

1999 DRAFTING REQUEST

Bill

Received: 02/04/2000

Received By: shoveme

Wanted: As time permits

Identical to LRB: 99-4242/1

For: Brian Burke (608) 266-8535

By/Representing: Julie

This file may be shown to any legislator: NO

Drafter: shoveme

May Contact: Foley & Lardner, John
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jkreye

Subject: Counties
Munis - miscellaneous
Tax - miscellaneous
Bonding - municipal
Bonding - state
State Government - miscellaneous
Tax - sales

Extra Copies: PEN

Pre Topic:

No specific pre topic given

Topic:

Creation of special purpose district for professional football stadiums

Instructions:

Companion bill for AB ⁷³⁸(LRB -4242/1). See that bill file for complete drafting instructions. Special purpose district for the Packers, based on 1995 Act 56, the Brewers Bill.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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<i>11 MES 2/4/00</i>							
						<i>JACKET FOR SENATE</i>	

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1999 BILL

D-Note

Wanted
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JACKET
for Senate

1 AN ACT to renumber 66.066 (5) and 77.707; to amend 13.94 (4) (a) 1., 13.94 (10),
2 16.70 (14), 18.03 (5s), 19.42 (13) (a), 19.59 (1) (a), 19.59 (1) (g) 1. a., 25.50 (1) (d),
3 66.04 (2) (a) (intro.), 66.066 (1) (a), 66.066 (1) (c), 66.067, 66.30 (1) (a), 71.26 (1)
4 (bm), 71.26 (1m) (g), 71.36 (1m), 71.45 (1t) (g), 77.705 (title), 77.71, 77.76 (3m),
5 77.76 (4), 779.14 (1m) (d) 2. b. and 779.14 (1m) (d) 3.; and to create 20.395 (1)
6 (gv), 20.566 (1) (ge), 20.835 (4) (ge), 20.867 (5), 24.61 (2) (a) 8., 25.17 (3) (b) 11.,
7 66.04 (2) (a) 3q., 66.066 (5) (b), 71.05 (1) (c) 5., 77.54 (45), 77.706, 77.707 (2),
8 77.76 (3p), 85.62, 219.09 (1) (d), subchapter IV of chapter 229 [precedes
9 229.820] and 779.14 (4) of the statutes; relating to: creating a local
10 professional football stadium district; giving a local professional football
11 stadium district the authority to issue bonds and granting income tax
12 exemptions for interest income on bonds issued by the district; making a state
13 moral obligation pledge with respect to bonds issued by a local professional
14 football stadium district; giving a local professional football stadium district

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1 the authority to impose a sales tax and a use tax; creating an income and
2 franchise tax exemption for a local professional football stadium district; state
3 aid for transportation facilities associated with a professional football team's
4 home stadium; and making appropriations.

*Analysis by the Legislative Reference Bureau***CREATION AND DISSOLUTION OF A DISTRICT**

This bill creates a professional football stadium district, which is a special purpose district, in each county with a population of more than 150,000 that includes the principal site of an existing or to be constructed league-approved home stadium for a professional football team that is a member of a league of teams that have home stadiums in at least ten states and a collective average attendance for all league members of at least 40,000 per game over the five years immediately preceding the year in which a district is created. A district is a local unit of government that is a body corporate and politic and that is separate and distinct from, and independent of, the state and the political subdivisions within its jurisdiction. Under the bill, a district's jurisdiction remains fixed even if population or attendance figures subsequently decline below the minimums described. A district does not have jurisdiction over any relocated stadium, whether or not the stadium is approved by the league.

In connection with football stadium facilities, the powers of a district include the construction, maintenance, management and acquisition of the football stadium and facilities; the issuance of bonds and imposition of a sales tax and a use tax to finance the stadium and facilities; and the authority to enter into partnerships, joint ventures, common ownership or other arrangements with other persons to further the district's purposes. Before the taxes imposed by a district may take effect, however, the district's action must be approved in a referendum. A district may also set standards governing the use of, and the conduct within, the stadium and facilities, and may set and collect fees for the use of the facilities or for the right to purchase admission to events at the stadium. Unless it is not feasible to do so, the bill requires a district to enter into a contract with a professional football team, or a subsidiary or affiliate of the team, that requires the team or its subsidiary or affiliate to acquire and construct football stadium facilities that are part of any facilities that the district leases to the team or its subsidiary, whether or not the football stadium facilities are financed by a district.

The district is governed by a board that consists of two persons appointed by the governor, two persons appointed by the chief elected official of the most populous city within the district's jurisdiction, two persons appointed by the chief elected official of the county in which the football stadium is located and, if such a situation exists, one person appointed by the chief elected official of each city, village or town (municipality) within the district's jurisdiction, other than the most populous city

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within the district's jurisdiction, that has a boundary at the time of the district's creation that is contiguous to a boundary of the site of the football stadium.

A district may dissolve by action of the district board, subject to payment of the district's bonds and fulfillment of its other contractual obligations. If a district is dissolved, its property must be transferred to the municipalities and county in the district's jurisdiction in proportions determined by the secretary of administration, based on the contributions of each municipality and county to the development or improvement of the football stadium facilities.

Under the bill, a municipality or county within the district's jurisdiction may make grants or loans, or lease or transfer property, to a district; expend public funds to subsidize a district; or borrow money to fund grants, loans or subsidies to a district. With the consent of a district, such a municipality or county may also establish and collect fees or other charges applicable only to a football stadium for the right to purchase admission to events at the stadium.

BONDING

This bill grants a district the power to issue revenue bonds for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a local professional football stadium district. Under the bill, the bonds issued by the district may be secured by the district's interest in any football stadium facilities, by income from these facilities, by proceeds of bonds issued by the district and by other amounts placed in a special redemption fund and investment earnings on such amounts, including any taxes that the district is authorized to impose. The bill specifically provides that the district may not pledge its full faith and credit on the bonds and that the bonds are not a general obligation liability of the district.

The bill authorizes a district to establish a special debt service reserve fund, subject to certain findings of the secretary of administration. The special debt service reserve fund is significant, because if there are insufficient moneys in the special debt service reserve fund to meet the special debt service reserve fund requirement established in the bill, the legislature expresses its expectation and aspiration that, if certain conditions are met, the legislature would appropriate state moneys to the district in the amount necessary to restore the moneys in the fund to an amount equal to its special debt service reserve fund requirement. This expression of legislative expectation and aspiration has been referred to as a "state moral obligation pledge". The special debt service requirement is determined in the bond resolution authorizing the issuance of bonds.

In order to create a special debt service reserve fund backed up by the state moral obligation pledge, however, the secretary of administration must find that the bond proceeds will be used for purposes related to the football stadium facilities; that there is a reasonable likelihood that the bonds will be repaid without the necessity of drawing on funds in the special debt service reserve fund; that the amount of all bonds that would be secured by all special debt service reserve funds of the district will not exceed \$160,000,000; and that the bonds, other than refunding bonds, will be issued no later than December 31, 2004.

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In addition to creating a state moral obligation pledge to appropriate to the district the funds necessary to restore the special debt service reserve fund to an amount equal to its special debt service reserve fund requirement, the bill provides that the state pledges that it will not limit or alter the rights vested in a district under the bill before the district has fully performed its contracts and has fully met and discharged its bonds.

Finally, the bill contains provisions authorizing certain state and local government funds and certain regulated financial institutions to invest in bonds issued by the district; provides that all moneys received by a district, including proceeds from the sale of bonds, are trust funds to be held and applied solely for the purposes provided in the bill; and limits the personal liability of members of a district's board of directors with respect to the issuance of bonds.

PROVISION OF FINANCIAL SERVICES

This bill permits the building commission, upon request of a district, to serve as a financial consultant to the district for the purpose of assisting with and coordinating the issuance of bonds by the district.

FINANCE

This bill permits the legislative audit bureau to audit the records of a district. Under the bill, the joint legislative audit committee may review a district's performance.

ETHICS

Members of a district board are subject to the statutory code of ethics for local public officials. In addition, board members are subject to other standards of conduct that apply to state public officials. However, like other local public officials, district board members are not subject to periodic reporting requirements.

APPLICABILITY OF OTHER LAWS

Numerous laws that currently apply to special purpose districts and local units of government apply to a local professional football district, including, among others:

1. The district is subject to laws requiring, with certain exceptions, public notice of and access to meetings of the district board and public access to the district's records.

2. The district is subject to worker's compensation, unemployment insurance, state minimum wage and hour and family and medical leave laws.

3. The district is subject to the law requiring the payment of prevailing wages on local government public works projects.

4. The district is governed by laws regulating municipal administrative procedures and rights.

5. The district is subject to laws restricting employers from testing employees and prospective employees for human immunodeficiency virus (HIV) or an antibody to HIV.

6. The district is subject to the tort and antitrust liability limitation that currently applies to actions brought against local governmental units of \$50,000 per occurrence, and persons attempting to sue the district are subject to a requirement to file notice of their claims within 120 days of their occurrence.

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7. The professional football stadium and related facilities of the district are exempt from the property tax.

8. The district is subject to laws regulating buildings and safety.

9. The district may exercise eminent domain powers for public purposes, upon a showing of necessity.

10. Purchases made by the district, other than purchases of building materials, are subject to the sales tax and use tax and the property of the district is subject to special assessment levies.

Under the bill, the district may participate in:

1. The state public employe retirement plan and state-administered plans for deferred compensation, health care benefits and disability and survivor benefits.

2. The local government property insurance fund.

The bill provides that the district is not subject to laws regulating generally the ways in which funds of local governments may be invested.

The bill also provides that the district may:

1. Contract with municipalities and federally recognized Indian tribes and bands in this state for the receipt or furnishing of services or the joint exercise of powers or duties.

2. Participate in the state-operated local government pooled-investment fund.

Under the bill, the assets and liabilities of a district are not assets or liabilities of the county in which the district is located.

TAXATION

Under the bill, a local professional football stadium district may adopt a resolution to impose a sales tax and a use tax at a rate of no more than 0.5% on the sale or use of tangible personal property or services in the district subject to approval by the electors of a district at a referendum. The referendum may be held at any regularly scheduled primary or other election, or at a special election. The date of the referendum is determined by the county board of the county in which a district is located. The district tax revenue may be used only for purposes related to football stadium facilities. Under the bill, generally, the sales tax and use tax imposed by the district may not be collected after the district has retired its bonds related to the football stadium facilities and after reserve funds are adequately funded.

Under the bill, the income of a local professional football stadium district is exempt from the income tax and the franchise tax, and the income and interest from the district's obligations are exempt from the income tax and the franchise tax.

The bill creates a sales tax and a use tax exemption for parking related to professional football stadium facilities and for a license or other right to purchase admission to events at a professional football stadium.

LIENS

Current law provides certain protections to persons who provide labor and materials for a construction project. For example, a person who works on an improvement to privately owned land generally has a lien on all interests in the land (construction lien). However, under current law, a construction lien may not be filed against property owned by a public entity. Thus, in the case of a public construction project, a person who works on the project generally has a lien on money owing to the

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prime contractor, with certain exceptions. Furthermore, current law contains a bonding requirement, under which certain public construction contracts must include a provision requiring the prime contractor to provide or obtain a payment and performance bond or other payment assurance. In the case of a public construction contract with a local government entity, a bonding requirement applies to any contract exceeding \$50,000.

This bill exempts a public construction contract with a district from any applicable bonding requirement.

TRANSPORTATION AIDS

The bill authorizes the department of transportation (DOT) to make aid payments to a local professional football stadium district for the development, construction, reconstruction or improvement of bridges, highways, parking lots, garages, transportation facilities or other functionally related or auxiliary facilities or structures associated with any home stadium of a professional football team, and creates a continuing appropriation in the segregated transportation fund for this purpose. The bill does not appropriate any money for the purpose of DOT making such aid payments. Continuing appropriations are expendable until fully depleted or repealed by subsequent action of the legislature.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 13.94 (4) (a) 1. of the statutes, as affected by 1999 Wisconsin Act 9,
2 is amended to read:

3 13.94 (4) (a) 1. Every state department, board, examining board, affiliated
4 credentialing board, commission, independent agency, council or office in the
5 executive branch of state government; all bodies created by the legislature in the
6 legislative or judicial branch of state government; any public body corporate and
7 politic created by the legislature including specifically a professional baseball park
8 district, a local professional football stadium district and a family care district
9 created under s. 46.2895; every Wisconsin works agency under subch. III of ch. 49;

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1 every provider of medical assistance under subch. IV of ch. 49; technical college
2 district boards; development zones designated under s. 560.71; every county
3 department under s. 51.42 or 51.437; every nonprofit corporation or cooperative to
4 which moneys are specifically appropriated by state law; and every corporation,
5 institution, association or other organization which receives more than 50% of its
6 annual budget from appropriations made by state law, including subgrantee or
7 subcontractor recipients of such funds.

8 **SECTION 2.** 13.94 (10) of the statutes is amended to read:

9 13.94 (10) ~~FINANCIAL STATUS OF LOCAL CERTAIN PROFESSIONAL BASEBALL PARK~~
10 ~~SPORTS~~ DISTRICTS. As promptly as possible following the end of each state fiscal
11 biennium in which there are outstanding bonds or notes issued by a local
12 professional baseball park district created under subch. III of ch. 229 that are subject
13 to s. 229.74 (7) or by a local professional football stadium district created under
14 subch. IV of ch. 229 that are subject to s. 229.830 (7), the legislative audit bureau
15 shall submit a report to the cochairpersons of the joint committee on finance
16 concerning the financial status of that district.

17 **SECTION 3.** 16.70 (14) of the statutes is amended to read:

18 16.70 (14) "State" does not include a district created under subch. II ~~or~~ III or
19 IV of ch. 229.

20 **SECTION 4.** 18.03 (5s) of the statutes is amended to read:

21 18.03 (5s) Upon the request of a local professional baseball park district
22 created under subch. III of ch. 229 or a local professional football stadium district
23 created under subch. IV of ch. 229, the commission may serve as financial consultant
24 to assist and coordinate the issuance of the bonds of a district.

25 **SECTION 5.** 19.42 (13) (a) of the statutes is amended to read:

BILL**SECTION 5**

1 19.42 (13) (a) All positions to which individuals are regularly appointed by the
2 governor, except the position of trustee of any private higher educational institution
3 receiving state appropriations and, the position of member of the district board of a
4 local professional baseball park district created under subch. III of ch. 229 and the
5 position of member of the district board of a local professional football stadium
6 district created under subch. IV of ch. 229.

7 **SECTION 6.** 19.59 (1) (a) of the statutes is amended to read:

8 19.59 (1) (a) No local public official may use his or her public position or office
9 to obtain financial gain or anything of substantial value for the private benefit of
10 himself or herself or his or her immediate family, or for an organization with which
11 he or she is associated. A violation of this paragraph includes the acceptance of free
12 or discounted admissions to a professional baseball or football game by a member of
13 the district board of a local professional baseball park district created under subch.
14 III of ch. 229 or a local professional football stadium district created under subch. IV
15 of ch. 229. This paragraph does not prohibit a local public official from using the title
16 or prestige of his or her office to obtain campaign contributions that are permitted
17 and reported as required by ch. 11.

18 **SECTION 7.** 19.59 (1) (g) 1. a. of the statutes is amended to read:

19 19.59 (1) (g) 1. a. "District" means a local professional baseball park district
20 created under subch. III of ch. 229 or a local professional football stadium district
21 created under subch. IV of ch. 229.

22 **SECTION 8.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
23 the following amounts for the purposes indicated:

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2 **20.395 Transportation, department of**

3 (1) AIDS

4 (gv) Transportation aids to local pro-
5 fessional football stadium dis-
6 tricts

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7 **20.566 Revenue, department of**

8 (1) COLLECTION OF TAXES

9 (ge) Administration of local profes-
10 sional football stadium district
11 taxes

	PR	A	-0-	-0-
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12 **SECTION 9.** 20.395 (1) (gv) of the statutes is created to read:

13 20.395 (1) (gv) *Transportation aids to local professional football stadium*
14 *districts.* As a continuing appropriation, the amounts in the schedule for
15 transportation aids to local professional football stadium districts under s. 85.62.

16 **SECTION 10.** 20.566 (1) (ge) of the statutes is created to read:

17 20.566 (1) (ge) *Administration of local professional football stadium district*
18 *taxes.* From the moneys transferred from the appropriation account under s. 20.835
19 (4) (ge), the amounts in the schedule for administering the special district taxes
20 imposed under s. 77.706 by a local professional football stadium district created
21 under subch. IV of ch. 229.

22 **SECTION 11.** 20.835 (4) (ge) of the statutes is created to read:

23 20.835 (4) (ge) *Local professional football stadium district taxes.* All moneys
24 received from the taxes imposed under s. 77.706, for the purpose of distribution to

BILL**SECTION 11**

1 the special districts that adopt a resolution imposing taxes under subch. V of ch. 77,
2 and for the purpose of financing a local professional football stadium district, except
3 that, of those tax revenues collected under subch. V of ch. 77, 1.5% shall be credited
4 to the appropriation account under s. 20.566 (1) (ge).

5 **SECTION 12.** 20.867 (5) of the statutes is created to read:

6 **20.867 (5) SERVICES TO NONSTATE GOVERNMENTAL UNITS.** (g) *Financial consulting*
7 *services.* All moneys received from local professional football stadium districts for
8 financial consulting services provided under s. 18.03 (5s), to be used to provide those
9 services.

10 **SECTION 13.** 24.61 (2) (a) 8. of the statutes is created to read:

11 **24.61 (2) (a) 8.** Bonds issued by a local professional football stadium district
12 created under subch. IV of ch. 229.

13 **SECTION 14.** 25.17 (3) (b) 11. of the statutes is created to read:

14 **25.17 (3) (b) 11.** Bonds issued by a local professional football stadium district
15 created under subch. IV of ch. 229.

16 **SECTION 15.** 25.50 (1) (d) of the statutes, as affected by 1999 Wisconsin Act 9,
17 is amended to read:

18 **25.50 (1) (d)** “Local government” means any county, town, village, city, power
19 district, sewerage district, drainage district, town sanitary district, public inland
20 lake protection and rehabilitation district, local professional baseball park district
21 created under subch. III of ch. 229, family care district under s. 46.2895, local
22 professional football stadium district created under subch. IV of ch. 229, public
23 library system, school district or technical college district in this state, any
24 commission, committee, board or officer of any governmental subdivision of this

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1 state, any court of this state, other than the court of appeals or the supreme court,
2 or any authority created under s. 231.02, 233.02 or 234.02.

3 **SECTION 16.** 66.04 (2) (a) (intro.) of the statutes is amended to read:

4 66.04 (2) (a) (intro.) Any county, city, village, town, school district, drainage
5 district, technical college district or other governing board, as defined by s. 34.01 (1),
6 other than a local professional football stadium district board created under subch.
7 IV of ch. 229, may invest any of its funds not immediately needed in any of the
8 following:

9 **SECTION 17.** 66.04 (2) (a) 3q. of the statutes is created to read:

10 66.04 (2) (a) 3q. Bonds issued by a local professional football stadium district
11 created under subch. IV of ch. 229.

12 **SECTION 18.** 66.066 (1) (a) of the statutes is amended to read:

13 66.066 (1) (a) "Municipality" means any city, village, town, county, commission
14 created by contract under s. 66.30, public inland lake protection and rehabilitation
15 district established under s. 33.23, 33.235 or 33.24, metropolitan sewerage district
16 created under ss. 66.20 to 66.26 or 66.88 to 66.918, town sanitary district under
17 subch. IX of ch. 60, a local professional baseball park district created under subch.
18 III of ch. 229, a local professional football stadium district created under subch. IV
19 of ch. 229 or a municipal water district or power district under ch. 198 and any other
20 public or quasi-public corporation, officer, board or other public body empowered to
21 borrow money and issue obligations to repay the same out of revenues.
22 "Municipality" does not include the state or a local exposition district created under
23 subch. II of ch. 229.

24 **SECTION 19.** 66.066 (1) (c) of the statutes is amended to read:

BILL**SECTION 19**

1 66.066 (1) (c) "Revenue" means all moneys received from any source by a public
2 utility and all rentals and fees and, in the case of a local professional baseball park
3 district created under subch. III of ch. 229 includes tax revenues deposited into a
4 special fund under s. 229.685 and payments made into a special debt service reserve
5 fund under s. 229.74 and, in the case of a local professional football stadium district
6 created under subch. IV of ch. 229 includes tax revenues deposited into a special fund
7 under s. 229.825 and payments made into a special debt service reserve fund under
8 s. 229.830.

9 **SECTION 20.** 66.066 (5) of the statutes is renumbered 66.066 (5) (a).

10 **SECTION 21.** 66.066 (5) (b) of the statutes is created to read:

11 66.066 (5) (b) Revenue bonds issued by a local professional football stadium
12 district created under subch. IV of ch. 229 are subject to the provisions in ss. 229.829
13 to 229.834.

14 **SECTION 22.** 66.067 of the statutes is amended to read:

15 **66.067 Public works projects.** For financing purposes, garbage
16 incinerators, toll bridges, swimming pools, tennis courts, parks, playgrounds, golf
17 links, bathing beaches, bathhouses, street lighting, city halls, village halls, town
18 halls, courthouses, jails, schools, cooperative educational service agencies, hospitals,
19 homes for the aged or indigent, child care centers, as defined in s. 231.01 (3c),
20 regional projects, waste collection and disposal operations, systems of sewerage,
21 local professional baseball park facilities, local professional football stadium
22 facilities and any and all other necessary public works projects undertaken by any
23 municipality are public utilities within the meaning of s. 66.066.

24 **SECTION 23.** 66.30 (1) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
25 is amended to read:

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1 66.30 (1) (a) In this section “municipality” means the state or any department
2 or agency thereof, or any city, village, town, county, school district, public library
3 system, public inland lake protection and rehabilitation district, sanitary district,
4 farm drainage district, metropolitan sewerage district, sewer utility district, solid
5 waste management system created under s. 59.70 (2), local exposition district
6 created under subch. II of ch. 229, local professional baseball park district created
7 under subch. III of ch. 229, local professional football stadium district created under
8 subch. IV of ch. 229, family care district under s. 46.2895, water utility district,
9 mosquito control district, municipal electric company, county or city transit
10 commission, commission created by contract under this section, taxation district or
11 regional planning commission.

12 **SECTION 24.** 71.05 (1) (c) 5. of the statutes is created to read:

13 71.05 (1) (c) 5. A local professional football stadium district created under
14 subch. IV of ch. 229.

15 **SECTION 25.** 71.26 (1) (bm) of the statutes is amended to read:

16 71.26 (1) (bm) *Certain local districts.* Income of a local exposition district
17 created under subch. II of ch. 229 ~~or~~, a local professional baseball park district
18 created under subch. III of ch. 229 or a local professional football stadium district
19 created under subch. IV of ch. 229.

20 **SECTION 26.** 71.26 (1m) (g) of the statutes is amended to read:

21 71.26 (1m) (g) Those issued under s. 66.066 by a local professional baseball
22 park district or a local professional football stadium district.

23 **SECTION 27.** 71.36 (1m) of the statutes is amended to read:

24 71.36 (1m) A tax-option corporation may deduct from its net income all
25 amounts included in the Wisconsin adjusted gross income of its shareholders, the

BILL**SECTION 27**

1 capital gain deduction under s. 71.05 (6) (b) 9. and all amounts not taxable to
2 nonresident shareholders under ss. 71.04 (1) and (4) to (9) and 71.362. For purposes
3 of this subsection, interest on federal obligations, obligations issued under s. 66.066
4 by a local professional baseball park district or a local professional football stadium
5 district, obligations issued under ss. 66.40, 66.431 and 66.4325, obligations issued
6 under s. 234.65 to fund an economic development loan to finance construction,
7 renovation or development of property that would be exempt under s. 70.11 (36) and
8 obligations issued under subch. II of ch. 229 is not included in shareholders' income.
9 The proportionate share of the net loss of a tax-option corporation shall be attributed
10 and made available to shareholders on a Wisconsin basis but subject to the limitation
11 and carry-over rules as prescribed by section 1366 (d) of the internal revenue code.
12 Net operating losses of the corporation to the extent attributed or made available to
13 a shareholder may not be used by the corporation for further tax benefit. For
14 purposes of computing the Wisconsin adjusted gross income of shareholders,
15 tax-option items shall be reported by the shareholders and those tax-option items,
16 including capital gains and losses, shall retain the character they would have if
17 attributed to the corporation, including their character as business income. In
18 computing the tax liability of a shareholder, no credit against gross tax that would
19 be available to the tax-option corporation if it were a nontax-option corporation may
20 be claimed.

21 **SECTION 28.** 71.45 (1t) (g) of the statutes is amended to read:

22 71.45 (1t) (g) Those issued under s. 66.066 by a local professional baseball park
23 district or a local professional football stadium district.

24 **SECTION 29.** 77.54 (45) of the statutes is created to read:

BILL

1 77.54 (45) The gross receipts from the sale of, and the storage, use or other
2 consumption of, any of the following related to the use of football stadium facilities,
3 as defined in s. 229.821 (7):

4 (a) Parking or providing parking space for motor vehicles on property that is
5 leased from a municipality or a local professional football stadium district and leased
6 to a professional football team or a related party, as defined in s. 229.821 (12).

7 (b) Parking or providing parking space for motor vehicles on professional
8 football game days pursuant to a contract between a municipality or a local
9 professional football stadium district and the owner of the property on which there
10 is parking or parking space provided on professional football game days.

11 (c) A license or other right to purchase admission to events at a football
12 stadium, as defined in s. 229.821 (6), that is granted by a municipality; a local
13 professional football stadium district; or a professional football team or related party,
14 as defined in s. 229.821 (12).

15 **SECTION 30.** 77.705 (title) of the statutes is amended to read:

16 **77.705 (title) Adoption by resolution; baseball park district.**

17 **SECTION 31.** 77.706 of the statutes is created to read:

18 **77.706 Adoption by resolution; football stadium district.** A local
19 professional football stadium district created under subch. IV of ch. 229, by
20 resolution under s. 229.824 (15), may impose a sales tax and a use tax under this
21 subchapter at a rate of no more than 0.5% of the gross receipts or sales price. Those
22 taxes may be imposed only in their entirety. The imposition of the taxes under this
23 section shall be effective on the first day of the first month that begins 30 days after
24 the approval of the resolution by the electors in the district's jurisdiction under s.
25 229.824 (15).

BILL**SECTION 32**

1 **SECTION 32.** 77.707 of the statutes is renumbered 77.707 (1).

2 **SECTION 33.** 77.707 (2) of the statutes is created to read:

3 77.707 (2) Retailers and the department of revenue may not collect a tax under
4 s. 77.706 for any local professional football stadium district created under subch. IV
5 of ch. 229 after the calendar quarter during which the local professional football
6 stadium district board makes a certification to the department of revenue under s.
7 229.825 (2), except that the department of revenue may collect from retailers taxes
8 that accrued before that calendar quarter and fees, interest and penalties that relate
9 to those taxes.

10 **SECTION 34.** 77.71 of the statutes is amended to read:

11 **77.71 Imposition of county and special district sales and use taxes.**
12 Whenever a county sales and use tax ordinance is adopted under s. 77.70 or a special
13 district resolution is adopted under s. 77.705 or 77.706, the following taxes are
14 imposed:

15 (1) For the privilege of selling, leasing or renting tangible personal property
16 and for the privilege of selling, performing or furnishing services a sales tax is
17 imposed upon retailers at the rate of 0.5% in the case of a county tax or at the rate
18 under s. 77.705 or 77.706 in the case of a special district tax of the gross receipts from
19 the sale, lease or rental of tangible personal property, except property taxed under
20 sub. (4), sold, leased or rented at retail in the county or special district or from selling,
21 performing or furnishing services described under s. 77.52 (2) in the county or special
22 district.

23 (2) An excise tax is imposed at the rate of 0.5% in the case of a county tax or
24 at the rate under s. 77.705 or 77.706 in the case of a special district tax of the sales
25 price upon every person storing, using or otherwise consuming in the county or

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1 special district tangible personal property or services if the property or service is
2 subject to the state use tax under s. 77.53, except that a receipt indicating that the
3 tax under sub. (1), (3) or (4) has been paid relieves the buyer of liability for the tax
4 under this subsection and except that if the buyer has paid a similar local tax in
5 another state on a purchase of the same property or services that tax shall be credited
6 against the tax under this subsection and except that for motor vehicles that are used
7 for a purpose in addition to retention, demonstration or display while held for sale
8 in the regular course of business by a dealer the tax under this subsection is imposed
9 not on the sales price but on the amount under s. 77.53 (1m).

10 (3) An excise tax is imposed upon a contractor engaged in construction
11 activities within the county or special district, at the rate of 0.5% in the case of a
12 county tax or at the rate under s. 77.705 or 77.706 in the case of a special district tax
13 of the sales price of tangible personal property that is used in constructing, altering,
14 repairing or improving real property and that becomes a component part of real
15 property in that county or special district, unless the contractor has paid the sales
16 tax of a county in the case of a county tax or of a special district in the case of a special
17 district tax in this state on that property, and except that if the buyer has paid a
18 similar local sales tax in another state on a purchase of the same property that tax
19 shall be credited against the tax under this subsection.

20 (4) An excise tax is imposed at the rate of 0.5% in the case of a county tax or
21 at the rate under s. 77.705 or 77.706 in the case of a special district tax of the sales
22 price upon every person storing, using or otherwise consuming a motor vehicle, boat,
23 snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer,
24 all-terrain vehicle or aircraft, if that property must be registered or titled with this
25 state and if that property is to be customarily kept in a county that has in effect an

BILL**SECTION 34**

1 ordinance under s. 77.70 or in a special district that has in effect a resolution under
2 s. 77.705 or 77.706, except that if the buyer has paid a similar local sales tax in
3 another state on a purchase of the same property that tax shall be credited against
4 the tax under this subsection.

5 **SECTION 35.** 77.76 (3m) of the statutes is amended to read:

6 **77.76 (3m)** From the appropriation under s. 20.835 (4) (gb) the department, for
7 the first 2 years of collection, shall distribute 97% of the ~~special district~~ taxes
8 reported for each ~~special~~ local professional baseball park district that has imposed
9 taxes under this subchapter, minus the ~~special~~ district portion of the retailers'
10 discounts, to the ~~special~~ local professional baseball park district no later than the end
11 of the 3rd month following the end of the calendar quarter in which such amounts
12 were reported. From the appropriation under s. 20.835 (4) (gb) the department, after
13 the first 2 years of collection, shall distribute 98.5% of the ~~special district~~ taxes
14 reported for each ~~special~~ local professional baseball park district that has imposed
15 taxes under this subchapter, minus the ~~special~~ district portion of the retailers'
16 discount, to the ~~special~~ local professional baseball park district no later than the end
17 of the 3rd month following the end of the calendar quarter in which such amounts
18 were reported. At the time of distribution the department shall indicate the taxes
19 reported by each taxpayer. In this subsection, the "~~special~~ district portion of the
20 retailers' discount" is the amount determined by multiplying the total retailers'
21 discount by a fraction the numerator of which is the gross ~~special~~ local professional
22 baseball park district sales and use taxes payable and the denominator of which is
23 the sum of the gross state and ~~special~~ local professional baseball park district sales
24 and use taxes payable. The ~~special~~ local professional baseball park district taxes
25 distributed shall be increased or decreased to reflect subsequent refunds, audit

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1 adjustments and all other adjustments of the ~~special local professional baseball park~~
2 district taxes previously distributed. Interest paid on refunds of ~~special local~~
3 ~~professional baseball park~~ district sales and use taxes shall be paid from the
4 appropriation under s. 20.835 (4) (gb) at the rate paid by this state under s. 77.60 (1)
5 (a). Any ~~special local professional baseball park~~ district receiving a report under this
6 subsection is subject to the duties of confidentiality to which the department of
7 revenue is subject under s. 77.61 (5).

8 **SECTION 36.** 77.76 (3p) of the statutes is created to read:

9 77.76 (3p) From the appropriation under s. 20.835 (4) (ge) the department of
10 revenue shall distribute 98.5% of the taxes reported for each local professional
11 football stadium district that has imposed taxes under this subchapter, minus the
12 district portion of the retailers' discount, to the local professional football stadium
13 district no later than the end of the 3rd month following the end of the calendar
14 quarter in which such amounts were reported. At the time of distribution the
15 department of revenue shall indicate the taxes reported by each taxpayer. In this
16 subsection, the "district portion of the retailers' discount" is the amount determined
17 by multiplying the total retailers' discount by a fraction the numerator of which is
18 the gross local professional football stadium district sales and use taxes payable and
19 the denominator of which is the sum of the gross state and local professional football
20 stadium district sales and use taxes payable. The local professional football stadium
21 district taxes distributed shall be increased or decreased to reflect subsequent
22 refunds, audit adjustments and all other adjustments of the local professional
23 football stadium district taxes previously distributed. Interest paid on refunds of
24 local professional football stadium district sales and use taxes shall be paid from the
25 appropriation under s. 20.835 (4) (ge) at the rate paid by this state under s. 77.60 (1)

BILL**SECTION 36**

1 (a). Any local professional football stadium district receiving a report under this
2 subsection is subject to the duties of confidentiality to which the department of
3 revenue is subject under s. 77.61 (5).

4 **SECTION 37.** 77.76 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
5 amended to read:

6 77.76 (4) There shall be retained by the state 1.5% of the taxes collected for
7 taxes imposed by special districts under ~~s. ss.~~ 77.705 and 77.706 and 1.75% of the
8 taxes collected for taxes imposed by counties under s. 77.70 to cover costs incurred
9 by the state in administering, enforcing and collecting the tax. All interest and
10 penalties collected shall be deposited and retained by this state in the general fund.

11 **SECTION 38.** 85.62 of the statutes is created to read:

12 **85.62 Aid to local professional football stadium districts.** The
13 department may make aid payments from the appropriation under s. 20.395 (1) (gv)
14 to a local professional football stadium district created under subch. IV of ch. 229 for
15 the development, construction, reconstruction or improvement of bridges, highways,
16 parking lots, garages, transportation facilities or other functionally related or
17 auxiliary facilities or structures associated with a football stadium, as defined in s.
18 229.821 (6).

19 **SECTION 39.** 219.09 (1) (d) of the statutes is created to read:

20 219.09 (1) (d) A local professional football stadium district created under
21 subch. IV of ch. 229.

22 **SECTION 40.** Subchapter IV of chapter 229 [precedes 229.820] of the statutes
23 is created to read:

CHAPTER 229

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SUBCHAPTER IV

LOCAL PROFESSIONAL

FOOTBALL STADIUM DISTRICTS

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2
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4 **229.820 Legislative declaration.** (1) The legislature determines that the
5 provision of assistance by state agencies to a district under this subchapter, any
6 appropriation of funds to a district under this subchapter and the moral obligation
7 pledge under s. 229.830 (7) serve a statewide public purpose by assisting the
8 development of professional football stadium facilities in the state for providing
9 recreation, by encouraging economic development and tourism, by reducing
10 unemployment and by bringing needed capital into the state for the benefit and
11 welfare of people throughout the state. The legislature determines that the taxes
12 that may be imposed by a district under subch. V of ch. 77 are special taxes that are
13 generated apart from any direct annual tax on taxable property.

14 (2) The legislature determines that a district serves a public purpose in the
15 district's jurisdiction by providing recreation, by encouraging economic development
16 and tourism, by reducing unemployment and by bringing needed capital into the
17 district's jurisdiction for the benefit of people in the district's jurisdiction.

18 **229.821 Definitions.** In this subchapter:

19 (1) "Bond" means any bond, note or other obligation issued under s. 66.066 by
20 a district.

21 (2) "Bond resolution" means a resolution of the district board authorizing the
22 issuance of, or providing terms and conditions related to, bonds and includes, where
23 appropriate, any trust agreement, trust indenture, indenture of mortgage or deed of
24 trust providing terms and conditions for bonds.

BILL**SECTION 40**

1 (3) “Chief elected official” means the mayor of a city or, if the city is organized
2 under subch. I of ch. 64, the president of the council of that city, the village president
3 of a village, the town board chair of a town or the county executive of a county or, if
4 the county does not have a county executive, the chairperson of the county board of
5 supervisors.

6 (4) “District” means a special purpose district created under this subchapter.

7 (5) “District board” means the governing board of a district.

8 (6) “Football stadium” means a stadium that is principally used as the home
9 stadium of a professional football team described in s. 229.823 at the time that a
10 district is created, or if no home stadium exists at the time that a district is created,
11 “football stadium” means a stadium that includes the site of a proposed home
12 stadium of such a team.

13 (7) “Football stadium facilities” means football stadium property, tangible or
14 intangible, including spectator seating of all types, practice facilities, parking lots
15 and structures, garages, restaurants, parks, concession facilities, entertainment
16 facilities, facilities for the display or sale of memorabilia, transportation facilities,
17 and other functionally related or auxiliary facilities or structures.

18 (8) “Home stadium” means a stadium approved as provided in s. 229.823.

19 (9) “Members–elect” means those members of the governing body of a
20 municipality or county, at a particular time, who have been duly elected or appointed
21 for a current regular or unexpired term and whose service has not terminated by
22 death, resignation or removal from office.

23 (10) “Municipality” means a city, village or town.

24 (11) “Political subdivision” means a city, village, town or county.

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1 (12) “Related party” means a corporation or business entity that is owned,
2 controlled or operated by, or under common control with, a professional football team.

3 **229.822 Creation and organization.** (1) There is created, for each
4 jurisdiction under s. 229.823, a special district that is a local governmental unit, that
5 is a body corporate and politic, that is separate and distinct from, and independent
6 of, the state and the political subdivisions within its jurisdiction, that has the powers
7 under s. 229.824 and the name of which includes “Professional Football Stadium
8 District”.

9 (2) A district is governed by its district board. Subject to sub. (3), the district
10 board shall consist of the following members:

11 (a) Two persons appointed by the governor. At least one of the persons
12 appointed by the governor shall reside within the county in which the football
13 stadium is located. A person appointed under this paragraph may take his or her
14 seat immediately upon appointment and qualification, subject to confirmation or
15 rejection by the senate.

16 (b) Two persons appointed by the chief elected official of the most populous city
17 located wholly or partly within the jurisdiction of a district. A person appointed
18 under this paragraph may take his or her seat immediately upon appointment and
19 qualification, subject to confirmation or rejection by a majority of the members—elect
20 of the common council or council.

21 (c) Two persons appointed by the chief elected official of the county in which the
22 football stadium is located. A person appointed under this paragraph may take his
23 or her seat immediately upon appointment and qualification, subject to confirmation
24 or rejection by a majority of the members—elect of the county board.

BILL**SECTION 40**

1 (d) One person appointed by the chief elected official of any municipality
2 located wholly or partly within the jurisdiction of the district, other than the most
3 populous city located wholly or partly within the jurisdiction of the district, that has
4 a boundary at the time of creation of the district that is contiguous to a boundary of
5 the site of the football stadium. A person appointed under this paragraph may take
6 his or her seat immediately upon appointment and qualification, subject to
7 confirmation or rejection by a majority of the members-elect of the governing body
8 of the municipality.

9 (3) Upon appointment under sub. (2), the appointing authorities shall certify
10 the appointees to the secretary of administration. The terms of office of the persons
11 appointed under sub. (2) shall be 2 years expiring on July 1, except that the initial
12 terms shall expire on July 1 of the 4th year beginning after the year of creation of a
13 district. Persons appointed under sub. (2) may be removed from the district board
14 before the expiration of their terms by the appointing authority but only for cause,
15 as defined in s. 17.16 (2). Vacancies shall be filled by the appointing authority who
16 appointed the person whose office is vacant. A person appointed to fill a vacancy
17 under sub. (2) shall serve for the remainder of the unexpired term to which he or she
18 is appointed. The appointing authorities shall confer with one another regarding
19 their appointments with a view toward achieving diversity on the district board.

20 (4) The governor shall select the chairperson of the district board, and the
21 district board shall elect from its membership a vice chairperson, a secretary and a
22 treasurer. A majority of the current membership of the district board constitutes a
23 quorum to do business. The district may take action based on the affirmative vote
24 of a majority of those members of the district board who are present at a meeting of
25 the district board.

BILL

1 (5) The members of the district board shall be reimbursed for their actual and
2 necessary expenses incurred in the performance of their duties.

3 (6) Upon the appointment and qualification of a majority of the members of a
4 district board, the district board may exercise the powers and duties of a district
5 board under this subchapter.

6 (7) The district board shall name the district, and the name shall include
7 “Professional Football Stadium District”.

8 **229.823 Jurisdiction.** A district’s jurisdiction is any county with a population
9 at the date of the district’s creation of more than 150,000 that includes the principal
10 site of a stadium that is home to a professional football team, that is a member of a
11 league of professional football teams that have home stadiums in at least 10 states
12 and a collective average attendance for all league members of at least 40,000 persons
13 per game over the 5 years immediately preceding the year in which a district is
14 created, and that is approved by that league for use as a home stadium for that
15 professional football team. Once created, the district’s jurisdiction remains fixed
16 even if population or attendance figures subsequently decline below the minimums
17 described in this section.

18 **229.824 Powers of a district.** A district has all of the powers necessary or
19 convenient to carry out the purposes and provisions of this subchapter. In addition
20 to all other powers granted by this subchapter, a district may do all of the following:

- 21 (1) Adopt bylaws to govern the district’s activities, subject to this subchapter.
22 (2) Sue and be sued in its own name, plead and be impleaded.
23 (3) Maintain an office.
24 (4) In connection with football stadium facilities:

BILL**SECTION 40**

1 (a) Acquire, construct, equip, maintain, improve, operate and manage the
2 football stadium facilities as a revenue-generating enterprise, or engage other
3 persons to do these things.

4 (b) Acquire; lease, as lessor or lessee; use; transfer; or accept transfers of
5 property.

6 (c) Improve, maintain and repair property, and fund reserves for maintenance,
7 depreciation and capital improvements.

8 (d) Enter into contracts, subject to such standards as may be established by the
9 district board. The district board may award any such contract for any combination
10 or division of work it designates and may consider any factors in awarding a contract,
11 including price, time for completion of work and qualifications and past performance
12 of a contractor.

13 (e) Grant concessions.

14 (f) Sell or otherwise dispose of unneeded or unwanted property.

15 (5) Employ personnel, and fix and regulate their compensation; and provide,
16 either directly or subject to an agreement under s. 66.30 as a participant in a benefit
17 plan of another governmental entity, any employe benefits, including an employe
18 pension plan.

19 (6) Purchase insurance, establish and administer a plan of self-insurance or,
20 subject to an agreement with another governmental entity under s. 66.30,
21 participate in a governmental plan of insurance or self-insurance.

22 (7) Mortgage, pledge or otherwise encumber the district's property or funds.

23 (8) Issue revenue bonds under s. 66.066, subject to ss. 229.829 to 229.834, and
24 enter into agreements related to the issuance of bonds, including liquidity and credit
25 facilities, remarketing agreements, insurance policies, guaranty agreements, letter

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1 of credit or reimbursement agreements, indexing agreements, interest exchange
2 agreements and currency exchange agreements.

3 (9) Maintain funds and invest the funds in any investment that the district
4 board considers appropriate.

5 (10) Promote, advertise and publicize its football stadium facilities and related
6 activities.

7 (11) Set standards governing the use of, and the conduct within, its football
8 stadium facilities in order to promote public safety and convenience and to maintain
9 order.

10 (12) Establish and collect fees or other charges for the use of its football
11 stadium facilities or for services rendered by the district.

12 (13) Establish and collect fees or other charges for the right to purchase
13 admission to events at the football stadium if the proceeds from any amount that is
14 collected under this subsection are used for purposes related to football stadium
15 facilities.

16 (14) Enter into partnerships, joint ventures, common ownership or other
17 arrangements with other persons to further the district's purposes.

18 (15) Impose, by the adoption of a resolution, the taxes under subch. V of ch. 77,
19 except that the taxes imposed by the resolution may not take effect until the
20 resolution is approved by a majority of the electors in the district's jurisdiction voting
21 on the resolution at a referendum, to be held on a date specified by the county board
22 not earlier than 45 days nor later than one year after adoption of the resolution. The
23 referendum may be held at any spring or general election or any spring or September
24 primary, or at a special election called by the county board for that purpose. A district
25 may not levy any taxes that are not expressly authorized under subch. V of ch. 77.

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1 If a district board adopts a resolution that imposes taxes and the resolution is
2 approved by the electors, the district shall deliver a certified copy of the resolution
3 to the secretary of revenue at least 30 days before its effective date.

4 (16) Accept gifts, loans and other aid.

5 (17) Administer the receipt of revenues, and oversee the payment of bonds
6 issued by the district.

7 (18) Adopt and alter an official seal.

8 **229.825 Special fund tax revenues.** (1) The district board shall maintain
9 a special fund into which it deposits only the revenue received from the department
10 of revenue, that is derived from the taxes imposed under subch. V of ch. 77, and may
11 use this revenue only for purposes related to football stadium facilities.

12 (2) If the district board determines that the revenues in the special fund under
13 this section exceed current debt service and operating expenses for the operation of
14 football stadium facilities, the district board shall apply the excess first to fund a
15 reserve or reserves for maintenance costs, depreciation and capital improvements,
16 and second, when the reserve or reserves are adequately funded to meet the
17 obligations of the district, to retire bonds issued for purposes related to football
18 stadium facilities, and any bonds issued to fund or refund those bonds, prior to their
19 maturity. As soon as practicable after the retirement of all bonds issued for purposes
20 related to football stadium facilities and all bonds issued to fund or refund those
21 bonds and after funding a reserve or reserves for maintenance costs and capital
22 improvements sufficiently to meet any maintenance, depreciation or capital
23 improvement obligations between the district and any professional football team
24 using football stadium facilities constructed under this subchapter as a home

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1 stadium, the district board shall make a certification to the department of revenue
2 to that effect.

3 **229.826 Powers granted to a municipality or county.** In addition to any
4 powers that it may otherwise have, a county or municipality located wholly or partly
5 within a district's jurisdiction may do any of the following:

6 (1) Make grants or loans to a district upon terms that the county or
7 municipality considers appropriate.

8 (2) Expend public funds to subsidize a district.

9 (3) Borrow money under ss. 67.04 and 67.12 (12) for football stadium facilities
10 or to fund grants, loans or subsidies to a district.

11 (4) Lease or transfer property to a district upon terms that the county or
12 municipality considers appropriate.

13 (5) With the consent of a district, establish and collect fees or other charges
14 applicable only to a football stadium for the right to purchase admission to events at
15 the stadium, if the proceeds from any amount that is collected under this subsection
16 are used for purposes related to football stadium facilities.

17 **229.827 Contracting.** Unless a district board determines that it is not
18 feasible to do so, the district shall enter into a contract with a professional football
19 team, as described in s. 229.823, or a related party, that requires the team or related
20 party to acquire and construct football stadium facilities that are part of any facilities
21 that are leased by the district to the team or to a related party, without regard to
22 whether the football stadium facilities are financed by the district.

23 **229.828 Dissolution of a district.** Subject to providing for the payment of
24 its bonds, including interest on the bonds, and the performance of its other
25 contractual obligations, a district may be dissolved by the action of the district board.

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1 If the district is dissolved, the property of the district shall be transferred to the
2 political subdivisions that compose the district's jurisdiction in such proportions as
3 the secretary of administration determines fairly and reasonably represent the
4 contributions of each political subdivision to the development or improvement of the
5 football stadium facilities.

6 **229.829 Issuance and negotiability of bonds. (1) NEGOTIABILITY.** All bonds
7 are negotiable for all purposes, notwithstanding their payment from a limited
8 source.

9 (2) **EMPLOYMENT OF FINANCIAL CONSULTANT.** A district may retain the building
10 commission or any other person as its financial consultant to assist with and
11 coordinate the issuance of bonds.

12 (3) **NO PERSONAL LIABILITY.** Neither the members of the district board nor any
13 person executing the bonds is liable personally on the bonds or subject to any
14 personal liability or accountability by reason of the issuance of the bonds, unless the
15 personal liability or accountability is the result of wilful misconduct.

16 **229.830 Special debt service reserve funds for moral obligation pledge.**

17 (1) **DESIGNATION OF SPECIAL DEBT SERVICE RESERVE FUNDS.** A district may designate one
18 or more accounts in funds created under s. 66.066 (2) (e) as special debt service
19 reserve funds, if, prior to each issuance of bonds to be secured by each special debt
20 service reserve fund, the secretary of administration determines that all of the
21 following conditions are met with respect to the bonds:

22 (a) *Purpose.* The proceeds of the bonds, other than refunding bonds, will be
23 used for purposes related to football stadium facilities.

24 (b) *Feasibility.* The proceeds of bonds, other than refunding bonds, will be used
25 for feasible projects and there is a reasonable likelihood that the bonds will be repaid

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1 without the necessity of drawing on funds in the special debt service reserve fund
2 that secures the bonds. The secretary of administration may make the
3 determinations required under this paragraph only after considering all of the
4 following:

5 1. Whether a pledge of the tax revenues of the district is made under the bond
6 resolution.

7 2. How the tax revenues of the district are pledged to the payment of the bonds.

8 3. Revenue projections for the project to be financed by the bonds, including tax
9 revenues, and the reasonableness of the assumptions on which these revenue
10 projections are based.

11 4. The proposed interest rates of the bonds and the resulting cash-flow
12 requirements.

13 5. The projected ratio of annual tax revenues to annual debt service of the
14 district, taking into account capitalized interest.

15 6. Whether an understanding exists providing for repayment by the district to
16 the state of all amounts appropriated to the special debt service reserve fund
17 pursuant to sub. (7).

18 7. Whether the district has agreed that the department of administration will
19 have direct and immediate access, at any time and without notice, to all records of
20 the district.

21 (c) *Limit on bonds issued backed by moral obligation pledge.* The principal
22 amount of all bonds, other than refunding bonds, that would be secured by all special
23 debt service reserve funds of the district under this section will not exceed
24 \$160,000,000 at any one time outstanding.

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1 (d) *Date of issuance.* The bonds, other than refunding bonds, will be issued no
2 later than December 31, 2004.

3 (e) *Refunding bonds.* All refunding bonds to be secured by the special debt
4 service reserve fund meet all of the following conditions:

5 1. The refunding bonds are to be issued to fund, refund or advance refund bonds
6 secured by a special debt service reserve fund.

7 2. The refunding of bonds by the refunding bonds will not adversely affect the
8 risk that the state will be called on to make a payment under sub. (7).

9 (f) *Approval of outstanding debt.* All outstanding debt of the district has been
10 reviewed and approved by the secretary of administration. In determining whether
11 to approve outstanding debt under this paragraph, the secretary may consider any
12 factor which the secretary determines to have a bearing on whether the state moral
13 obligation pledge under sub. (7) should be granted with respect to an issuance of
14 bonds.

15 (g) *Financial reports.* The district has agreed to provide to the department of
16 administration, the legislative fiscal bureau and the legislative audit bureau all
17 financial reports of the district and all regular monthly statements of any trustee of
18 the bonds on a direct and ongoing basis.

19 (2) PAYMENT OF FUNDS INTO A SPECIAL DEBT SERVICE RESERVE FUND. A district shall
20 pay into any special debt service reserve fund of the district any moneys appropriated
21 and made available by the state for the purposes of the special debt service reserve
22 fund, any proceeds of a sale of bonds to the extent provided in the bond resolution
23 authorizing the issuance of the bonds and any other moneys that are made available
24 to the district for the purpose of the special debt service reserve fund from any other
25 source.

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1 **(3) USE OF MONEYS IN THE SPECIAL DEBT SERVICE RESERVE FUND.** All moneys held
2 in any special debt service reserve fund of a district, except as otherwise specifically
3 provided, shall be used, as required, solely for the payment of the principal of bonds
4 secured in whole or in part by the special debt service reserve fund, the making of
5 sinking fund payments with respect to these bonds, the purchase or redemption of
6 these bonds, the payment of interest on these bonds or the payment of any
7 redemption premium required to be paid when these bonds are redeemed prior to
8 maturity. If moneys in a special debt service reserve fund at any time are less than
9 the special debt service reserve fund requirement under sub. (5) for the special debt
10 service reserve fund, the district may not use these moneys for any optional purchase
11 or optional redemption of the bonds. Any income or interest earned by, or increment
12 to, any special debt service reserve fund due to the investment of moneys in the
13 special debt service reserve fund may be transferred by the district to other funds or
14 accounts of the district to the extent that the transfer does not reduce the amount of
15 the special debt service reserve fund below the special debt service reserve fund
16 requirement under sub. (5) for the special debt service reserve fund.

17 **(4) LIMITATION ON BONDS SECURED BY A SPECIAL DEBT SERVICE RESERVE FUND.** A
18 district shall accumulate in each special debt service reserve fund an amount equal
19 to the special debt service reserve fund requirement under sub. (5) for the special
20 debt service reserve fund. A district may not at any time issue bonds secured in whole
21 or in part by a special debt service reserve fund if upon the issuance of these bonds
22 the amount in the special debt service reserve fund will be less than the special debt
23 service reserve fund requirement under sub. (5) for the special debt service reserve
24 fund.

BILL**SECTION 40**

1 **(5) SPECIAL DEBT SERVICE RESERVE FUND REQUIREMENT.** The special debt service
2 reserve fund requirement for a special debt service reserve fund, as of any particular
3 date of computation, is equal to an amount of money, as provided in the bond
4 resolution authorizing the bonds with respect to which the special debt service
5 reserve fund is established, that may not exceed the maximum annual debt service
6 on the bonds of the district for the fiscal year in which the computation is made or
7 any future fiscal year of the district secured in whole or in part by that special debt
8 service reserve fund. In computing the annual debt service for any fiscal year, bonds
9 deemed to have been paid in accordance with the defeasance provisions of the bond
10 resolution authorizing the issuance of the bonds shall not be included in bonds
11 outstanding on the date of computation. The annual debt service for any fiscal year
12 is the amount of money equal to the aggregate of all of the following calculated on the
13 assumption that the bonds will, after the date of computation, cease to be
14 outstanding by reason, but only by reason, of the payment of bonds when due, and
15 the payment when due, and application in accordance with the bond resolution
16 authorizing those bonds, of all of the sinking fund payments payable at or after the
17 date of computation:

18 (a) All interest payable during the fiscal year on all bonds that are secured in
19 whole or in part by the special debt service reserve fund and that are outstanding on
20 the date of computation.

21 (b) The principal amount of all of the bonds that are secured in whole or in part
22 by the special debt service reserve fund, are outstanding on the date of computation
23 and mature during the fiscal year.

24 (c) All amounts specified in bond resolutions of the district authorizing any of
25 the bonds that are secured in whole or in part by the special debt service reserve fund

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1 to be payable during the fiscal year as a sinking fund payment with respect to any
2 of the bonds that mature after the fiscal year.

3 (6) VALUATION OF SECURITIES. In computing the amount of a special debt service
4 reserve fund for the purposes of this section, securities in which all or a portion of the
5 special debt service reserve fund is invested shall be valued at par, or, if purchased
6 at less than par, at their cost to the district.

7 (7) STATE MORAL OBLIGATION PLEDGE. If at any time of valuation the special debt
8 service reserve fund requirement under sub. (5) for a special debt service reserve
9 fund exceeds the amount of moneys in the special debt service reserve fund, the
10 district board shall certify to the secretary of administration, the governor, the joint
11 committee on finance and the governing body of the county in the district the amount
12 necessary to restore the special debt service reserve fund to an amount equal to the
13 special debt service reserve fund requirement under sub. (5) for the special debt
14 service reserve fund. If this certification is received by the secretary of
15 administration in an even-numbered year prior to the completion of the budget
16 compilation under s. 16.43, the secretary shall include the certified amount in the
17 budget compilation. In any case, the joint committee on finance shall introduce in
18 either house, in bill form, an appropriation of the amount so certified to the
19 appropriate special debt service reserve fund of the district. Recognizing its moral
20 obligation to do so, the legislature hereby expresses its expectation and aspiration
21 that, if ever called upon to do so, it shall make this appropriation.

22 (8) INFORMATION TO JOINT COMMITTEE ON FINANCE. The district shall provide to
23 the cochairpersons of the joint committee on finance information concerning the
24 district's projected cashflows and security features underlying each issuance of
25 bonds under this subchapter.

BILL**SECTION 40**

1 **229.831 Bonds not public debt.** (1) The state and the county and
2 municipalities located wholly or partly within the district's jurisdiction are not liable
3 on bonds and the bonds are not a debt of the state or the county or any municipality
4 located wholly or partly within the district. All bonds shall contain a statement to
5 this effect on the face of the bond. A bond issue does not, directly or indirectly or
6 contingently, obligate the state or a political subdivision of the state to levy any tax
7 or make any appropriation for payment of the bonds.

8 (2) Nothing in this subchapter authorizes a district to create a debt of the state
9 or the county or any municipality located wholly or partly within the district's
10 jurisdiction, and all bonds issued by a district are payable, and shall state that they
11 are payable, solely from the funds pledged for their payment in accordance with the
12 bond resolution authorizing their issuance or in any trust indenture or mortgage or
13 deed of trust executed as security for the bonds. Neither the state nor the county or
14 any such municipality is liable for the payment of the principal of or interest on a
15 bond or for the performance of any pledge, mortgage, obligation or agreement that
16 may be undertaken by a district. The breach of any pledge, mortgage, obligation or
17 agreement undertaken by a district does not impose pecuniary liability upon the
18 state or the county or any such municipality in the district's jurisdiction or a charge
19 upon its general credit or against its taxing power.

20 (3) Bonds issued by the district may be secured only by the district's interest
21 in any football stadium facilities, by income from these facilities, by proceeds of bonds
22 issued by the district and by other amounts placed in a special redemption fund and
23 investment earnings on such amounts, including any taxes imposed by the district
24 under subch. V of ch. 77. The district may not pledge its full faith and credit on the
25 bonds and the bonds are not a general obligation liability of the district.

BILL

1 **229.832 State pledge.** The state pledges to and agrees with the bondholders,
2 and persons that enter into contracts with a district under this subchapter, that the
3 state will not limit or alter the rights and powers vested in a district by this
4 subchapter, including the rights and powers under s. 229.824 (15), before the district
5 has fully met and discharged the bonds, and any interest due on the bonds, and has
6 fully performed its contracts, unless adequate provision is made by law for the
7 protection of the bondholders or those entering into contracts with a district.

8 **229.833 Trust funds.** All moneys received under this subchapter, whether as
9 proceeds from the sale of bonds or from any other source, are trust funds to be held
10 and applied solely as provided in this subchapter. Any officer with whom, or any
11 bank or trust company with which, those moneys are deposited shall act as trustee
12 of those moneys and shall hold and apply the moneys for the purposes of this
13 subchapter, subject to this subchapter and the bond resolution authorizing issuance
14 of the bonds.

15 **229.834 Budgets; rates and charges; audit.** A district shall adopt a
16 calendar year as its fiscal year for accounting purposes. The district board shall
17 annually prepare a budget for the district. Rates and other charges received by the
18 district shall be used for the general expenses and capital expenditures of the district
19 and to pay interest, amortization, and retirement charges on bonds. A district shall
20 maintain an accounting system in accordance with generally accepted accounting
21 principles and shall have its financial statements and debt covenants audited
22 annually by an independent certified public accountant.

23 **SECTION 41.** 779.14 (1m) (d) 2. b. of the statutes is amended to read:

24 779.14 (1m) (d) 2. b. The Except as provided in sub. (4), the contract shall
25 require the prime contractor to provide a payment and performance bond meeting

BILL**SECTION 41**

1 the requirements of par. (e), unless the public body authorized to enter into the
2 contract allows the prime contractor to substitute a different payment assurance for
3 the payment and performance bond. The public body may allow a prime contractor
4 to substitute a different payment and performance assurance for the payment and
5 performance bond only if the substituted payment and performance assurance is for
6 an amount at least equal to the contract price and is in the form of a bond, an
7 irrevocable letter of credit or an escrow account acceptable to the public body. The
8 public body shall establish written standards under this subd. 2. b. governing when
9 a different payment and performance assurance may be substituted for a payment
10 and performance bond under par. (e).

11 **SECTION 42.** 779.14 (1m) (d) 3. of the statutes is amended to read:

12 779.14 (1m) (d) 3. ~~In~~ Except as provided in sub. (4), in the case of a contract with
13 a contract price exceeding \$100,000, as indexed under sub. (1s), the contract shall
14 require the prime contractor to obtain a payment and performance bond meeting the
15 requirements under par. (e).

16 **SECTION 43.** 779.14 (4) of the statutes is created to read:

17 779.14 (4) BONDING EXEMPTION. A contract with a local professional football
18 stadium district under subch. IV of ch. 229 is not required under sub. (1m) (d) 2. b.
19 or 3. to include a provision requiring the prime contractor to provide or obtain a
20 payment and performance bond or other payment assurance.

21 **SECTION 44. Initial applicability.**

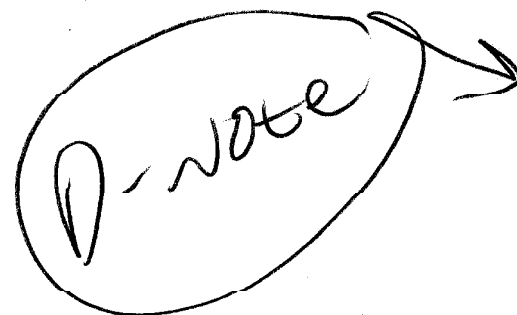
22 (1) The treatment of sections 71.05 (1) (c) 5., 71.26 (1) (bm) and (1m) (g), 71.36
23 (1m) and 71.45 (1t) (g) of the statutes first applies to taxable years beginning on
24 January 1, 2000.

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1 **SECTION 45. Effective dates.** This act takes effect on the day after publication,
2 except as follows:

3 (1) The treatment of section 77.54 (45) of the statutes takes effect on the first
4 day of the 2nd month beginning after publication.

5 **(END)**



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

- 4487/ldh
LRB-4242/P300
MES/JTK/RAC/JK:cmh:77

January 28, 2000

Representative ~~Cam~~ Senator Burke

1. Per our discussion of January 14, this draft, in proposed s. 229.823, establishes a district's jurisdiction in such a way that there is no scenario that envisions a relocated stadium. Therefore, if for any reason the current thinking shifts on this point, the district will not have jurisdiction to become involved. We do not think this necessarily impairs the open class because the draft still permits a new stadium to be sited potentially in any county having a population of 150,000 or more.

2. Under proposed ss. 77.54 (45) (c), 229.824 (13) and 229.826 (5), we have substituted references to fees or other charges for the right to purchase "admission" rather than "tickets". Though the difference is subtle, it seemed to us that the concept of a public entity deciding who may purchase tickets to a privately produced event is potentially awkward. We were more comfortable with the concept of an admissions fee.

3. There are several references in the draft to municipalities contained within a district's jurisdiction. Because under current Wisconsin law, a city or village may be located in more than one county (and over 40 of them are), we have changed these references to municipalities that are *wholly or partly* contained within a district's jurisdiction. This is just an effort to maintain an open class by dealing with every potential situation. You could, if you wish, substitute references to municipalities that are *wholly* contained within a district's jurisdiction.

4. Concerning the appropriations to DOA (your treatment of s. 20.505 (1) (ka) and (kc), stats.), we did not think this treatment was necessary because under this draft, unlike 1995 Act 56, DOA does not provide services generally to the football stadium district. However, even though 1995 Act 56 did not include this detail, we do think the draft should properly include a program revenue appropriation to the building commission to implement the amendment of s. 18.03 (5s) and proposed s. 229.829 (2). See proposed s. 20.867 (5) (g).

2 (4) Concerning the legislative declaration, the last sentence of proposed s. 229.820 (1) asserts that the taxes that may be imposed by the district are special taxes. Although this language appeared in 1995 Act 56, the courts will presumably make this determination independently. It would be more helpful and appropriate in this context to explain why the taxes are special taxes. The rest of the declaration provides interpretive guidance, but this sentence does not.

and for transportation aids to such districts

3
For this draft, we have included an appropriation for administration of local professional football stadium district taxes but have specified "\$-0-" for expenditures in fiscal years 1999-00 and 2000-01. When you know the dollar amounts that you need to include in the proposal, contact us and we will either redraft the proposal or draft an amendment, whichever is appropriate.

Constitutional issues:

This draft adheres to the structure of 1995 Act 56 in most respects, and the constitutionality of several provisions of that act were upheld in *Libertarian Party v. State*, 199 Wis.2d 790 (1996). Therefore, the issues that were novel prior to enactment of 1995 Act 56 have now in many instances been reviewed and decided. There is no better authority on a point of state law than a recent holding of the Wisconsin Supreme Court that is almost directly in point. Nevertheless, the language and reasoning of that decision in some cases left unexplained logical issues and inconsistencies with the Court's prior decisions, which may indicate that there is some risk that the Court might refine its thinking if the issues are ably reargued. Every enactment of the legislature enjoys a presumption of constitutionality and any doubt must be resolved in favor of the constitutionality of a statute. *Samb v. City of Brookfield*, 97 Wis. 2d 356 at 370 (1980). Given this situation, it may be the better part of wisdom to design this draft to fit this recent holding as closely as possible. However, because alternative choices are available, we raise these issues for your consideration:

1. Article VIII, section 10, of the Wisconsin Constitution prohibits the state from being a party to carrying on works of internal improvement. In *Libertarian Party*, because the Court found that construction of stadium facilities serves a predominately governmental purpose, it found no violation of the internal improvements clause. 199 Wis. 2d 790 at 816. In other cases, however, the Court has said this is not enough: see, for example, *State ex rel. Jones v. Froehlich*, 115 Wis. 32 (1902), where the Court requires that there be an essential governmental function and that private capital be inadequate to fund the project. 115 Wis. 32 at 41. See also *State ex rel. Martin v. Giessel*, 252 Wis. 363 at 365-374 (1948) and *Dept. of Development v. Building Comm.*, 139 Wis. 2d 1 at 9-11 (1987). In *Libertarian Party*, the Court did not distinguish these cases. Because the public purpose doctrine stands independently of the internal improvements clause [see, for example, *Rath v. Community Hospital*, 160 Wis. 2d 853 at 862 (Ct. App., 1991)], it would have been helpful for the Court to explain what, if anything, remains of the internal improvements clause under its revised interpretation. If the line of cases that precedes *Libertarian Party* retains any vigor, it may be helpful to include a legislative finding that private capital is insufficient to fund needed capital investments in professional football stadium facilities. Despite the remaining uncertainty, it should be noted that while this draft retains state involvement in at least 3 ways (see proposed ss. 229.822 (2) (a) and (4), 229.829 (2) and 229.830), it does not retain any requirement for the department of administration to provide services generally to a football stadium district (see ss. 16.82 and 16.854, stats.), so state involvement here is less extensive than under *Libertarian Party*. To resolve all uncertainty, however, state involvement would need to be completely removed.

2. Also related to the issue of state involvement is the line of cases that holds that tax revenue must be spent at the level of government at which the tax is raised. See *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d. 391 at 421 (1973) and 77 Marquette Law Review, 466-67 (1994). If the district is not viewed as a unit of local government, this principle would be offended. The draft states that the district is a unit of local government [see proposed s. 229.822 (1)]. However, under proposed s. 229.822 (2) (a) and (4), the governor appoints two members of the district board and designates the chairperson. Unfortunately, the Court in *Libertarian Party* did not determine what exactly constitutes a unit of local government, thereby leaving for another day the issue of whether a unit of government, like this one, with mixed state and local control is pure enough to pass the test. The fact that under this draft, unlike *Libertarian Party*, a local referendum is required to approve a sales tax and use tax levy may help to tilt the balance in favor of viewing this district as local.

3. Also related to the issue of expenditure at the level of taxation is the question of whether this principle would be offended if a municipality or county subsidizes a district, as authorized in proposed s. 229.826. Here again, this issue was not discussed in *Libertarian Party*. It can probably be said, however, that if any subsidy would serve a legitimate, independent public purpose of the municipality or county, rather than serve simply as a means of circumventing revenue raising at the district level, the proposed language, as applied, would not offend the "spend at the level of taxation" principle.

199 4. Article XI, section 3 (2), of the Wisconsin Constitution imposes a debt limitation on "municipal corporation[s]". Article XI, section 3 (3), further requires that any such indebtedness be repaid within 20 years by levying a direct, annual [property] tax. However, Article XI, section 3 (5), provides that the debt limitation does not apply to indebtedness created for the purpose of "purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility of a ...special district...[if]...secured solely by the property or income of such public utility...". Taking advantage of this exception, the draft, like 1995 Act 56, provides in its treatment of s. 66.067, stats., that football stadium facilities are public utilities. *Libertarian Party* in effect holds that the legislature's classification of baseball stadium facilities as "public utilities" is a permissible interpretation of the term. 199 Wis. 2d 790 at 820. In that case, the Court held that the indebtedness of a baseball district is not public debt governed by the limitation, although the Court notes that the indebtedness is not secured solely by the "property or income of such public utility [stadium facilities]", as provided in Article XI, section 3 (5), but also by "the proceeds of the bonds issued by the District, and by sales and use taxes imposed by the District." 199 Wis. 2d 790 at 819. Although the Court in *Libertarian Party* cites *City of Hartford v. Kirley*, 172 Wis. 2d. 191 at 207 (1992), for the proposition that the District's bonded indebtedness has the same characteristics as special assessment bonds, in that bond revenue is placed in a special fund for debt retirement, *Hartford* seems to suggest that the special fund revenue must be from the project being funded. 172 Wis. 191 at 208-209 and 212. In *Libertarian Party*, therefore, the Court seems to overrule *Hartford* (and preceding cases cited therein) without expressly saying so. It would have been helpful had the Court made this clear so that no future questions would be raised. To

eliminate all potential questions regarding this issue, the draft would have to provide that the district's bonded indebtedness is secured only by the property or income of the stadium facilities. This may be an unacceptable policy choice, however.

If you have any further questions regarding the above issues, please let us know.

~~As a reminder, this draft is preliminary because certain figures are not included in this version. We know that you will be making some revisions to this draft. The revisions should include insertion of the proper figures (with the exception of the appropriation mentioned in point 6 above, if you wish to defer that). If the revisions are not extensive, we would hope to produce a final draft within a relatively short time frame.~~

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4487/1dn
MES/JTK/RAC/JK:cmh:jf

February 7, 2000

Senator Burke:

1. This draft, in proposed s. 229.823, establishes a district's jurisdiction in such a way that there is no scenario that envisions a relocated stadium. Therefore, if for any reason the current thinking shifts on this point, the district will not have jurisdiction to become involved. We do not think this necessarily impairs the open class because the draft still permits a new stadium to be sited potentially in any county having a population of 150,000 or more.

2. Concerning the legislative declaration, the last sentence of proposed s. 229.820 (1) asserts that the taxes that may be imposed by the district are special taxes. Although this language appeared in 1995 Act 56, the courts will presumably make this determination independently. It would be more helpful and appropriate in this context to explain why the taxes are special taxes. The rest of the declaration provides interpretive guidance, but this sentence does not.

3. For this draft, we have included appropriations for administration of local professional football stadium district taxes and for transportation aids to such districts but have specified "\$-0-" for expenditures in fiscal years 1999-00 and 2000-01. When you know the dollar amounts that you need to include in the proposal, contact us and we will either redraft the proposal or draft an amendment, whichever is appropriate.

Constitutional issues:

This draft adheres to the structure of 1995 Act 56 in most respects, and the constitutionality of several provisions of that act were upheld in *Libertarian Party v. State*, 199 Wis.2d 790 (1996). Therefore, the issues that were novel prior to enactment of 1995 Act 56 have now in many instances been reviewed and decided. There is no better authority on a point of state law than a recent holding of the Wisconsin Supreme Court that is almost directly in point. Nevertheless, the language and reasoning of that decision in some cases left unexplained logical issues and inconsistencies with the Court's prior decisions, which may indicate that there is some risk that the Court might refine its thinking if the issues are ably reargued. Every enactment of the legislature enjoys a presumption of constitutionality and any doubt must be resolved in favor of the constitutionality of a statute. *Samb's v. City of Brookfield*, 97 Wis. 2d 356 at 370 (1980). Given this situation, it may be the better part of wisdom to design this draft to fit this recent holding as closely as possible. However, because alternative choices are available, we raise these issues for your consideration:

1. Article VIII, section 10, of the Wisconsin Constitution prohibits the state from being a party to carrying on works of internal improvement. In *Libertarian Party*, because the Court found that construction of stadium facilities serves a predominately governmental purpose, it found no violation of the internal improvements clause. 199 Wis. 2d 790 at 816. In other cases, however, the Court has said this is not enough: see, for example, *State ex rel. Jones v. Froehlich*, 115 Wis. 32 (1902), where the Court requires that there be an essential governmental function and that private capital be inadequate to fund the project. 115 Wis. 32 at 41. See also *State ex rel. Martin v. Giessel*, 252 Wis. 363 at 365-374 (1948) and *Dept. of Development v. Building Comm.*, 139 Wis. 2d 1 at 9-11 (1987). In *Libertarian Party*, the Court did not distinguish these cases. Because the public purpose doctrine stands independently of the internal improvements clause [see, for example, *Rath v. Community Hospital*, 160 Wis. 2d 853 at 862 (Ct. App., 1991)], it would have been helpful for the Court to explain what, if anything, remains of the internal improvements clause under its revised interpretation. If the line of cases that precedes *Libertarian Party* retains any vigor, it may be helpful to include a legislative finding that private capital is insufficient to fund needed capital investments in professional football stadium facilities. Despite the remaining uncertainty, it should be noted that while this draft retains state involvement in at least 3 ways (see proposed ss. 229.822 (2) (a) and (4), 229.829 (2) and 229.830), it does not retain any requirement for the department of administration to provide services generally to a football stadium district (see ss. 16.82 and 16.854, stats.), so state involvement here is less extensive than under *Libertarian Party*. To resolve all uncertainty, however, state involvement would need to be completely removed.

2. Also related to the issue of state involvement is the line of cases that holds that tax revenue must be spent at the level of government at which the tax is raised. See *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d. 391 at 421 (1973) and 77 Marquette Law Review, 466-67 (1994). If the district is not viewed as a unit of local government, this principle would be offended. The draft states that the district is a unit of local government [see proposed s. 229.822 (1)]. However, under proposed s. 229.822 (2) (a) and (4), the governor appoints two members of the district board and designates the chairperson. Unfortunately, the Court in *Libertarian Party* did not determine what exactly constitutes a unit of local government, thereby leaving for another day the issue of whether a unit of government, like this one, with mixed state and local control is pure enough to pass the test. The fact that under this draft, unlike *Libertarian Party*, a local referendum is required to approve a sales tax and use tax levy may help to tilt the balance in favor of viewing this district as local.

3. Also related to the issue of expenditure at the level of taxation is the question of whether this principle would be offended if a municipality or county subsidizes a district, as authorized in proposed s. 229.826. Here again, this issue was not discussed in *Libertarian Party*. It can probably be said, however, that if any subsidy would serve a legitimate, independent public purpose of the municipality or county, rather than serve simply as a means of circumventing revenue raising at the district level, the proposed language, as applied, would not offend the "spend at the level of taxation" principle.

4. Article XI, section 3 (2), of the Wisconsin Constitution imposes a debt limitation on "municipal corporation[s]". Article XI, section 3 (3), further requires that any such indebtedness be repaid within 20 years by levying a direct, annual [property] tax. However, Article XI, section 3 (5), provides that the debt limitation does not apply to indebtedness created for the purpose of "purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility of a ...special district...[if]...secured solely by the property or income of such public utility...". Taking advantage of this exception, the draft, like 1995 Act 56, provides in its treatment of s. 66.067, stats., that football stadium facilities are public utilities. *Libertarian Party* in effect holds that the legislature's classification of baseball stadium facilities as "public utilities" is a permissible interpretation of the term. 199 Wis. 2d 790 at 820. In that case, the Court held that the indebtedness of a baseball district is not public debt governed by the limitation, although the Court notes that the indebtedness is not secured solely by the "property or income of such public utility [stadium facilities]", as provided in Article XI, section 3 (5), but also by "the proceeds of the bonds issued by the District, and by sales and use taxes imposed by the District." 199 Wis. 2d 790 at 819. Although the Court in *Libertarian Party* cites *City of Hartford v. Kirley*, 172 Wis. 2d. 191 at 207 (1992), for the proposition that the District's bonded indebtedness has the same characteristics as special assessment bonds, in that bond revenue is placed in a special fund for debt retirement, *Hartford* seems to suggest that the special fund revenue must be from the project being funded. 172 Wis. 191 at 208-209 and 212. In *Libertarian Party*, therefore, the Court seems to overrule *Hartford* (and preceding cases cited therein) without expressly saying so. It would have been helpful had the Court made this clear so that no future questions would be raised. To eliminate all potential questions regarding this issue, the draft would have to provide that the district's bonded indebtedness is secured only by the property or income of the stadium facilities. This may be an unacceptable policy choice, however.

If you have any further questions regarding the above issues, please let us know.

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February 22, 2000

MEMORANDUM

To: The drafting file

From: Joseph T. Kreye; Legislative Attorney

Subject: Error in the analysis of 1999 Assembly Bill 730 and 1999 Senate Bill 384

1999 Assembly Bill 730 and its companion, 1999 Senate Bill 384, create a local professional football stadium district. Page five of the analysis of both bills indicates that the income and interest from the district's obligations are exempt from the income tax and the franchise tax. However, under both 1999 Assembly Bill 730 and 1999 Senate Bill 384 **the income and interest from the district's obligations are exempt from the income tax but not exempt from the franchise tax.**