

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB133)

Received: **05/24/99**

Received By: **shoveme**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau 6-9916**

By/Representing: **Olin**

This file may be shown to any legislator: **NO**

Drafter: **shoveme**

May Contact: **Bill Ford, Leg. Council
6-0680**

Alt. Drafters:

Subject: **State Government - miscellaneous
Munis - tax incremental financing
Gambling - miscellaneous**

Extra Copies: **JTK, ISR, RAC**

Pre Topic:

LFB:.....Olin -

Topic:

Indian trust lands in a tax incremental district; governor's determination of effect on TIF district

Instructions:

See Attached

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>
/1	shoveme 05/25/99	gilfokm 05/25/99	mclark 05/26/99	_____	gretskl 05/26/99		

FE Sent For:

<END>

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/1	shoveme	1-5-25-99 KMG	MRC SJS	MRC/KM SJS			
/1 MES 5/24/99							

FE Sent For:

<END>

Representative Duff

Tribal Gaming

SHARED REVENUE AND TAX RELIEF -- PROPERTY TAXATION

Trust Fund Lands in Tax Increment District

Motion:

Move to prohibit the Governor from concurring with the Secretary of Interior's decision under 25 U.S.C. s. 2719(b)(1)(A) that gaming regulated under the Federal Indian Gaming Regulatory Act on lands acquired by the Secretary in trust for an Indian tribe after October 17, 1988, would not be detrimental to the surrounding area, if the lands are located in a tax increment district, unless the Governor determines that appropriate arrangements have been made so that the location of the lands within the district would not extend the existence of the district for a greater number of years than the district would have been in existence had the land not been located within the district.

in
10-6

Post-It® Fax Note	7671	Date	5/21	# of pages	1
To	M. Shovers	From	Kickoin		
Co./Dept.		Co.	A/Ronde		
Phone #		Phone #			
Fax #		Fax #			


Sec. 2719. Gaming on lands acquired after October 17, 1988

◦ (a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless -

- ◻ (1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or
- ◻ (2) the Indian tribe has no reservation on October 17, 1988, and -
 - (A) such lands are located in Oklahoma and -
 - (i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or
 - (ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or
 - (B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

◦ (b) Exceptions

- 
- ◻ (1) Subsection (a) of this section will not apply when -
 - (A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or
 - (B) lands are taken into trust as part of -
 - (i) a settlement of a land claim,
 - (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or
 - (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.
 - ◻ (2) Subsection (a) of this section shall not apply to -
 - (A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or
 - (B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

- ◻ (3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

- ◻ (c) Authority of Secretary not affected
Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

- ◻ (d) Application of title 26
 - ◻ (1) The provisions of title 26 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.
 - ◻ (2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0388/1

MES...:k...
kmo

LFB:.....Olin - Indian trust lands in a tax incremental district; governor's determination of effect on TIF district

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

O - Note

SOON

1 At the locations indicated, amend the bill as follows:

2 1. Page 1438, line 8: after that line insert:

3 "~~(7)~~ TRUST LANDS IN TAX INCREMENTAL DISTRICT; GOVERNOR'S CONCURRENCE. (a)

4 Except as provided in ~~any~~ ^{paragraph} (b), the governor may not concur with the determination
5 of the ~~Secretary~~ ^{U.S.} Secretary of the Interior, as described in 25 USC 2719 (b) (1) (A), that a gaming
6 establishment on land acquired by the ~~Secretary~~ in trust for an Indian Tribe after
7 October 17, 1988, would not be detrimental to the surrounding area if the land on
8 which the gaming establishment is located, or is proposed to be located, is in a tax
9 incremental district.

10 (b) The prohibition on concurrence under ~~any~~ ^{paragraph} (a) does not apply if the governor
11 determines that appropriate arrangements have been made to ensure that the life

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1 of the tax incremental district described in ~~part~~ ^{paragraph} (a) will not be extended for a greater
2 number of years than the district would have existed if the land on which the gaming
3 establishment is located, or is proposed to be located, ~~was~~ not part of the tax
4 incremental district." • *were*

④
5

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0388/1dn

MES.../k...
KMG

In the other hand,
if the legislature may prohibit the
governor from concurring with the Secretary's
determination and the governor concurs anyway, what
penalty is there?

I believe that this amendment is drafted according to your instructions, but I'm not sure that it has any legal effect. Because federal law under 25 U.S.C. 2719 (b) (1) (A) grants to a governor the authority to concur in the Secretary's determination, I'm not sure that a state legislature has any authority to tell a governor in which determinations of the Secretary of the Interior he may or may not concur.

In addition, I have no idea what the motion means, or what kind of standard is intended, by the language that the governor may concur with the Secretary if the governor "determines that appropriate arrangements have been made" regarding the life span of a tax incremental district (TID). How could the governor possibly ensure that a city or village planning commission would not amend a project plan? Even if the current members of a plan commission tell the governor that they don't intend to amend the plan and lengthen a TID's life, a new set of plan commission members may come into office and decide otherwise. Consequently, I'm not sure what the practical effect of the motion is, assuming there is no separation of powers problem as described in the first paragraph.

Marc E. Shovers
Senior Legislative Attorney
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E-mail: Marc.Shovers@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0388/1dn
MES:kmg:mrc

May 25, 1999

I believe that this amendment is drafted according to your instructions, but I'm not sure that it has any legal effect. Because *federal law* under 25 USC 2719 (b) (1) (A) grants to a governor the authority to concur in the U.S. Secretary's determination, I'm not sure that a state legislature has any authority to tell a governor in which determinations of the secretary of the interior the governor may or may not concur. On the other hand, if the legislature *may* prohibit the governor from concurring with the secretary's determination and the governor concurs anyway, what penalty is there?

In addition, I have no idea what the motion means, or what kind of standard is intended, by the language that the governor may concur with the U.S. secretary if the governor "determines that appropriate arrangements have been made" regarding the life span of a tax incremental district (TID). How could the governor possibly ensure that a city or village planning commission would not amend a project plan? Even if the current members of a plan commission tell the governor that they don't intend to amend the plan and lengthen a TID's life, a new set of plan commission members may come into office and decide otherwise. Consequently, I'm not sure what the practical effect of the motion is, assuming there is no separation of powers problem as described in the first paragraph.

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State of Wisconsin
1999 - 2000 LEGISLATURE

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4 (a) Except as provided in paragraph (b), the governor may not concur with the
5 determination of the U.S. secretary of the interior, as described in 25 USC 2719 (b)
6 (1) (A), that a gaming establishment on land acquired by the secretary in trust for
7 an Indian tribe after October 17, 1988, would not be detrimental to the surrounding
8 area if the land on which the gaming establishment is located, or is proposed to be
9 located, is in a tax incremental district.

10 (b) The prohibition on concurrence under paragraph (a) does not apply if the
11 governor determines that appropriate arrangements have been made to ensure that

1 the life of the tax incremental district described in paragraph (a) will not be extended
2 for a greater number of years than the district would have existed if the land on which
3 the gaming establishment is located, or is proposed to be located, were not part of the
4 tax incremental district.”.

5 (END)