

**2001 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-SB55)**

Received: 06/26/2001

Received By: shoveme

Wanted: As time permits

Identical to LRB:

For: Assembly Republican Caucus

By/Representing: Smith

This file may be shown to any legislator: NO

Drafter: shoveme

May Contact:

Addl. Drafters:

Subject: Munis - miscellaneous

Extra Copies:

Submit via email: NO

Requester's email:

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**Pre Topic:**

ARC:.....Smith - AM114,

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**Topic:**

Change the status of the town of Hobart in Brown County to a village

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**Instructions:**

See Attached.

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**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 06/26/2001	hhagen 06/26/2001	rschluet 06/26/2001	_____	lrb_docadmin 06/26/2001		
/2	shoveme 06/28/2001	hhagen 06/28/2001	rschluet 06/28/2001	_____	lrb_docadmin 06/28/2001		

FE Sent For:

<END>

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/1	shoveme 06/26/2001	hhagen 06/26/2001 <i>12 h/h</i>	rschluet 06/26/2001		lrb_docadmin 06/26/2001		

*12 MES 6/28/01 6/28/01*  
FE Sent For:

*[Handwritten signatures]*  
*6-28-1*  
*<END>*

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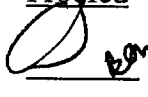
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/1	shoveme	l hmb 6/26/01					

*1 MES 6/26/01*  
FE Sent For:

*6-26-1*

<END>





ARC:.....Smith – AM114, Change the status of the town of Hobart in Brown County to a village

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

*D-NOTE*

*Substitute amendment*

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

2 1. Page 1378, line 9: after that line insert:

3 <sup>f</sup>~~(3p)~~ CHANGE THE TOWN OF HOBART INTO A VILLAGE. Notwithstanding the  
4 provisions of sections 66.0201 to 66.0211 of the statutes the town of Hobart, in Brown  
5 County, shall become a village on the first day of the 2nd month beginning after the  
6 effective date of this subsection ~~and the first day of~~. Section 66.0213 of the  
7 statutes, as it applies to towns that become villages under the procedures in sections  
8 66.0201 to 66.0211 of the statutes, applies to the town of Hobart in Brown County  
9 upon the town becoming a village under this subsection.”

*App change*

10

(END)

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

LRBb1793/1dn

MES *m:hand*

*Dak*

Heather Smith:

If a lawsuit concerning this amendment is filed, it is likely that a Wisconsin court would find that the amendment constitutes a "private or local bill" which, under art. IV, sec. 18, of the Wisconsin Constitution, must be enacted as single-subject legislation. If so, this amendment cannot validly be enacted as part of the budget bill, which clearly encompasses more than one subject.

The Wisconsin Supreme Court has created 2 tests to determine whether a bill, or amendment, is "private or local". One test applies to bills that are specific as to persons, places or things. See *Milwaukee Brewers Baseball Club v. Wisconsin Dept. of Health and Social Services*, 130 Wis. 2d 79 (1986). The other test applies to legislation that is general on its face but applicable only to a particular class. See *City of Brookfield v. Milwaukee Metropolitan Sewerage District*, 144 Wis. 2d 896 (1988), and *Davis v. Grover*, 166 Wis. 2d 501 (1992).

This amendment applies only to the town of Hobart in Brown County. You may wish to consider introducing the amendment as a separate bill.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

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

LRBb1793/1dn  
MES:hmh:rs

June 26, 2001

Heather Smith:

If a lawsuit concerning this amendment is filed, it is likely that a Wisconsin court would find that the amendment constitutes a "private or local bill" which, under art. IV, sec. 18, of the Wisconsin Constitution, must be enacted as single-subject legislation. If so, this amendment cannot validly be enacted as part of the budget bill, which clearly encompasses more than one subject.

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*RMR*

ARC:.....Smith - AM114, Change the status of the town of Hobart in Brown County to a village

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

*D-NOT 2*

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1378, line 9: after that line insert:

3 ~~(3p) CHANGE THE TOWN OF HOBART INTO A VILLAGE. Notwithstanding the~~  
4 ~~provisions of sections 66.0201 to 66.0211 of the statutes the town of Hobart, in Brown~~  
5 ~~County, shall become a village on the first day of the 2nd month beginning after the~~  
6 ~~effective date of this subsection. Section 66.0213 of the statutes, as it applies to towns~~  
7 ~~that become villages under the procedures in sections 66.0201 to 66.0211 of the~~  
8 ~~statutes, applies to the town of Hobart in Brown County upon the town becoming a~~  
9 ~~village under this subsection.”~~

10

(END)

*↘*

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBb1793/2ins  
MES:hmh:rs

<sup>f</sup>  
“(3~~1~~) CHANGE THE TOWN OF HOBART INTO A VILLAGE. The town of Hobart, in Brown County, shall become a village if all of the procedures contained in sections 66.0201 to 66.0213 of the statutes are fulfilled, except that approval by the department of administration under section 66.0207 of the statutes is not necessary for the town to become a village. In addition, the town of Hobart, in Brown County, and the City of Green Bay shall enter into a boundary agreement under section 66.0307 of the statutes, although the agreement need not be finalized before the referendum is held under section 66.0211 of the statutes.”.

(END)

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

LRBb1793/2dn

MES:lmh:rs

*Geary*

*Date*

Heather Smith:

In addition to the "private or local bill" issues that I raised in the /1 drafter's note, I believe that if a lawsuit is filed to challenge the validity of this amendment, a number of other issues could be raised.

Article IV, section 23 of the Wisconsin Constitution states that "The legislature shall establish but one system of town government, which shall be as nearly uniform as practicable . . ." It could be argued that this amendment creates another system of town government under which one particular town may become a village using procedures that do not apply to any other towns.

In addition, Article XI, section 3 of the <sup>Wisconsin</sup> state constitution, as well as s. 62.11 (5) of the statutes, and numerous decisions of the Wisconsin Supreme Court give cities, and villages, extensive home rule authority. This constitutional provision "makes a direct grant of legislative power to municipalities" by authorizing them to determine their own local affairs, subject to the constitution and legislative enactments of statewide concern. See *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526 (1977), citing *State ex rel. Ekern v. City of Milwaukee*, 190 Wis. 633, 637 (1926).

The provision also stands for the proposition that the state legislature is limited "in its enactments in the field of local affairs of cities and villages" (*Michalek*, 526 citing *Ekern*, 638) and cannot prohibit a city or village from acting in an area that solely involves local affairs and that is not a matter of statewide concern. It could be argued that by requiring the City of Green Bay to enter into a boundary agreement, which appears to be an issue of local affairs and not a matter of statewide concern, the amendment violates Article XI, section 3 of the constitution.

You should know that even if this amendment becomes law, the City of Green Bay may not be subject to its provisions. In some cases, if a state law intrudes on an area of local concern, a city may elect not to be governed by the law. See *Ekern*, 642.

Although it is difficult to predict how a court would rule should this amendment become law and should a legal challenge be filed, I thought you should at least be aware of these issues. Please let me know if you have any questions.

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**

LRBb1793/2dn  
MES:hmh:rs

June 28, 2001

Heather Smith:

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Although it is difficult to predict how a court would rule should this amendment become law and should a legal challenge be filed, I thought you should at least be aware of these issues. Please let me know if you have any questions.

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ARC:.....Smith – AM114, Change the status of the town of Hobart in Brown  
County to a village

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

**CAUCUS ASSEMBLY AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2001 SENATE BILL 55**

1 At the locations indicated, amend the substitute amendment as follows:

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4 County, shall become a village if all of the procedures contained in sections 66.0201  
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6 administration under section 66.0207 of the statutes is not necessary for the town  
7 to become a village. In addition, the town of Hobart, in Brown County, and the City  
8 of Green Bay shall enter into a boundary agreement under section 66.0307 of the

1 statutes, although the agreement need not be finalized before the referendum is held  
2 under section 66.0211 of the statutes.”

3 (END)