earlier cases by stating, "equality in taxation is a matter of particular statewide concern." n67 An even more recent case stated the corollary of the holding that taxation is a matter of statewide concern - local units of government may enact only those taxes that the state government authorizes by legislation. n68

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n65. Id. art. XI, 3(1).

n66. Jordan v. Village of Menomonee Falls, 28 Wis. 2d 608, 621, 137 N.W.2d 442, 449 (1965), appeal dismissed, 385 U.S. 4 (1966); Plymouth v. Elsner, 28 Wis. 2d 102, 107, 135 N.W.2d 799, 802 (1965).

n67. Thompson v. Kenosha County, 64 Wis. 2d 673, 686, 221 N.W.2d 845, 852 (1974).

n68. Blue Top Motel, Inc. v. City of Stevens Point, 107 Wis. 2d 392, 395, 320 N.W.2d 172, 173 (1982).

-----End Footnotes-----

Because the authority of local units of government to tax has no substantial roots in the state constitution, it is necessary to look for statutory authorization. Before doing so, however, it is worth noting that two statutes prohibit certain taxes: a local income tax n69 and a local motor vehicle fuel tax. n70 The case law on the home rule section of the constitution makes it obvious that local units of government have no inherent taxing authority and must rely on state authorization; thus, the statutes are redundant. The same effect is attained by the failure to authorize, by statute, local income taxes and local motor vehicle fuel taxes. Another statute provides that, notwithstanding the statutory prohibition against local income taxes, municipalities may impose franchise fees on cable television companies based on income. n71

-----Footnotes-----

n69. Wis. Stat. 66.70 (1991-92).

n70. Id. 78.82.

-----End Footnotes-----

[\*465]

The number of local taxes authorized by statute in Wisconsin is quite small, smaller than the number in most other states. One such local tax, the franchise fee that may be imposed on cable television companies, has already been mentioned. In actuality it is a tax, not a fee, because it may be imposed at a rate exceeding the cost of regulation and thus may produce general revenue for the municipality imposing it, although the authorizing statute mentions that the fee is imposed in the regulation of those systems. Another statute allows towns, villages, and cities to impose a "room tax," a tax on the furnishing of rooms to transients. n72 Counties are allowed to impose sales and use taxes. n73 Municipalities and counties are also allowed to impose vehicle registration fees (the "wheel tax"). n74 Local exposition districts may impose a tax on the rental of hotel and motel rooms, n75 a tax on the sale of certain food and beverages, n76 and a tax on car rentals. n77

-----Footnotes-----

n72. Id. 66.75(1).

n73. Id. 77.70.

n74. Id. 341.35(1).

n75. Id. 66.75(1).

n76. Id. 77.98.

n77. Id. 77.99.

-----End Footnotes-----

The tax that is available to most local units of government and provides by far the most local tax revenue is the property tax. Authority to impose the property tax appears in many statutes. Counties and villages are explicitly given authority. n78 Under two statutes towns may assume the powers of villages, making their authority derivative. n79 The authority for cities to tax property is tersely conferred in a list of the means that the common council may employ to perform its general duties. n80 Vocational, Technical and Adult Education Districts have clear authority. n81 There are four grants of authority to school districts: one to the Milwaukee School District, authorizing it to require the City of Milwaukee to levy for the district, n82 one to the annual meeting of common or union high school districts, n83 one to the boards of common or union high school districts, n84 and one to the boards of unified districts. n85 Three types of special districts have property tax authority. They include public inland lake protection and rehabilitation districts (which actually are [\*466] required to impose a property tax), n86 metropolitan sewerage districts, n87 and the Milwaukee Metropolitan Sewerage District. n88 There are also specific property tax authorizations that apply only to forest land. n89

-----Footnotes-----

n78. Id. 59.07(5), 61.46.

n79. Id. 60.10(2)(c), 60.22(3).

n80. Id. 62.11(5).

- n81. Id. 38.16.
- n82. Id. 119.46-48.
- n83. Id. 120.10(6)-(10).
- n84. Id. 120.12(3).
- n85. Id. 120.44(1).
- n86. Id. 33.31(3).
- n87. Id. 66.25(2).
- n88. Id. 66.91(6).
- n89. Id. 77.01-77.17, 77.84.

-----End Footnotes-----

#### IV. Limitations on the Power to Tax

As shown above, the state's power to tax and authorize local units of government to tax is not quite plenary. Certain limits, some of them constitutional and some firmly established in case law, apply. One of those limits is the principle that the unit of government that imposes a tax must also

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be the unit of government that spends the tax proceeds. It might be argued that this principle does not exist, given two cases in which challenges to "impact fees" were unsuccessful. n90 Prior to the enactment of a law to prevent the practice, n91 a few municipalities had been charging impact fees to developers and giving some of the proceeds to school districts. (These "fees" are actually taxes because the revenue that they generate is not dedicated to regulatory purposes.) However, the above principle was not an issue in either case; if it had been, the impact fees almost certainly would have been invalidated.

-----Footnotes-----

n90. *Black v. City of Waukesha*, 125 Wis. 2d 254, 371 N.W.2d 389 (Ct. App. 1985); *Jordan v. Village of Menomonee Falls*, 28 Wis. 2d 608, 137 N.W.2d 442 (1965).

n91. 1993 Wis. Laws 305(1)-(2).

-----End Footnotes-----

This result would have occurred because the courts in five cases prior to the two impact fee cases ruled that the taxing and spending units of government must be identical. The court made the same ruling in three cases that were litigated after the impact fee cases. The earliest case was litigated in 1865 n92 and was followed by two early twentieth-century cases. n93 In the fourth case, the court set forth a clear statement of the rule: "[A] tax must be spent at the level at which it is raised." n94 Two years later, the court reiterated the principle. n95 The doctrine remained viable thirty-five years later. n96 When next addressing this principle, the court acknowledged its long history and connected it to the public purpose doctrine: "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

this rule in 1980. n98

-----Footnotes-----

n92. *Brodhead v. City of Milwaukee*, 19 Wis. 658 (1865).

n93. *State ex rel. New Richmond v. Davidson*, 114 Wis. 563, 576, 88 N.W. 596, 596 (1902); *State ex rel. Owen v. Donald*, 160 Wis. 21, 125, 151 N.W. 331, 365 (1915).

n94. *State ex rel. Wisconsin Dev. Auth. v. Dammann*, 228 Wis. 147, 183, 280 N.W. 698, 709 (1938).

n95. *State ex rel. American Legion 1941 Conv. Corp. v. Smith*, 235 Wis. 443, 451, 293 N.W. 161, 166 (1940).

n96. *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 421, 208 N.W.2d 780, 799 (1973).

n97. *Buse v. Smith*, 74 Wis. 2d 550, 577, 247 N.W.2d 141, 153 (1976).

n98. *Sigma Tau Gamma Fraternity House v. City of Menomonie*, 93 Wis. 2d 392, 412-13, 288 N.W.2d 85, 94 (1980).

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-----End Footnotes-----

This principle does not mean that one unit of government may not collect tax revenue, commingle it with other funds, and then make payments to other units of government. The state annually distributes billions of dollars in aid to other units of government. Because money is fungible and thus cannot be traced, it cannot plausibly be argued that aid programs violate the principle that the taxing unit and the spending unit must be identical. Nevertheless, a municipal ordinance imposing a tax or fee and specifying that part or all of its proceeds shall be given to another unit of government would violate this principle, as would a state statute authorizing a municipality to do so.

The next limit on the taxing authority of governmental units in Wisconsin follows from the limit just delineated. If a unit of government imposing a tax must be the unit of government spending the tax proceeds, one can conclude that only a unit of government may tax. Otherwise, the rule would be stated more broadly; for example, the rule could refer to taxing authorities rather than units of government. Common sense would also suggest that taxation is a function peculiar to units of government. These two rather slender reeds are reinforced by a number of cases which hold that only units of government may impose taxes.

The roots of this doctrine lie in the opening statement of *Cooley* on Taxation, as quoted in a Wisconsin case: A tax is "levied by the state by virtue of its sovereignty for support of government and for all public needs." n99 A later case makes it clear that "state" was intended as a generic term for a unit of government. The court, citing the passage from the earlier case, held that a charge was not a tax because it was "not imposed by the city in the exercise of its sovereign power." n100 In another case, the court arrived at the same destination by following a different route, stating that "any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining govern- [\*468] mental functions ... is a tax." n101 Subsequently, this holding was cited by the court when it declared that "[a] tax is an exaction, usually of money, by the government for the support of government." n102 Later, in yet another case, the court stated the rule, by then firmly established, in slightly different terms: A tax is "levied by the state or municipality for the support of its government and its public needs." n103 Two

years later the court approvingly quoted the earlier version of the rule. n104  
The most recent statement of the rule also quoted the earlier version. n105

-----Footnotes-----

n99. *Fitch v. Wisconsin Tax Comm'n*, 201 Wis. 383, 387, 230 N.W. 37, 38 (1930).

n100. *City of De Pere v. Public Serv. Comm'n*, 266 Wis. 319, 325, 63 N.W.2d 764, 768 (1954).

n101. *City of Milwaukee v. Milwaukee Suburban Transp. Corp.*, 6 Wis. 2d 299, 304, 94 N.W.2d 584, 588 (1959) (quoting 51 Am. Jur. 3 Taxation (1944)).

n102. *State ex rel. Bldg. Owners & Managers Ass'n v. Adamany*, 64 Wis. 2d 280, 289, 219 N.W. 274, 279 (1974).

n103. *Buse v. Smith*, 74 Wis. 2d 550, 575, 247 N.W.2d 141, 153 (1976).

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n104. *State ex rel. La Follette v. Iorphy*, 85 Wis. 2d 94, 108, 270 N.W.2d 187, 192 (1978).

n105. *O'Donnell v. Reivitz*, 144 Wis. 2d 717, 725, 424 N.W.2d 733, 735 (Ct. App. 1988).

-----End Footnotes-----

In order to apply the rule that only units of government may tax, it is necessary to define "unit of government." Unfortunately, the seven cases that enunciate the rule do not define the term. Nor is the term defined in other tax cases. One logical reaction to this vacuum is to proceed inductively. Common sense suggests that the state, counties, cities, villages, and towns are units of government. An attempt to devise a definition by identifying the attributes that these entities share would perhaps result in a statement such as "a unit of government is an entity that performs a wide variety of functions for the general public in its jurisdiction and that has elected officials." Difficulty with this definition soon arises.

The two next most obvious candidates for the status of unit of government are school districts and vocational, technical, and adult education districts. The first difficulty with the definition above is that these districts with taxing authority perform narrow functions for the public within their jurisdictions. A second difficulty is that the elected officials test eliminates vocational, technical and adult education districts and the special districts that have taxing authority, because all of these entities have appointed - not elected - officials. It also casts some doubt on the inclusion of certain school districts, since the annual meetings of common and union high school districts have taxing authority.

However, one can resolve these difficulties by asking not "what is a unit of government?" but "what is not a unit of government?" If the latter question can be answered, the principle that only units of government may tax can be applied, and one can determine at least some of the entities that may not tax. Although identifying every entity that is not a [\*469] unit of government is impossible, many entities employ the strategy of avoiding classification as a unit of government in order to avoid constitutional limitations. Surely those entities cannot argue both that constitutional limitations do not apply to them because they are not units of government and that they have taxing authority because they are units of government.

The entities that have worked themselves into this corner are a number of authorities and similar entities created by statute which have labels that make them look like units of government. Examples include industrial development agencies ("public instrumentality and body corporate and politic"), n106 county housing authorities (no label is given, but because statutes that apply to city housing authorities also apply to county housing authorities, each is a "public body corporate and politic"), n107 regional transportation authority (not labeled), n108 veterans' housing authorities ("public body corporate and politic"), n109 housing authorities for elderly persons ("public body corporate and politic"), n110 city housing authorities ("public body corporate and politic"), n111 redevelopment authorities ("body corporate and politic"), n112 housing and community development authorities ("body politic"), n113 metropolitan transit authorities ("political subdivision, body politic and

corporate"), n114 the Health and Educational Facilities Authority ("public body politic and corporate"), n115 the Bradley Center Sports and Entertainment Corporation ("public body corporate and politic"), n116 the Wisconsin Housing and Economic Development Authority ("public body corporate and politic"), n117 and the World Dairy Center Authority ("public body corporate and politic"). n118 None of these entities has statutory taxing authority and probably none, despite the statutory descriptions of their nature, could constitutionally be given taxing authority.

-----Footnotes-----

n106. Wis. Stat. 59.071(4)(d) (1991-92).

n107. Id. 59.075.

n108. Id. 59.966.

n109. Id. 66.39(2).

n110. Id. 66.395(4)(a).

n111. Id. 66.40(4)(a).

n112. Id. 66.431.

n113. Id. 66.4325.

n114. Id. 66.94(2).

n115. Id. 231.02(1).

n116. Id. 232.03(1).

n117. Id. 234.02(1).

n118. Id. 235.02(1).

-----End Footnotes-----

[\*470]

A case about the Housing Finance Authority illustrates the machinations involved in avoiding constitutional prohibitions by avoiding being labeled a unit of government. n119 In the case, the court held that the Housing Finance Authority (predecessor to the Wisconsin Housing and Economic Development Authority) had been put together in such a way as to prevent it from being subject to the constitutional debt limits, the prohibition against pledging the



Improvements. n120 That is, the court held that the authority was not a unit of government and was not part of the state. In another case, the court held that a local entity that was akin to an authority, an industrial development agency, was not subject to the constitutional limit on municipal debt n121 because it was not a municipality. n122

-----Footnotes-----

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n119. State ex rel. Warren v. Nusbaum, 59 Wis. 2d 391, 208 N.W.2d 780 (1973).

n120. Wis. Const. art. VIII, 4, 6, 7; art. VIII, 3; art. VIII, 10.

n121. Id. art. XI, 3.

n122. State ex rel. Bowman v. Barczak, 34 Wis. 2d 57, 148 N.W.2d 683 (1967).

-----End Footnotes-----

Two important determinations must be made in accordance with the rule that only units of government may tax. First, the extent to which non-governmental bodies may participate in imposing taxes for governmental units must be determined, and second, it must be determined whether the legislature has delegated legislative authority to tax contrary to the state constitution. n123 In an early case, the court addressed these issues by distinguishing between two meanings of "levy a tax." n124 One meaning refers to the determination of the amount of revenue to be raised and the vote to impose the tax, while the other meaning refers to the carrying out of mere ministerial duties in regard to a tax. n125 The court held that the State Board of Assessors, which was not a governmental unit, exercised only ministerial duties when it assessed railroad property and applied the statewide average property tax rate to the assessed value. n126 Since the tax was previously approved by the legislature, it was imposed by the state and was valid. However, in a later case involving non-governmental officials and taxation, the court invalidated a tax. n127 At issue was a statute that allowed a group of freeholders, under certain circumstances, to force a town board to levy a tax for highways. The court held that "the tax power must be exerted by the legislative [\*471] branch of government either directly or through the officers of a political subdivision." n128 At this point, it seemed that non-governmental officials could not impose a tax, but could only perform ministerial duties necessary for its imposition.

-----Footnotes-----

n123. Wis. Const. art. IV, 1.

n124. Chicago & Northwestern Ry. Co. v. State, 128 Wis. 553, 629, 108 N.W. 557, 576 (1906).

n125. Id.

n126. Id. at 631, 108 N.W. at 576.

n127. State ex rel. Carey v. Ballard, 158 Wis. 251, 148 N.W. 1090 (1914).

n128. Id. at 258, 148 N.W. at 1092.

-----End Footnotes-----

The next time the court considered the issue of the status necessary to impose taxes, it found an unusual way to validate the property taxes imposed by

commissioners had authority to tell the county board the amount of revenue the commission needed. The board was then required to issue bonds in an amount necessary to provide the needed revenue and to impose a tax to retire the bonds.

It appeared that the commission, through its agent, the county, imposed the tax. It certainly determined the amount of revenue needed, which was not a mere ministerial duty. The court, rather than simply holding that the commission was a governmental body, unnecessarily adopted the reasoning of the court in the previous case and held that "the taxing power of the state is exerted through the Metropolitan Sewerage Commission and the various governing bodies and officers of the various municipalities." n130 The argument is sophistry because the state merely authorized the imposition of the tax, and the sewerage district, by means of the county, actually imposed the tax.

-----Footnotes-----

n129. Thielen v. Metropolitan Sewerage Comm'n, 178 Wis. 34, 189 N.W. 484 (1922).

n130. Id. at 54, 189 N.W. at 492.

-----End Footnotes-----

In a subsequent case, the court returned to the ministerial duties argument. That case involved the Green Bay Sewerage District, which, unlike the Milwaukee district, had the authority to impose a tax itself rather than the mere authority to require a county to impose a tax. n131 The court improbably found that the district's determination of its revenue needs and its other actions were ministerial n132 and that the tax was actually imposed not by the district, but by the legislature. n133 A few years later the court reached the same result for the same reasons. n134 Finally, the court validated a tax imposed by a vocational, technical, and adult education district, holding that the legislature had delegated its [\*472] taxing authority to the district and that such a delegation was constitutional. n135

-----Footnotes-----

n131. Golden v. Green Bay Metro. Sewerage Dist., 210 Wis. 193, 201, 246 N.W. 505, 508 (1933).

n132. Id. at 202, 246 N.W. at 509.

n133. Id. at 203, 246 N.W. at 509.

n134. State ex rel. Milwaukee Sewerage Comm'n v. Board of Supervisors, 220 Wis. 670, 675, 265 N.W. 848, 850 (1936).

n135. Village of West Milwaukee v. Area Bd. of Vocational, Tech. & Adult Educ., 51 Wis. 2d 356, 369, 187 N.W.2d 387, 392 (1971).

-----End Footnotes-----

In addition to granting taxing authority, the section of the constitution containing the uniformity clause limits taxing authority. n136 The most significant limit is the requirement of uniformity, which has been elaborated on in more than 125 appellate cases and applies only to the property tax. A recent article exhaustively covers that subject. n137

-----Footnotes-----

n136. Wis. Const. art. VIII, 1.

n137. Jack Stark, *The Uniformity Clause Of The State Constitution*, 76 Marq. L. Rev. 577 (1993).

-----End Footnotes-----

This section of the state constitution also requires that the exemptions for taxes on incomes, privileges, and occupations be "reasonable." The reasonableness requirement was litigated in a case involving the Housing Finance Authority. The court found that an income tax exemption for the earnings from the authority's notes and bonds was reasonable, defined as having "a reasonable relation to a legitimate end of governmental action." n138 The reasonableness requirement has probably been litigated so rarely because reasonableness is far from a demanding standard.

-----Footnotes-----

n138. *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 438, 208 N.W.2d 780, 808 (1973).

-----End Footnotes-----

Oddly enough, the meaning of "income" in that section of the constitution has frequently been litigated in cases in which taxpayers have argued that the income tax was improperly applied to them. They argued that "income" is a limiting term. In most cases the subject was earnings on intangible property. The usual argument was that part of the earnings were a return of capital, not "income." The first two cases involved earnings on bonds. In each case, the court held that "income" meant the "fruits of property and labor." n139 The next three cases on this issue involved dividends. In each of the three the court defined "income" as "profit or gain." n140 The taxpayers lost all of the cases because the court defined income so broadly. In the next case, however, the court cited the "profit or gain" definition and held that revenue from the sale of tobacco was not entirely profit or gain because the seller should be allowed to deduct the cost of producing the tobacco when computing the [\*473] tax on that revenue. n141 In another dividends case, the court ignored the earlier, more precise definition of "income" and announced that it would give the term a meaning liberal enough to include dividends. n142 In five later cases, which involved potential earnings on secured contracts, n143 a loss on stock, n144 a gain on stock, n145 a gain on the transfer of real estate in a divorce, n146 and a gain on a stock option, n147 the court went back to the "profit or gain" definition. In short, although it has been established that the income tax may be imposed only on "income," the prevailing definition of "income" is so broad that the standard is easily met.

-----Footnotes-----

n139. *State ex rel. Manitowoc Gas Co. v. Wisconsin Tax Comm'n*, 161 Wis. 111, 116, 152 N.W. 848, 850 (1915); *Van Dyke v. City of Milwaukee*, 159 Wis. 460, 464, 146 N.W. 812, 814 (1915).

n140. *State ex rel. Moon v. Nygaard*, 170 Wis. 415, 418, 175 N.W. 810, 811 (1920); *State ex rel. Wisconsin Trust Co. v. Widule*, 164 Wis. 56, 61, 159 N.W.

630, 632 (1916); *State ex rel. Bundy v. Nygaard*, 163 Wis. 307, 310, 158 N.W. 87, 88 (1916).

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n141. Village of Westby v. Bekkedal, 172 Wis. 114, 119, 178 N.W. 451, 453 (1920).

n142. State ex rel. Dulaney v. Nygaard, 174 Wis. 597, 608, 183 N.W. 884, 887-88 (1921).

n143. State ex rel. Waldheim v. Wisconsin Tax Comm'n, 187 Wis. 539, 544, 204 N.W. 481, 482 (1925).

n144. Falk v. Wisconsin Tax Comm'n, 201 Wis. 292, 294, 230 N.W. 64, 64 (1930).

n145. Appeal of Siesel, 217 Wis. 661, 665, 259 N.W. 839, 841 (1935).

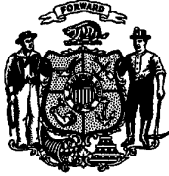
n146. Department of Taxation v. Siegman, 24 Wis. 2d 92, 96, 128 N.W.2d 658, 661 (1964).

n147. Uecke v. Department of Taxation, 36 Wis. 2d 530, 535, 153 N.W.2d 614, 617 (1967).

-----End Footnotes-----

#### V. Conclusion

The points about taxing authority and its limits presented above are the major ones that legislators and local officials who wish to create or modify a tax need to consider. Some of them are far from obvious and can be found only by carefully examining Wisconsin case law. Their importance bears reiteration. To venture beyond one's taxing authority is to court disaster.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
**1999 ASSEMBLY JOINT RESOLUTION**

1 **To create** section 11 of article VIII of the constitution; **relating to:** elector approval  
2 for certain taxing and spending decisions by the state and local governmental  
3 units, refunds of amounts in excess of the approved amounts, required reserves,  
4 emergency taxes and state mandates (first consideration).

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

This proposed constitutional amendment, proposed to the 1999 legislature on first consideration, ??

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

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5 ***Resolved by the assembly, the senate concurring, That:***

6 **SECTION 1.** Section 11 of article VIII of the constitution is created to read:

7 [Article VIII] Section 11 (1) In this section:

8 (a) "Ballot issue" means a question presented pursuant to this section to the  
9 electors for approval at an election.

1 (b) “Chief election officer” means:

2 1. For this state, the chief election officer for this state designated by the  
3 legislature by law or, if none is so designated, the secretary of state.

4 2. For a governmental unit other than the state, the chief election officer for the  
5 governmental unit designated by the legislature by law, or if none is so designated,  
6 the person designated as such by the governing body of the governmental unit.

7 (c) “Emergency” means a sudden unexpected happening; an unforeseen  
8 occurrence or condition; perplexing contingency or complication of circumstances; a  
9 sudden or unexpected occasion for action; exigency; or pressing necessity. The term  
10 excludes economic conditions, revenue shortfalls, and salary and fringe benefit  
11 increases of a governmental unit.

12 (d) “Fiscal year spending” means all expenditures and reserve increases under  
13 subsection (5) of a governmental unit except, as to both, those for refunds made in  
14 the current or next fiscal year or those from gifts, federal funds, collections for  
15 another governmental unit, pension fund earnings, net proceeds of the state lottery  
16 authorized pursuant to article IV, section 26 (6), reserve transfers or expenditures,  
17 damage awards, or real property sales.

18 (e) “Governmental unit” means the state; any city, village, town or county; or  
19 any school district or special purpose district, other than a sewerage district or water  
20 district, authorized by law to levy taxes on general property.

21 (f) “Inflation” means the percentage change in the United States Bureau of  
22 Labor Statistics Consumer Price Index for Milwaukee–Racine, all items, all urban  
23 consumers, or its successor index.

24 (f) “Population” means either:

1           1. The periodic census conducted by the United States department of commerce  
2 or its successor agency, or the annual update of such census; or

3           2. A different measure or index of population adopted by the legislature, by joint  
4 resolution, upon affirmative vote of two-thirds of the members present of each house.

5           (2) (a) This section takes effect on the ~~first~~ December 31 that occurs after the  
6 ratification of this paragraph, or as otherwise stated in this section.

7           (b) All provisions of this section are self-executing and severable.

8           (c) Any individual or class of individuals have standing to bring a suit to enforce  
9 this section. A court of record shall award a successful plaintiff costs and reasonable  
10 attorney fees in the suit, but may not allow a governmental unit to recover costs and  
11 reasonable attorney fees unless a suit against it is ruled frivolous.

12           (d) A governmental unit shall refund revenue collected, kept or spent in  
13 violation of this section since 4 full fiscal years before a suit is filed with 10% annual  
14 simple interest from the date of the initial violation. Notwithstanding section 1 of  
15 this article, a governmental unit may use any reasonable method for a refund under  
16 this section, including a temporary tax credit or rate reduction. A refund need not  
17 be proportional when prior payments are impractical to identify or return.

18           (3) (a) A ballot issue may be submitted only at an election at which either  
19 members of the legislature or members of the judiciary are regularly elected or at a  
20 primary election held to nominate candidates to be voted for at such an election, or  
21 on the Tuesday next succeeding the first Monday of November in odd-numbered  
22 years.

23           (b) At least 15 days before a ballot issue election, the governmental unit shall  
24 mail a titled notice or set of notices addressed to "All Qualified Electors" at each  
25 address of one or more active qualified electors. A title shall have this order of

1 preference: "NOTICE OF REFERENDUM TO EXCEED SPENDING  
2 LIMITS/INCREASE TAXES." A notice shall include only:

3 1. The election date, hours, ballot title, text, and address and telephone number  
4 of the election office of the governmental unit;

5 2. For a proposed increase in spending or taxation, the total or estimated total  
6 of fiscal year spending by the governmental unit for the current year and each of the  
7 past 4 years, and the overall percentage and dollar change of the proposed increase  
8 and of the past 4 years;

9 3. For the first full fiscal year of each proposed tax increase, an estimate of the  
10 maximum dollar amount of each increase by the governmental unit and of fiscal year  
11 spending by the governmental unit without the increase; and

12 4. Two summaries, up to 500 words each, one for and one against the ballot  
13 issue, prepared by the chief election officer.

14 (c) The summaries under paragraph (b) 4. may not mention the name of a  
15 person or group or an endorsement of, or a statement or position against, the ballot  
16 issue.

17 (d) If a tax increase or fiscal year spending exceeds an estimate in paragraph

18 (3) (b) 3. for the same fiscal year, the tax increase is thereafter reduced by the proportion  
19 that the increase is of the combined dollar excess, and the combined excess revenue  
20 shall be refunded in the next fiscal year. A ballot title for an increase in spending or

21 taxation shall begin "SHALL (GOVERNMENTAL UNIT) SPENDING LIMITS BE  
22 EXCEEDED (full fiscal year dollar amount in excess of the limit); or "SHALL  
23 (GOVERNMENTAL UNIT) TAXES BE INCREASED (first, or if phased in, final, full  
24 fiscal year dollar increase) ANNUALLY...?".



1           (4) Beginning on the first day that occurs after the ratification of this  
2 paragraph, a governmental unit must have elector approval under this section in  
3 advance for:

4           (a) Exceeding on a temporary or permanent basis a spending limit under this  
5 section.

6           (b) Unless subsection (6) applies, a new tax, tax rate increase, mill levy above  
7 that for the prior year, extension of an expiring tax, or a tax change causing a net tax  
8 revenue gain to the governmental unit, including one required under section 5 of this  
9 article, section 4 of article X or section 3 (4) of article XI.

10          (5) (a) Each governmental unit shall reserve for the first fiscal year that occurs  
11 after the ratification of this paragraph 1% or more, for the second fiscal year that  
12 occurs after the ratification of this paragraph 2% or more, for the third fiscal year  
13 that occurs after the ratification of this paragraph 3% or more, and for all later fiscal  
14 years, except as provided in paragraph (b), 4% or more of its fiscal year estimated  
15 spending.

16          (b) Unused reserves become part of the next year's reserve.

17          (c) If the use of the reserve decreases the reserve below 4% in the fourth fiscal  
18 year that occurs after the ratification of this paragraph or a later year, the  
19 governmental unit, beginning in the fourth fiscal year that occurs after the  
20 ratification of this paragraph, shall reserve, in addition to the unused reserve from  
21 the prior year, 1% or more for the first year after the reserve is decreased below 4%,  
22 2% or more for the second year after the reserve is decreased below 4%, 3% or more  
23 for the third year after the reserve is decreased below 4%, and 4% or more for the  
24 fourth year after the reserve is decreased below 4%.

1           (6) This section does not grant new taxing power. Any emergency tax imposed  
2 by the state shall meet all of the following conditions:

3           (a) Two-thirds of the members elected to each house of the legislature declare  
4 the emergency and impose the tax by separate recorded roll call votes.

5           (b) Emergency tax revenue is spent only after the reserve under subsection (5)  
6 is depleted, and is refunded under this section within 180 days after the emergency  
7 ends if not spent on the emergency.

8           (c) An emergency tax not approved at the first election permitted under  
9 subsection (3)(a) that occurs at least 60 days after the declaration shall expire at the  
10 end of the taxable year in which the election is held.

11           (7) (a) The maximum annual percentage change in fiscal year spending by the  
12 state equals inflation plus the percentage change in the state population in the prior  
13 calendar year, adjusted for revenue changes approved by the electors under this  
14 section after the year in which the ratification of this paragraph occurs.

15           (b) The maximum annual percentage change in fiscal year spending by a school  
16 district equals inflation in the prior calendar year plus the percentage change in its  
17 student enrollment, adjusted for revenue changes approved by the electors under  
18 this section after the year in which the ratification of this paragraph occurs.

19           (c) The maximum annual percentage change in fiscal year spending by a  
20 governmental unit, other than the state or a school district, equals inflation in the  
21 prior calendar year plus population growth of the governmental unit, adjusted for  
22 revenue changes approved by the electors under this section after the year in which  
23 the ratification of this paragraph occurs.

24           (d) Population under this subsection shall be determined by annual federal  
25 census estimates, if available, and shall be adjusted to match the population under

1 each federal decennial census. A population measure or index shall apply for  
2 subsequent fiscal years, except it shall not apply for the fiscal year following the  
3 adoption of the measure or index if the measure or index is adopted after March 1  
4 of the preceding fiscal year.

5 (e) The legislature, by law, shall provide an adjustment method to phase in over  
6 a 10-year period the effect of a decline in population of a governmental unit on a  
7 limitation under this section. The adjustment method provided for in this paragraph  
8 shall be used in determining a limitation under this section beginning with the fiscal  
9 year immediately following the decline.

10 (f) The legislature, by law, shall provide an adjustment method to reflect any  
11 subsequent transfer of all or any part of the cost of providing a governmental  
12 function. The adjustment method provided for in this paragraph shall be used in  
13 determining a limitation under this section beginning with the fiscal year  
14 immediately following the transfer.

15 (g) The legislature, by law, shall provide an adjustment method to reflect any  
16 subsequent annexation, creation of a new governmental unit, consolidation or  
17 change in the boundaries of a governmental unit. The adjustment method provided  
18 for in this paragraph shall be used in determining a limitation under this section  
19 beginning with the fiscal year immediately following the annexation, creation of a  
20 new governmental unit, consolidation or change in the boundaries of a governmental  
21 unit.

22 *6* (h) A governmental unit shall reduce tax rates for the next tax year to reflect  
23 the excess of revenues over expenditures in a tax year, unless the electors under this  
24 section approve a taxing or spending change.





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3986/P8  
PJD&RAC:.....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
**1999 ASSEMBLY JOINT RESOLUTION**

\*\*\*\*NOTE: This draft carries out your latest e-mail items 1 to 3, but not items 4 and 5. Please review this draft on the hold harmless for declining populations (subsection (3) (e) to (g)) and ask Rep. Lasee what needs to be drafted differently. Please review this draft on the local payback (subsection (9) (a) to (c)) and ask Rep. Lasee what needs to be added or drafted differently. Should any of the other paragraphs be deleted? In reviewing the draft on last two issues, I realized that the section was not organized logically. I have reorganized it so that the definitions are first, followed by the general provisions. The key provisions establishing taxing and spending limits come next, followed by the election provisions required to exceed the limits and the emergency tax provisions restricting a method of temporarily handling the limits. Next comes the provisions on reserves and mandates followed by the enforcement mechanisms for all provisions (moved from three subsections in the /P7 draft), including reserves and mandates. Did you want the enforcement mechanisms to apply to violations of the reserve and mandate provisions too?

- 1 **To create** section 11 of article VIII of the constitution; **relating to:** elector approval
- 2 for certain taxing and spending decisions by the state and local governmental
- 3 units, emergency taxes, required reserves, state mandates and refunds of
- 4 amounts in excess of the approved amounts (first consideration).

---

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

This proposed constitutional amendment, proposed to the 1999 legislature on first consideration, ??

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

1           ***Resolved by the assembly, the senate concurring, That:***

2           **SECTION 1.** Section 11 of article VIII of the constitution is created to read:

3           [Article VIII] Section 11 (1) In this section:

4           (a) “Ballot issue” means a question presented pursuant to this section to the  
5 electors for approval at an election.

6           (b) “Chief election officer” means:

7           1. For this state, the chief election officer for this state designated by the  
8 legislature by law or, if none is so designated, the secretary of state.

9           2. For a governmental unit other than the state, the chief election officer for the  
10 governmental unit designated by the legislature by law, or if none is so designated,  
11 the person designated as such by the governing body of the governmental unit.

12           (c) “Emergency” means a sudden unexpected happening; an unforeseen  
13 occurrence or condition; perplexing contingency or complication of circumstances; a  
14 sudden or unexpected occasion for action; exigency; or pressing necessity. The term  
15 excludes economic conditions, revenue shortfalls, and salary and fringe benefit  
16 increases of a governmental unit.

17           (d) “Fiscal year spending” means all expenditures and reserve increases under  
18 subsection (7) of a governmental unit except, as to both, those for refunds made in  
19 the current or next fiscal year or those from gifts, federal funds, collections for  
20 another governmental unit, pension fund earnings, net proceeds of the state lottery  
21 authorized pursuant to article IV, section 26 (6), reserve transfers or expenditures,  
22 damage awards, or real property sales.

1           (e) “Governmental unit” means the state; any city, village, town or county; or  
2 any school district or special purpose district, other than a sewerage district or water  
3 district, authorized by law to levy taxes on general property.

4           (f) “Inflation” means the percentage change in the United States Bureau of  
5 Labor Statistics Consumer Price Index for Milwaukee–Racine, all items, all urban  
6 consumers, or its successor index.

7           (g) “Population” means either:

8           1. The periodic census conducted by the United States department of commerce  
9 or its successor agency, or the annual update of such census; or

10           2. A different measure or index of population adopted by the legislature, by joint  
11 resolution, upon affirmative vote of two–thirds of the members present of each house.

12           (h) “Professional drafting agency” means the professional drafting agency of the  
13 legislature designated by the legislature by law or, if none is so designated, the  
14 drafting agency designated as such by the chief election officer.

15           (2) (a) This section first applies to a governmental unit on the first day of the  
16 first fiscal year of the governmental unit that occurs after the ratification of this  
17 paragraph, or as otherwise stated in this section.

18           (b) All provisions of this section are self–executing and severable.

19           (c) Any individual or class of individuals have standing to bring a suit to enforce  
20 this section. A court of record shall award a successful plaintiff costs and reasonable  
21 attorney fees in the suit, but may not allow a governmental unit to recover costs and  
22 reasonable attorney fees unless a suit against it is ruled frivolous.

23           (3) (a) The maximum annual percentage change in fiscal year spending by the  
24 state equals inflation plus the percentage change in the state population in the prior

1 calendar year, adjusted for revenue changes approved by the electors under this  
2 section after the year in which the ratification of this paragraph occurs.

3 (b) The maximum annual percentage change in fiscal year spending by a school  
4 district equals inflation in the prior calendar year plus the percentage change in its  
5 student enrollment, adjusted for revenue changes approved by the electors under  
6 this section after the year in which the ratification of this paragraph occurs.

7 (c) The maximum annual percentage change in fiscal year spending by a  
8 governmental unit, other than the state or a school district, equals inflation in the  
9 prior calendar year plus population growth of the governmental unit, adjusted for  
10 revenue changes approved by the electors under this section after the year in which  
11 the ratification of this paragraph occurs.

12 (d) Population under this subsection shall be determined by annual federal  
13 census estimates, if available, and shall be adjusted to match the population under  
14 each federal decennial census. A population measure or index shall apply for  
15 subsequent fiscal years, except it shall not apply for the fiscal year following the  
16 adoption of the measure or index if the measure or index is adopted after March 1  
17 of the preceding fiscal year.

18 (e) The legislature, by law, shall provide an adjustment method to phase in over  
19 a 10-year period the effect of a decline in population of a governmental unit on a  
20 limitation under this section. The adjustment method provided for in this paragraph  
21 shall be used in determining a limitation under this section beginning with the fiscal  
22 year immediately following the decline.

23 (f) The legislature, by law, shall provide an adjustment method to reflect any  
24 subsequent transfer of all or any part of the cost of providing a governmental  
25 function. The adjustment method provided for in this paragraph shall be used in

*Handwritten note:*  
#  
The note refers to the text in paragraph (e).



1 determining a limitation under this section beginning with the fiscal year  
2 immediately following the transfer.

3 (g) The legislature, by law, shall provide an adjustment method to reflect any  
4 subsequent annexation, creation of a new governmental unit, consolidation or  
5 change in the boundaries of a governmental unit. The adjustment method provided  
6 for in this paragraph shall be used in determining a limitation under this section  
7 beginning with the fiscal year immediately following the annexation, creation of a  
8 new governmental unit, consolidation or change in the boundaries of a governmental  
9 unit.

10 (4) Beginning on the first day that occurs after the ratification of this  
11 paragraph, a governmental unit must have elector approval under this section in  
12 advance for:

13 (a) Exceeding on a temporary or permanent basis a spending limit under this  
14 section.

15 (b) Unless subsection (6) applies, a new tax, tax rate increase, mill levy above  
16 that for the prior year, extension of an expiring tax, or a tax change causing a net tax  
17 revenue gain to the governmental unit, including one required under section 5 of this  
18 article, section 4 of article X or section 3<sup>(3)</sup> or (4) of article XI.

\*\*\*\*NOTE: "Unless subsection (6) applies," is unclear. Subsection (6)  
only applies to emergency taxes. Are any of the types of increases  
mentioned in this paragraph an emergency tax? Please tell me what Rep.  
Lasee wants to accomplish with that phrase so I can redraft it.

19 (5) (a) A ballot issue may be submitted only at an election at which either  
20 members of the legislature or members of the judiciary are regularly elected or at a  
21 primary election held to nominate candidates to be voted for at such an election, or

1 on the Tuesday next succeeding the first Monday of November in odd-numbered  
2 years.

3 (b) At least 15 days before a ballot issue election, the governmental unit shall  
4 mail a titled notice or set of notices addressed to “All Qualified Electors” at each  
5 address of one or more active qualified electors. A title shall have this order of  
6 preference: “NOTICE OF REFERENDUM TO EXCEED SPENDING  
7 LIMITS/INCREASE TAXES.” A notice shall include only:

8 1. The election date, hours, ballot title, text, and address and telephone number  
9 of the election office of the governmental unit;

10 2. For a proposed increase in spending or taxation, the total or estimated total  
11 of fiscal year spending by the governmental unit for the current year and each of the  
12 past 4 years, and the overall percentage and dollar change of the proposed increase  
13 and of the past 4 years;

14 3. For the first full fiscal year of each proposed tax increase, an estimate of the  
15 maximum dollar amount of each increase by the governmental unit and of fiscal year  
16 spending by the governmental unit without the increase; and

17 4. Two summaries, up to 500 words each, one for and one against the ballot  
18 issue.

19 (c) The summaries under paragraph (b) 4. shall be prepared for this state by the  
20 professional drafting agency and for a governmental unit other than this state by the  
21 chief election officer. The summaries under paragraph (b) 4. may not mention the  
22 name of a person or group or an endorsement of, or a statement or position against,  
23 the ballot issue.

24 (d) A ballot title for an increase in spending or taxation shall begin “SHALL  
25 (GOVERNMENTAL UNIT) SPENDING LIMITS BE EXCEEDED (full fiscal year

1 dollar amount in excess of the limit); or “SHALL (GOVERNMENTAL UNIT) TAXES  
2 BE INCREASED (first, or if phased in, final, full fiscal year dollar increase)  
3 ANNUALLY...?”.

4 (6) (a) This section does not grant new taxing power.

5 (b) Any emergency tax imposed by the state must meet all of the following  
6 conditions:

7 1. Two-thirds of the members elected to each house of the legislature declare  
8 the emergency and impose the tax by separate recorded roll call votes.

9 2. Emergency tax revenue is spent only after the reserve under subsection (7)  
10 is depleted, and is refunded under this section within 180 days after the emergency  
11 ends if not spent on the emergency.

12 3. An emergency tax not approved at the first election permitted under  
13 subsection (5) (a) that occurs at least 60 days after the declaration shall expire at the  
14 end of the taxable year in which the election is held.

15 (7) (a) Each governmental unit shall reserve for the first fiscal year that occurs  
16 after the ratification of this paragraph 1% or more, for the second fiscal year that  
17 occurs after the ratification of this paragraph 2% or more, for the third fiscal year  
18 that occurs after the ratification of this paragraph 3% or more, and for all later fiscal  
19 years, except as provided in paragraph (b), 4% or more of its fiscal year estimated  
20 spending.

21 (b) Unused reserves become part of the next year’s reserve.

22 (c) If the use of the reserve decreases the reserve below 4% in the fourth fiscal  
23 year that occurs after the ratification of this paragraph or a later year, the  
24 governmental unit, beginning in the fourth fiscal year that occurs after the  
25 ratification of this paragraph, shall reserve, in addition to the unused reserve from

1 the prior year, 1% or more for the first year after the reserve is decreased below 4%,  
2 2% or more for the second year after the reserve is decreased below 4%, 3% or more  
3 for the third year after the reserve is decreased below 4%, and 4% or more for the  
4 fourth year after the reserve is decreased below 4%.

5 (8) This state shall not impose upon any other governmental unit any part of  
6 the total costs of a new program or service, or an increase in an exiting program or  
7 service, unless a specific appropriation is made sufficient to pay the governmental  
8 unit for those costs. The proportion of state revenue paid to all governmental units,  
9 taken as a group, shall not be reduced below that proportion in effect on the first day  
10 that occurs after the ratification of this section. If costs are transferred from one  
11 governmental unit to another governmental unit, either by law or court order, the  
12 limitations imposed by this section shall be adjusted and transferred accordingly so  
13 that total costs are not increased as a result of the transfer.

14 (9) (a) If a tax increase or fiscal year spending exceeds an estimate in subsection  
15 (5) (b) 3. for the same fiscal year, the tax increase is thereafter reduced by the  
16 proportion that the increase is of the combined dollar excess, and the combined  
17 excess revenue shall be refunded in the next fiscal year.

\*\*\*\*NOTE: This was (3) (d) in LRB-3986/P7.

18 (b) A governmental unit shall reduce tax rates for the next tax year to reflect  
19 the excess of revenues over expenditures in a tax year, unless the electors under this  
20 section approve a taxing or spending change.

\*\*\*\*NOTE: This was (7) (h) in LRB-3986/P7.

21 (c) A governmental unit shall refund revenue collected, kept or spent in  
22 violation of this section since 4 full fiscal years before a suit is filed with 10% annual  
23 simple interest from the date of the initial violation. Notwithstanding section 1 of





*kmj*

**1999 ASSEMBLY JOINT RESOLUTION**

*Anote*

*By 2p.m. 7*  
*2/14*  
*[Signature]*

1 **To create** section 11 of article VIII of the constitution; **relating to:** elector approval  
2 for certain taxing and spending decisions by the state and local governmental  
3 units, emergency taxes, required reserves, state mandates, refunds of amounts  
4 in excess of the approved amounts and reduction of tax rates to reflect the  
5 excess of revenues over expenditures (first consideration).

***Analysis by the Legislative Reference Bureau***

This proposed constitutional amendment, proposed to the 1999 legislature on first consideration, requires elector approval for certain taxing and spending decisions by the state and local governmental units, such as exceeding a spending limit or imposing new taxes, increasing tax rates, increasing total levies, extending expiring taxes, or making tax changes causing net tax revenue gains; requires that emergency taxes imposed by the state meet certain conditions; requires governmental units to establish reserves; prohibits the state from imposing any part of the costs of a new program or service, or an increase in an existing program or service, on local governmental units, unless ~~it make~~ an appropriation to pay for those costs; and requires governmental units to refund amounts in excess of the approved amounts and reduce tax rates to reflect the excess of revenues over expenditures.

*the state makes*

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

6 ***Resolved by the assembly, the senate concurring, That:***

WFO: correct  
all single  
spacing to  
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places

SECTION 1. Section 11 of article VIII of the constitution is created to read:

[Article VIII] Section 11 (1) In this section:

(a) "Ballot issue" means a question presented pursuant to this section to the electors for approval at an election.

(b) "Chief election officer" means:

1. For this state, the chief election officer for this state designated by the legislature by law or, if none is so designated, the secretary of state.

2. For a governmental unit other than the state, the chief election officer for the governmental unit designated by the legislature by law or, if none is so designated, the person designated as such by the governing body of the governmental unit.

(c) "Emergency" means a sudden unexpected happening; an unforeseen occurrence or condition; perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; or pressing necessity. The term excludes economic conditions, revenue shortfalls, and salary and fringe benefit increases of a governmental unit.

(d) "Fiscal year spending" means all expenditures and reserve increases under subsection (7) of a governmental unit except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another governmental unit, pension fund earnings, net proceeds of the state lottery authorized pursuant to article IV, section (6), reserve transfers or expenditures, damage awards, or real property sales.

(e) "Governmental unit" means the state; any city, village, town or county; or any school district or special purpose district, other than a sewerage district or water district, authorized by law to levy taxes on general property.

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article IV section (6) OFA

1 (f) "Inflation" means the percentage change in the United States Bureau of  
2 Labor Statistics Consumer Price Index for Milwaukee–Racine, all items, all urban  
3 consumers, or its successor index.

4 (g) "Population" means either:

5 1. The periodic census conducted by the United States department of commerce  
6 or its successor agency, or the annual update of such census; or

7 2. A different measure or index of population adopted by the legislature, by joint  
8 resolution, upon <sup>the</sup> affirmative vote of two–thirds of the members present of each house.

9 (h) "Professional drafting agency" means the professional drafting agency of the  
10 legislature designated by the legislature by law or, if none is so designated, the  
11 drafting agency designated as such by the chief election officer.

12 (2) (a) This section first applies to a governmental unit on the first day of the  
13 first fiscal year of the governmental unit that occurs after the ratification of this  
14 paragraph, or as otherwise stated in this section.

15 (b) All provisions of this section are self–executing and severable.

16 (c) Any individual or class of individuals have standing to bring a suit to enforce  
17 this section. A court of record shall award a successful plaintiff costs and reasonable  
18 attorney fees in the suit, but may not allow a governmental unit to recover costs and  
19 reasonable attorney fees unless a suit against it is ruled frivolous.

20 (3) (a) The maximum annual percentage change in fiscal year spending by the  
21 state equals inflation in the prior calendar year, plus the percentage change in the  
22 state population in the prior calendar year if a positive number, adjusted for revenue  
23 changes approved by the electors under this section after the year in which the  
24 ratification of this paragraph occurs.



1 (b) The maximum annual percentage change in fiscal year spending by a school  
 2 district equals inflation in the prior calendar year, plus the percentage change in its  
 3 pupil enrollment if a positive number, adjusted for revenue changes approved by the  
 4 electors under this section after the year in which the ratification of this paragraph  
 5 occurs.

6 (c) The maximum annual percentage change in fiscal year spending by a  
 7 governmental unit, other than the state or a school district, equals inflation in the  
 8 prior calendar year, plus the percentage change in the population of the  
 9 governmental unit if a positive number, adjusted for revenue changes approved by  
 10 the electors under this section after the year in which the ratification of this  
 11 paragraph occurs.

12 (d) <sup>AA</sup>Population under this subsection shall be adjusted to match the population  
 13 under each federal decennial census. A population measure or index shall apply for  
 14 subsequent fiscal years, except <sup>that</sup> it shall not apply for the fiscal year following the  
 15 adoption of the measure or index if the measure or index is adopted after March 1  
 16 of the preceding fiscal year.

17 (e) The legislature, by law, shall provide a mechanism to adjust the amount of  
 18 a limitation under this section to reflect any subsequent transfer of all or any part  
 19 of the cost of providing a governmental function. The adjustment mechanism  
 20 provided for in this paragraph shall be used in determining a limitation under this  
 21 section beginning with the fiscal year immediately following the transfer.

22 (f) The legislature, by law, shall provide a mechanism to adjust the amount of  
 23 a limitation under this section to reflect any subsequent annexation, <sup>creation of a</sup>  
 24 new governmental unit, consolidation, or change in the boundaries of a governmental  
 25 unit. The adjustment mechanism provided for in this paragraph shall be used in

Handwritten notes and markings: A circled '24' with an arrow pointing to 'creation of a new governmental unit'. Another circled '24' with an arrow pointing to 'consolidation'. A circled '05' at the bottom.

1 determining a limitation under this section beginning with the fiscal year  
2 immediately following the annexation, creation of a new governmental unit,  
3 <sup>or</sup> consolidation or change in the boundaries of a governmental unit.

4 (4) Beginning on the first day that occurs after the ratification of this  
5 paragraph, a governmental unit must have elector approval under this section in  
6 advance for <sup>any of the following</sup>

7 (a) Exceeding on a temporary or permanent basis a spending limit under this  
8 section.

9 (b) Unless it is an emergency tax meeting the requirements of ~~subsection~~ (6) (b),  
10 a new tax, tax rate increase, total tax levy above that for the prior year, extension of  
11 an expiring tax, or a tax change causing a net tax revenue gain to the governmental  
12 unit, including one required under section 5 of this article, section 4 of article X or  
13 section 3 (3) or (4) of article XI.

14 (5) (a) A ballot issue may be submitted only at an election at which either  
15 members of the legislature or members of the judiciary are regularly elected or at a  
16 primary election held to nominate candidates to be voted for at such an election, or  
17 on the Tuesday next succeeding the first Monday of November in odd-numbered  
18 years.

19 (b) At least 15 days before a ballot issue election, the governmental unit shall  
20 mail a titled notice or set of notices addressed to "All Qualified Electors" at each  
21 address of one or more ~~active~~ <sup>residents</sup> qualified electors. A title shall have this order of  
22 preference: "NOTICE OF REFERENDUM TO EXCEED SPENDING  
23 LIMITS/INCREASE TAXES." A notice shall include only: <sup>notice</sup> ~~AD~~

24 1. The election date <sup>and</sup> hours, <sup>and</sup> the ballot title <sup>and</sup> text, <sup>and</sup> the address and telephone number  
25 of the election office of the governmental unit;

1 2. For a proposed increase in spending or taxation, the total or estimated total  
 2 of fiscal year spending by the governmental unit for the current year and each of the  
 3 past 4 years, and the overall percentage and dollar change of the proposed increase  
 4 ~~and of~~ the past 4 years;

5 3. For the first full fiscal year of each proposed tax increase, an estimate of the  
 6 maximum dollar amount of each increase by the governmental unit and of fiscal year  
 7 spending by the governmental unit without the increase; and

8 4. Two summaries, up to 500 words each, one for and one against the ballot  
 9 issue.

10 (c) The summaries under paragraph (b) 4. shall be prepared for this state by the  
 11 professional drafting agency and, for a governmental unit other than this state, by the  
 12 chief election officer. The summaries under paragraph (b) 4. may not mention the  
 13 name of a person or group or an endorsement of, or a statement or position against,  
 14 the ballot issue.

15 (d) A ballot title for an increase in spending or taxation shall begin "SHALL  
 16 (GOVERNMENTAL UNIT) SPENDING LIMITS BE EXCEEDED (full fiscal year  
 17 dollar amount in excess of the limit); or "SHALL (GOVERNMENTAL UNIT) TAXES  
 18 BE INCREASED (first, or if phased in, final, full fiscal year dollar increase)  
 19 ANNUALLY?".

20 (6) (a) This section does not grant new taxing power.

21 (b) Any emergency tax imposed by the state must meet all of the following  
 22 conditions:

23 1. Two-thirds of the members elected to each house of the legislature declare  
 24 the emergency and impose the tax by separate recorded roll call votes.

*over*

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2. Emergency tax revenue <sup>✓</sup> spent only after the reserve under subsection (7) is depleted, and <sup>must be</sup> refunded under this section within 180 days after the emergency ends if not spent on the emergency.

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3. An emergency tax <sup>that is</sup> not approved at the first election permitted under subsection (5) (a) that occurs at least 60 days after the declaration shall expire at the end of the taxable year in which the election is held.

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(7) (a) Each governmental unit shall reserve for the first fiscal year that occurs after the ratification of this paragraph 1% or more, for the ~~second~~ <sup>2nd</sup> fiscal year that occurs after the ratification of this paragraph 2% or more, for the ~~third~~ <sup>3rd</sup> fiscal year that occurs after the ratification of this paragraph 3% or more, <sup>keep</sup> and for all later fiscal years, except as provided in paragraph (b), 4% or more of its fiscal year estimated spending.

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(b) Unused reserves become part of the next year's reserve.

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(c) If the use of the reserve decreases the reserve below 4% in the ~~fourth~~ <sup>4th</sup> fiscal year that occurs after the ratification of this paragraph or a later year, the governmental unit, beginning in the ~~fourth~~ <sup>4th</sup> fiscal year that occurs after the ratification of this paragraph, shall reserve, in addition to the unused reserve from the prior year, 1% or more for the first year after the reserve is decreased below 4%, 2% or more for the ~~second~~ <sup>2nd</sup> year after the reserve is decreased below 4%, 3% or more for the ~~third~~ <sup>3rd</sup> year after the reserve is decreased below 4%, and 4% or more for the ~~fourth~~ <sup>4th</sup> year after the reserve is decreased below 4%.

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(8) This state shall not impose upon any other governmental unit any part of the total costs of a new program or service, or an increase in an existing program or service, unless a specific appropriation is made sufficient to pay the governmental unit for those costs. The proportion of state revenue paid to all other governmental

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1 units, taken as a group, shall not be reduced below that proportion in effect on the  
2 first day that occurs after the ratification of this section. If costs are transferred from  
3 one governmental unit to another governmental unit, either by law or court order,  
4 the limitations imposed by this section shall be adjusted and transferred accordingly  
5 so that total costs are not increased as a result of the transfer.

6 (9)(a) If a tax increase or fiscal year spending exceeds an estimate in subsection  
7 (5) (b) 3. for the same fiscal year, the tax increase is thereafter reduced by the  
8 proportion that the increase is of the combined dollar excess, and the combined  
9 excess revenue shall be refunded in the next fiscal year.

10 (b) A governmental unit shall reduce tax rates for the next tax year to reflect  
11 the excess of revenues over expenditures in a tax year, unless the electors under this  
12 section approve a taxing or spending change.

13 (c) A governmental unit shall refund revenue collected, kept or spent in  
14 violation of this section since 4 full fiscal years before a suit is filed with 10% annual  
15 simple interest from the date of the initial violation. Notwithstanding section 1 of  
16 this article, a governmental unit may use any reasonable method for a refund under  
17 this section, including a temporary tax credit or rate reduction, and a refund need  
18 not be proportional when prior payments are impractical to identify or return.

19 **SECTION 2. Numbering of new provision.** The new section 11 of article VIII  
20 of the constitution created in this joint resolution shall be designated by the next  
21 higher open whole section number in that article if, before the ratification by the  
22 people of the amendment proposed in this joint resolution, any other ratified  
23 amendment has created a section 11 of article VIII of the constitution of this state.  
24 If one or more joint resolutions create a section 11 of article VIII simultaneously with  
25 the ratification by the people of the amendment proposed in this joint resolution, the

1 sections created shall be numbered and placed in a sequence so that the sections  
2 created by the joint resolution having the lowest enrolled joint resolution number  
3 have the numbers designated in that joint resolution and the sections created by the  
4 other joint resolutions have numbers that are in the same ascending order as are the  
5 numbers of the enrolled joint resolutions creating the sections.

6 *Be it further resolved, That* this proposed amendment be referred to the  
7 legislature to be chosen at the next general election and that it be published for 3  
8 months previous to the time of holding such election.

9 (END)

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

LRB-3986/1dn

PJD:jk:....  
*kmcy*

February 10, 2000

The first sentence of subsection (3) (d) seems to conflict with the definition of population, so I removed "shall be determined by annual federal census estimates, if available, and" from the previous draft. OK?

The increases in subsection (4) (b) are not subject to adjustment for inflation, but the limits in subsection (3) are so adjusted. OK as drafted?

Do you want to require a two-thirds vote to be able to expend the reserve under subsection (7)? There is no penalty for spending it, just a requirement that it ~~must~~ be replenished. It appears that it can be spent during a fiscal year with no consequence.

The enforcement mechanism in subsection (9) apply to violations of the reserve and mandate provisions too. OK?

Atty. Peter J. Dykman  
General Counsel  
Phone: (608) 266-7098  
E-mail: Peter.Dykman@legis.state.wi.us

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

LRB-3986/1dn  
PJD:kmg:ch

February 14, 2000

The first sentence of subsection (3) (d) seems to conflict with the definition of population, so I removed "shall be determined by annual federal census estimates, if available, and" from the previous draft. OK?

The increases in subsection (4) (b) are not subject to adjustment for inflation, but the limits in subsection (3) are so adjusted. OK as drafted?

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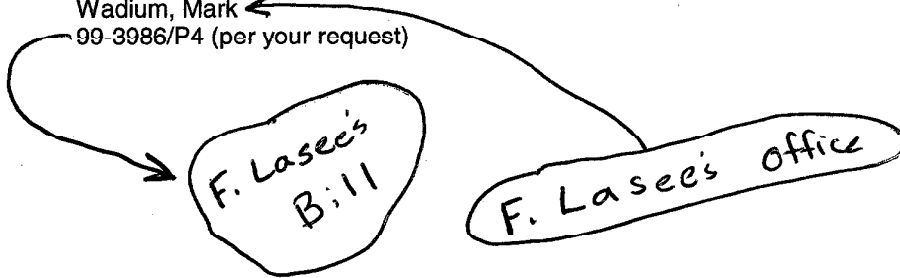
**Barman, Mike**

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**From:** Barman, Mike  
**Sent:** Thursday, December 16, 1999 4:58 PM  
**To:** Wadium, Mark  
**Subject:** 99-3986/P4 (per your request)



-max0002.TIF



*Mike Barman*

Mike Barman - Senior Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703

A hand-drawn oval containing the text 'PJD Draft' written in a casual, handwritten style.

*credit rev*

**1999 ASSEMBLY JOINT RESOLUTION**

*THURS 17th Today*

*only*  
*which may not be approved by a two-thirds vote*

1 **To create** section 11 of article VIII of the constitution; **relating to:** elector approval  
2 for certain taxing and spending decisions by the state and local governmental  
3 units, emergency taxes, required reserves, state mandates, refunds of amounts  
4 in excess of the approved amounts and reduction of tax rates to reflect the  
5 excess of revenues over expenditures (first consideration).

***Analysis by the Legislative Reference Bureau***

This proposed constitutional amendment, proposed to the 1999 legislature on first consideration, requires elector approval for certain taxing and spending decisions by the state and local governmental units, such as exceeding a spending limit or imposing new taxes, increasing tax rates, ~~increasing total levies~~, extending expiring taxes, or making tax changes causing net tax revenue gains; requires that emergency taxes imposed by the state meet certain conditions; requires governmental units to establish reserves; prohibits the state from imposing any part of the costs of a new program or service, or an increase in an existing program or service, on local governmental units, unless the state makes an appropriation to pay for those costs; and requires governmental units to refund amounts in excess of the approved amounts and reduce tax rates to reflect the excess of revenues over expenditures.

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

1 ***Resolved by the assembly, the senate concurring, That:***

2 **SECTION 1.** Section 11 of article VIII of the constitution is created to read:

3 [Article VIII] Section 11 (1) In this section:

4 (a) "Ballot issue" means a question presented pursuant to this section to the  
5 electors for approval at an election.

6 (b) "Chief election officer" means:

7 1. For this state, the chief election officer for this state designated by the  
8 legislature by law or, if none is so designated, the secretary of state.

9 2. For a governmental unit other than the state, the chief election officer for the  
10 governmental unit designated by the legislature by law or, if none is so designated,  
11 the person designated as such by the governing body of the governmental unit.

12 <sup>b</sup> (c) "Emergency" means a sudden unexpected happening; an unforeseen  
13 occurrence or condition; a perplexing contingency or complication of circumstances;  
14 a sudden or unexpected occasion for action; an exigency; or a pressing necessity. The  
15 term excludes economic conditions, revenue shortfalls, and salary and fringe benefit  
16 <sup>c</sup> increases of a governmental unit.

17 (d) "Fiscal year spending" means all expenditures and reserve increases under  
18 sub. (7) of a governmental unit except, as to both, those for refunds made in the  
19 current or next fiscal year or those from gifts, federal funds, collections for another  
20 governmental unit, pension fund earnings, net proceeds of the state lottery  
21 <sup>d</sup> authorized pursuant to section 24 (6) of article IV, reserve transfers or expenditures,  
22 damage awards or real property sales.

23 (e) "Governmental unit" means the state; any city, village, town or county; or  
24 any school district or special purpose district, other than a sewerage district or water  
25 district, authorized by law to levy taxes on general property.

*W. A. A. A. A.*

*e* For all governmental units

1 (f) "Inflation" means the percentage change in the United States Bureau of  
2 Labor Statistics Consumer Price Index for Milwaukee-Racine, all items, all urban  
3 consumers, or its successor index.

4 f (g) "Population" means either:

*for all governmental units other than this state, a*

5 1. The periodic census conducted by the United States department of commerce  
6 or its successor agency, or the annual update of such census; ~~or~~

3A

7 2. ~~A~~ different measure or index of population adopted by the legislature, by  
8 joint resolution, upon the affirmative vote of two-thirds of the members present of  
9 each house; *or*

10 (h) "Professional drafting agency" means the professional drafting agency of  
11 the legislature designated by the legislature by law *or*, if none is so designated, the  
12 ~~drafting agency designated as such by the chief election officer.~~

13 (2) (a) This section first applies to a governmental unit on the first day of the  
14 first fiscal year of the governmental unit that occurs after the ratification of this  
15 paragraph, or as otherwise stated in this section.

16 (b) All provisions of this section are self-executing and severable.

17 (c) Any individual or class of individuals have standing to bring a suit to enforce  
18 this section. A court of record shall award a successful plaintiff costs and reasonable  
19 attorney fees in the suit, but may not allow a governmental unit to recover costs and  
20 reasonable attorney fees unless a suit against it is ruled frivolous.

21 (3) (a) The maximum annual percentage change in fiscal year spending by the  
22 state equals inflation in the prior calendar year ~~plus~~ the percentage change in the  
23 state population in the prior calendar year if a positive number, adjusted for revenue  
24 changes approved by the electors under this section after the year in which the  
25 ratification of this paragraph occurs.

*(as compared to the year prior to that year)*

*in the prior calendar year as compared to the year prior to that year*

1 (b) The maximum annual percentage change in fiscal year spending by a school  
2 district equals inflation in the prior calendar year, plus the percentage change in its  
3 pupil enrollment if a positive number, adjusted for revenue changes approved by the  
4 electors under this section after the year in which the ratification of this paragraph  
5 occurs.

6 (c) The maximum annual percentage change in fiscal year spending by a  
7 governmental unit, other than the state or a school district, equals inflation in the  
8 prior calendar year, plus the percentage change in the population of the  
9 governmental unit if a positive number, adjusted for revenue changes approved by  
10 the electors under this section after the year in which the ratification of this  
11 paragraph occurs.

*4A*

12 (d) Population under this subsection shall be adjusted to match the population  
13 under each federal decennial census. A population measure or index shall apply for  
14 subsequent fiscal years, except that it shall not apply for the fiscal year following the  
15 adoption of the measure or index if the measure or index is adopted after March 1  
16 of the preceding fiscal year.

17 (e) The legislature, by law, shall provide a mechanism to adjust the amount of  
18 a limitation under this section to reflect any subsequent transfer of all or any part  
19 of the cost of providing a governmental function. The adjustment mechanism  
20 provided for in this paragraph shall be used in determining a limitation under this  
21 section beginning with the fiscal year immediately following the transfer.

22 (f) The legislature, by law, shall provide a mechanism to adjust the amount of  
23 a limitation under this section to reflect any subsequent annexation; creation of a  
24 new governmental unit; or consolidation, or change in the boundaries, of a  
25 governmental unit. The adjustment mechanism provided for in this paragraph shall

1 be used in determining a limitation under this section beginning with the fiscal year  
2 immediately following the annexation, creation of a new governmental unit, or  
3 consolidation or change in the boundaries of a governmental unit.

4 (4) Beginning on the first day that occurs after the ratification of this  
5 paragraph, a governmental unit must have elector approval under this section in  
6 advance for any of the following:

7 (a) Exceeding on a temporary or permanent basis a spending limit under this  
8 section.

9 (b) Unless it is an emergency tax meeting the requirements of sub. (6) (b), a new  
10 tax, tax rate increase, ~~total tax levy above that for the prior year~~, extension of an  
11 expiring tax, or a tax change causing a net tax revenue gain to the governmental unit,  
12 including one required under section 5 of this article, section 4 of article X or section  
13 3 (3) or (4) of article XI.

14 (5) (a) A ballot issue may be submitted only at an election at which either  
15 members of the legislature or members of the judiciary are regularly elected or at a  
16 primary election held to nominate candidates to be voted for at such an election, or  
17 on the Tuesday next succeeding the first Monday of November in odd-numbered  
18 years.

19 (b) At least 15 days before a ballot issue election, the governmental unit shall  
20 mail a titled notice or set of notices addressed to "All Qualified Electors" at each  
21 address of one or more residents. A notice shall have this order of preference:  
22 "NOTICE OF REFERENDUM TO EXCEED SPENDING LIMITS/INCREASE  
23 TAXES." A notice shall include only:

24 1. The election date and hours, the ballot title and text and the address and  
25 telephone number of the election office of the governmental unit;

1           2. For a proposed increase in spending or taxation, the total or estimated total  
2 of fiscal year spending by the governmental unit for the current year and each of the  
3 past 4 years, and the overall percentage and dollar change of the proposed increase  
4 over the past 4 years;

5           3. For the first full fiscal year of each proposed tax increase, an estimate of the  
6 maximum dollar amount of each increase by the governmental unit and an estimate  
7 of the maximum dollar amount of fiscal year spending by the governmental unit  
8 without the increase; and

9           4. Two summaries, up to 500 words each, one for and one against the ballot  
10 issue.

*a person designated by the governing body of the*  
11           (c) The summaries under par. (b) 4. shall be prepared for this state by the  
12 professional drafting agency and, for a governmental unit other than this state, by  
13 *the* chief election officer. The summaries under par. (b) 4. may not mention the name  
14 of a person or group or an endorsement of, or a statement or position against, the  
15 ballot issue. *question* *governmental unit*

16           (d) A ballot *question* for an increase in spending or taxation shall begin "SHALL  
17 (GOVERNMENTAL UNIT) SPENDING LIMITS BE EXCEEDED BY (full fiscal  
18 year dollar amount in excess of the limit)?" or "SHALL (GOVERNMENTAL UNIT)  
19 TAXES BE INCREASED BY (first, or, if phased in, final, full fiscal year dollar  
20 increase) ANNUALLY?".

21           (6) (a) This section does not grant new taxing power.

22           (b) Any emergency tax imposed by the state must meet all of the following  
23 conditions:

24           1. Two-thirds of the members elected to each house of the legislature must  
25 declare the emergency and impose the tax by separate recorded roll call votes.

1           2. Emergency tax revenue may be spent only after the reserve under sub. (7)  
2 is depleted, and must be refunded under this section within 180 days after the  
3 emergency ends if not spent on the emergency.

4           3. An emergency tax that is not approved at the first election permitted under  
5 sub. (5) (a) that occurs at least 60 days after the declaration shall expire at the end  
6 of the taxable year in which the election is held.

7           (7) (a) Each governmental unit shall reserve for the first fiscal year that occurs  
8 after the ratification of this paragraph 1% or more, for the 2nd fiscal year that occurs  
9 after the ratification of this paragraph 2% or more, for the 3rd fiscal year that occurs  
10 after the ratification of this paragraph 3% or more, and for all later fiscal years,  
11 except as provided in par. (b), 4% or more, of its fiscal year estimated spending.

12           (b) Unused reserves become part of the next year's reserve.

13           (c) If the use of the reserve decreases the reserve below 4% in the 4th fiscal year  
14 that occurs after the ratification of this paragraph or a later year, the governmental  
15 unit, beginning in the 4th fiscal year that occurs after the ratification of this  
16 paragraph, shall reserve, in addition to the unused reserve from the prior year, 1%  
17 or more for the first year after the reserve is decreased below 4%, 2% or more for the  
18 2nd year after the reserve is decreased below 4%, 3% or more for the 3rd year after  
19 the reserve is decreased below 4% and 4% or more for the 4th year after the reserve  
20 is decreased below 4%.

7A

the costs of

21           (8) This state shall not impose upon any other governmental unit any part of  
22 the total costs of a new program or service, or an increase in an existing program or  
23 service, unless a specific appropriation is made sufficient to pay the governmental  
24 unit for those costs. The proportion of state revenue paid to all other governmental  
25 units, taken as a group, shall not be reduced below that proportion in effect on the



1 first day that occurs after the ratification of this section. If costs are transferred from  
2 one governmental unit to another governmental unit, either by law or court order,  
3 the limitations imposed by this section shall be adjusted and transferred accordingly  
4 so that total costs are not increased as a result of the transfer.

5 (9) (a) If a tax increase or fiscal year spending exceeds an estimate in sub. (5)  
6 (b) 3. for the same fiscal year, the tax increase is thereafter reduced by the proportion  
7 that the increase is of the combined dollar excess, and the combined excess revenue  
8 shall be refunded in the next fiscal year.

9 (b) A governmental unit shall reduce tax rates for the next tax year to reflect  
10 the excess of revenues over expenditures in a tax year, unless the electors under this  
11 section approve a taxing or spending change.

12 (c) A governmental unit shall refund revenue collected, kept or spent in  
13 violation of this section since 4 full fiscal years before a suit is filed with 10% annual  
14 simple interest from the date of the initial violation. Notwithstanding section 1 of  
15 this article, a governmental unit may use any reasonable method for a refund under  
16 this section, including a temporary tax credit or rate reduction, and a refund need  
17 not be proportional when prior payments are impractical to identify or return.

18 **SECTION 2. Numbering of new provision.** The new section 11 of article VIII  
19 of the constitution created in this joint resolution shall be designated by the next  
20 higher open whole section number in that article if, before the ratification by the  
21 people of the amendment proposed in this joint resolution, any other ratified  
22 amendment has created a section 11 of article VIII of the constitution of this state.  
23 If one or more joint resolutions create a section 11 of article VIII simultaneously with  
24 the ratification by the people of the amendment proposed in this joint resolution, the  
25 sections created shall be numbered and placed in a sequence so that the sections

1 created by the joint resolution having the lowest enrolled joint resolution number  
2 have the numbers designated in that joint resolution and the sections created by the  
3 other joint resolutions have numbers that are in the same ascending order as are the  
4 numbers of the enrolled joint resolutions creating the sections.

5 *Be it further resolved, That* this proposed amendment be referred to the  
6 legislature to be chosen at the next general election and that it be published for 3  
7 months previous to the time of holding such election.

8 (END)

3A

§ 3. ~~The population~~ For a governmental Unit, other than this state, an estimate of the population of the governmental unit ~~is~~ adopted ~~by~~ upon the affirmative vote of two-thirds of the members present of the governing body of the governmental unit.

**Dykman, Peter**

**From:** Wadium, Mark  
**Sent:** Wednesday, February 16, 2000 4:53 PM  
**To:** Dykman, Peter  
**Subject:** TABOR adjustment

## Representative Frank Lasee

Phone: (608) 266-9870 or (920) 406-9488 ~ Fax (608) 282-3602 ~ Rep.Lasee@legis.state.wi.us

DATE: 2-16-2000

TO: Peter Dykman

FROM: Representative Frank Lasee

RE: TABOR draft LBB-3986

Peter please use this language to deal with the problem that you and Representative Lasee discussed earlier of what happens when a local government unit over estimates the population growth for their unit. Frank wants them to repay it by limiting any future increases until their spending levels are back where they are suppose to be.

*it may not increase its fiscal year spending*

*4A Notwithstanding par. (c), if*

*rather than this statute or a school district,*  
a government unit overestimates the population ~~growth~~ and increases their spending accordingly, they shall receive no spending increases for CPL or Population growth until their budget reaches the amount determined by ~~the census data~~. For this subsection population increases are limited to the average yearly increase in population between the two prior ~~US~~ censuses.

*the governmental units paragraph,*

*under par. (c) according to sub. (1)(g) 1. or 2.*

If you want an explanation please give me a call.  
Thanks,  
Mark Wadium  
Office of Representative Frank Lasee  
State Capitol Room 7 North  
P.O. Box 8952  
Madison, WI 53708-8952  
(608) 266-9871

*Spending limit*

*Ⓣ*

7A

(d) Money reserved <sup>under this subsection</sup> may not be expended by the state unless two-thirds of the members elected to each house of the Legislature, declare the necessity for the expenditure and make the expenditure by separate <sup>cor</sup> recorded roll call votes.

or by a governmental unit other than the state unless two-thirds of the members elected to the governing body of the governmental unit,

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 02/14/2000

To: Representative F. Lasee

Relating to LRB drafting number: LRB-3986

**Topic**

Elector approval for state and local taxing and spending decisions

**Subject(s)**

Constitutional Amendments, Tax - miscellaneous, State Finance - miscellaneous, State Government - miscellaneous

1. **JACKET** the draft for introduction \_\_\_\_\_

in the **Senate** \_\_\_\_\_ or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Attorney Peter J. Dykman, General Counsel  
Telephone: (608) 266-7098