

2001 ASSEMBLY JOINT RESOLUTION 64

October 8, 2001 – Introduced by Representatives F. LASEE, SUDER, MUSSER, MCCORMICK, SYKORA and SKINDRUD, cosponsored by Senators WELCH and ROESSLER. Referred to Committee on Tax and Spending Limitations.

1 **To amend** section 8 of article VIII; and **to create** section 8 (3) of article VIII and
2 section 11 of article VIII of the constitution; **relating to:** the vote on bills that
3 would increase certain tax rates or make certain taxing and spending decisions;
4 and elector approval for certain taxing and spending decisions by the state and
5 local governmental units, emergency taxes, required reserves, state mandates,
6 continuation of state payments to other governmental units, refunds of
7 amounts in excess of the approved amounts and reduction of tax rates to reflect
8 the excess of revenues over expenditures (first consideration).

Analysis by the Legislative Reference Bureau

This proposed constitutional amendment, proposed to the 2001 legislature on first consideration, requires elector approval for certain taxing and spending decisions by the state and local governmental units, such as exceeding a spending limit or imposing new taxes, increasing tax rates, extending expiring taxes, or making tax changes causing net tax revenue gains; requires that emergency taxes imposed by the state meet certain conditions; requires governmental units to establish reserves, which may be expended only by a two-thirds vote; prohibits the state from imposing any part of the costs of a new program or service, or an increase in an existing program or service, on local governmental units, unless the state makes an appropriation to pay for those costs; and requires governmental units to

refund amounts in excess of the approved amounts and reduce tax rates to reflect the excess of revenues over expenditures.

This proposal also requires a two-thirds vote in each house of the legislature to pass a bill to increase the rate of the state sales tax or any of the rates of the income tax or franchise tax or for taxing and spending decisions subject to elector approval under the proposal.

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

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

2 **SECTION 1.** Section 8 of article VIII of the constitution is amended to read:

3 [Article VIII] Section 8 (1) On the passage in either house of the legislature of
4 any law which that imposes, continues or renews a tax, or increases the rate of the
5 state sales tax or increases any of the rates of the income tax or franchise tax, or
6 exceeds the limit under section 11 (3) (a) of this article or the requirements of section
7 11 (4) (b) of this article, or creates a debt or charge, or makes, continues or renews
8 an appropriation of public or trust money, or releases, discharges or commutes a
9 claim or demand of the state, ~~the question~~ vote shall be taken by yeas and nays, which
10 shall be duly ayes and noes, and the names of the members voting for, and the names
11 of the members voting against, passage of the bill shall be entered on the journal;
12 and,

13 (2) For any vote under sub. (1), three-fifths of all the members elected to such
14 the current membership of each house ~~in all such cases be required to constitute~~
15 a quorum therein.

16 **SECTION 2.** Section 8 (3) of article VIII of the constitution is created to read:

17 [Article VIII] Section 8 (3) The passage in either house of the legislature of any
18 law to increase the rate of the state sales tax or to increase any of the rates of the
19 income tax or franchise tax or to exceed the limit under section 11 (3) (a) of this article

1 or the requirements of section 11 (4) (b) of this article requires the approval of
2 two-thirds of the members present.

3 **SECTION 3.** Section 11 of article VIII of the constitution is created to read:

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

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

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

12 (c) “Fiscal year spending” means all expenditures and reserve increases under
13 sub. (7) of a governmental unit except, as to both, those for refunds made in the
14 current or next fiscal year or those from gifts, federal funds, collections for another
15 governmental unit, pension fund earnings, net proceeds of the state lottery
16 authorized pursuant to section 24 (6) of article IV, reserve transfers or expenditures,
17 damage awards or real property sales.

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

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

24 (f) “Population” means either:

1 1. For all governmental units, the periodic census conducted by the United
2 States department of commerce or its successor agency, or the annual update of such
3 census;

4 2. For all governmental units other than this state, a different measure or index
5 of population adopted by the legislature, by joint resolution, upon the affirmative
6 vote of two-thirds of the members present of each house; or

7 3. For a governmental unit, other than this state, an estimate of the population
8 of the governmental unit adopted upon the affirmative vote of two-thirds of the
9 members present of the governing body of the governmental unit.

10 (g) “Professional drafting agency” means the professional drafting agency of
11 the legislature designated by the legislature by law.

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

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

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

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

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

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

12 (d) Population under this subsection shall be adjusted to match the population
13 under each federal decennial census. Notwithstanding par. (c), if a governmental
14 unit, other than this state or a school district, overestimates its population and
15 increases its spending accordingly, it may not increase its fiscal year spending until
16 its spending limit reaches the amount determined under par. (c) according to sub. (1)
17 (f) 1. or 2. For this paragraph, population increases are limited to the average yearly
18 increase in the governmental unit's population between the 2 prior censuses.

19 (e) The legislature, by law, shall provide a mechanism to adjust the amount of
20 a limitation under this section to reflect any subsequent transfer of all or any part
21 of the cost of providing a governmental function. The mechanism shall adjust the
22 amount of a limitation so that the total costs are not increased as a result of the
23 transfer. The adjustment mechanism provided for in this paragraph shall be used
24 in determining a limitation under this section beginning with the fiscal year
25 immediately following the transfer.

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

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

11 (a) Exceeding on a temporary or permanent basis a spending limit under this
12 section.

13 (b) Unless it is an emergency tax meeting the requirements of sub. (6) (b), a new
14 tax, tax rate increase, extension of an expiring tax, or a tax change causing a net tax
15 revenue gain to the governmental unit, including one required under section 5 of this
16 article, section 4 of article X or section 3 (3) or (4) of article XI.

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

22 (b) At least 15 days before a ballot issue election, the governmental unit shall
23 mail a titled notice or set of notices addressed to “All Qualified Electors” at each
24 address of one or more residents of the governmental unit. A notice shall have this

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

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

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

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

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

15 (c) The summaries under par. (b) 4. shall be prepared for this state by the
16 professional drafting agency and, for a governmental unit other than this state, by
17 a person designated by the governing body of the governmental unit. The summaries
18 under par. (b) 4. may not mention the name of a person or group or an endorsement
19 of, or a statement or position against, the ballot issue.

20 (d) A ballot question for an increase in spending or taxation shall begin “SHALL
21 (GOVERNMENTAL UNIT) SPENDING LIMITS BE EXCEEDED BY (full fiscal
22 year dollar amount in excess of the limit)?”; or “SHALL (GOVERNMENTAL UNIT)
23 TAXES BE INCREASED BY (first, or, if phased in, final, full fiscal year dollar
24 increase) ANNUALLY?”.

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

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

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

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

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

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

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

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

1 (d) Money reserved under this subsection may not be expended by the state
2 unless two-thirds of the members elected to each house of the legislature, or by a
3 governmental unit other than the state unless two-thirds of the members of the
4 governing body of the governmental unit, declare the necessity for the expenditure
5 and make the expenditure by separate recorded roll call votes.

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

10 (9) (a) Except as provided in par. (b), the proportion of costs of all other
11 governmental units, taken as a group, that the state pays shall not be reduced below
12 that proportion in effect on the first day that occurs after the ratification of this
13 section.

14 (b) The state is not required to pay, but may pay, in whole or in part, an amount
15 or proportion of costs of all other governmental unit, taken as a group, that are in
16 excess of the limitations under this section and attributable to elector approval under
17 this section.

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

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

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

7 **SECTION 4. Numbering of new provisions.** (1) The new subsection (3) of
8 section 8 of article VIII of the constitution created in this joint resolution shall be
9 designated by the next higher open whole subsection number in that section in that
10 article if, before the ratification by the people of the amendment proposed in this joint
11 resolution, any other ratified amendment has created a subsection (3) of section 8 of
12 article VIII of the constitution of this state. If one or more joint resolutions create
13 a subsection (3) of section 8 of article VIII simultaneously with the ratification by the
14 people of the amendment proposed in this joint resolution, the subsections created
15 shall be numbered and placed in a sequence so that the subsections created by the
16 joint resolution having the lowest enrolled joint resolution number have the numbers
17 designated in that joint resolution and the subsections created by the other joint
18 resolutions have numbers that are in the same ascending order as are the numbers
19 of the enrolled joint resolutions creating the subsections.

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

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

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

10 (END)