



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 02/23/2004 (Per: MES)



☞ The 2003 drafting file for LRB 03-3775/2

has been copied/added to the 2003 drafting file for

# LRB 03-4330

☞ The attached 2003 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

### 2003 DRAFTING REQUEST

#### Bill

Received: 11/03/2003

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Mark Pettis (608) 267-2365

By/Representing: Kimber

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: Munis - room tax

Extra Copies:

Submit via email: YES

Requester's email: Rep.Pettis@legis.state.wi.us

Carbon copy (CC:) to:

---

#### Pre Topic:

No specific pre topic given

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#### Topic:

Changes to the room tax law; creation of destination marketing organizations

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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>
/?	mshovers 11/20/2003	csicilia 11/20/2003		_____			Local
/P1			jfrantze 11/21/2003	_____	sbasford 11/21/2003		S&L
/1	mshovers	csicilia	jfrantze	_____	sbasford		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/21/2004	01/22/2004	01/23/2004	_____	01/23/2004		
/2	mshovers 02/10/2004	csicilia 02/10/2004	pgreensl 02/11/2004	_____	lnorthro 02/11/2004	lnorthro 02/11/2004	

FE Sent For:

<END>

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/1	mshovers	csicilia	jfrantze	_____	sbasford		

*1/2 gjs 2/10/04 2/10/04*

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	01/21/2004	01/22/2004	01/23/2004	_____	01/23/2004		

FE Sent For: *James 2/10/04*

<END>

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/P1	11/20/04	11/22/04	jfrantze 11/21/2003	_____	sbasford 11/21/2003		
<p>11/23/04</p> <p>11/23</p>							



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Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: Munis - room tax

Extra Copies: please e-mail a copy of the draft to: "pugal @ lodging-wi.com"

Submit via email: YES

Requester's email: Rep.Pettis@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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17	mshovers	1/01 gjs 11/20/03	g 11/21	JJD 11/21	Submit		
1/01 MES 11/20/03							

FE Sent For:

<END>

**Shovers, Marc**

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**From:** Trisha Pugal [pugal@lodging-wi.com]  
**Sent:** Wednesday, November 12, 2003 2:59 PM  
**To:** marc.shovers@legis.state.wi.us  
**Cc:** Kathi Kilgore; rep.pettis@legis.state.wi.us  
**Subject:** Room Tax Draft Questions

Dear Marc:

I understand you were looking for two definitions for your draft of the Room Tax Law Revision, which I have included below.

Also, regarding your question relating to communities with "grandfathered" room tax revenue percentages, they should also be covered by this revision.

A question we had after developing the suggested definitions, was whether there is already an existing definition of "tourism businesses" or not, as we use this in the definition of DMO?

## **Proposed Definitions Room Tax Law Revision**

1. "*Destination Marketing Organization (DMO)*" is a not-for-profit organization incorporated to promote tourism in an area that has as its primary purpose the generation of overnight stays within its area. A DMO must track the results of its approved expenditures and must provide these results at least annually to its governing board. The DMO's governing board must have as a majority of its members individuals currently owning or operating tourism businesses in its area, and the DMO must either have been established prior to January 1, 2004 or must be located in an area without a current DMO or without services provided by a DMO currently.

2. "*Area*" is a geographical boundary for the promotion of tourism that mirrors a room tax jurisdiction

Please contact me if you have any further questions, as we are most anxious for the draft to be completed.

Thank-you-

Trisha Pugal, CAE  
President, CEO  
Wisconsin Innkeepers Association  
262-782-2851

11/12/2003

pugal@lodging-wi.com  
For lodging information visit [lodging-wi.com](http://lodging-wi.com)--

**Shovers, Marc**

---

**From:** Trisha Pugal [pugal@lodging-wi.com]  
**Sent:** Friday, August 15, 2003 5:21 PM  
**To:** marc.shovers@legis.state.wi.us  
**Cc:** Kathi Kilgore; Julia Hertel; rep.pettis@legis.state.wi.us  
**Subject:** Room Tax Bill Draft



Room Tax  
Proposal-8/14.doc

→ 262  
782 2851

Marc:

I left you a voice message on Wednesday, however found out today, when calling again, that you will return on Monday.

The Wisconsin Innkeepers Association is working with Representative Mark Pettis to draft a bill relating to a revision in the state room tax law. His office had called to request a draft, and you had left me a voice mail over a week ago. While I apologize for the delay, I wanted to ensure we had reached a consensus before sending the overview to you for drafting to save you and everyone some time.

Attached you will find the overview. Unfortunately, I will be out of town until August 27th, however I will check e-mail hopefully daily should you have questions. In the interim, should you have any questions about the legislative side of the project, you may contact Kathi Kilgore, our lobbyist (608-286-9599). Should you wish to clarify the issues addressed, you can contact Julia Hertel, Wisconsin Association of Convention & Visitor Bureaus, at 608-837-6693.

We appreciate your assistance.

Trisha Pugal, CAE  
President, CEO  
Wisconsin Innkeepers Association  
262-782-2851  
pugal@lodging-wi.com  
For lodging information visit lodging-wi.com--

## ROOM TAX LAW REVISION Proposal

*Room Tax revenue allocated for "tourism promotion and development" per state law would go directly to a designated "Destination Marketing Organization" (DMO), which would be defined. In areas where this is not possible, the revenue must go to an eligible Tourism Commission who would be responsible for oversight and contracting with an eligible Tourism Entity. Should a municipality not have an eligible DMO or Tourism Commission (contracting with an eligible Tourism Entity) they would not be authorized to collect a local room tax from lodging properties, who would in turn not be required to collect a room tax from guests.*

### Single Municipality

#### A. Funding Goes Directly to a "DMO"

The "DMO" must:

- Have as it's primary purpose the generation of overnight stays in the area
- Have the following composition for it's governing board:
  - a minimum of 67% representation from the area's tourism industry (as described by sic code in the Premier Resort Area Tax law)
  - 33% or more of the total board must be from the lodging industry
  - 51% or more of the total board must be from either lodging, restaurant, tourist attraction, or privately owned golf course businesses in the area
- Track results of approved expenditures and provide these results to the governing board.
- Have a maximum of 29 members on the governing board
- Have been created by ~~September~~<sup>January</sup> 1, 2003, except in communities where no DMO was in existence or currently servicing the community as of that date.

#### B. Funding Goes to a Tourism Entity Contracted by a Tourism Commission

If a "DMO" as described above does not exist, a six-person Tourism Commission must be established, with the following representatives appointed by the principal elected official in the municipality:

- 2 lodging representatives
- 2 additional tourism representatives
- 2 city representatives

The Commission would be responsible for contracting with a "Tourism Entity" to provide tourism promotion and development services, and for oversight of the entity's local room tax expenditures.

The "Tourism Entity" must:

- Have as one of its primary purposes the generation of overnight stays in the area
- Track results of approved expenditures and provide the results to its governing board and the Tourism Commission
- Have over 50% of the total board from the tourism industry, and a minimum of 25% from the local lodging industry

### **Multiple Municipalities Joining Together**

Multiple municipalities may contract with the same "DMO", and have funding submitted directly to the "DMO" provided the "DMO":

- Has as its primary purpose the generation of overnight stays in the area
- Was established by ~~September 1, 2003~~<sup>January 4</sup>, except in municipalities where no DMO serviced that municipality as of the same date
- Track results of approved expenditures and provide these results to its governing board
- Have the following composition for its governing board:
  - Over 50% of the total board must be from restaurant, tourist attraction, privately owned golf course, or lodging businesses in the areas joining together
  - A minimum of 25% of the total board must be from lodging businesses in the areas joining together



State of Wisconsin  
2003 - 2004 LEGISLATURE

FIRST THING FRI (by 8:00 AM if possible)

LRB-3775/7  
MES:.....

P1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION



SA ✓  
X-ref ✓  
new CR ✓

D-note

Reg cat

- 1 AN ACT ... relating to: changes to the room tax law and the creation of
- 2 destination marketing organizations and tourism committees.

*Analysis by the Legislative Reference Bureau* <sup>a tax</sup>

Under current law a city, village, or town (municipality) and a local exposition district may impose a room tax. The room tax is on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators, and other persons who furnish accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations.

Generally, the maximum room tax that a municipality may impose is 8%. A single municipality that imposes a room tax may create a commission, which is defined as an entity to coordinate tourism promotion and development. If two or more municipalities in a zone impose a room tax, they must create a commission. Current law defines a zone as an area made up of two or more municipalities that, those municipalities agree, is a single destination as perceived by the traveling public. Current law requires a commission to contract with an organization to provide staff, development, or promotional services for the tourism industry in a municipality if a tourism entity does not exist in that municipality. A tourism entity is defined as a nonprofit organization that existed before January 1, 1992, that provides staff, development, or promotional services for the tourism industry in a municipality.

A municipality that first imposes a room tax after May 13, 1994, must spend at least 70% of the amount collected on tourism promotion and development, which may be spent directly by the municipality or forwarded to the commission for its municipality or zone.



④ Further analysis to be provided in a future draft.

④ FE-L

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

1           **SECTION 1.** 66.0615 (1) (a) of the statutes is renumbered 66.0615 (1) (ae).

2           **SECTION 2.** 66.0615 (1) (ab) of the statutes is created to read:

3           66.0615 (1) (ab) "Area" means the geographic area of one municipality that  
4 imposes a room tax under sub. (1m) (a) or the geographic areas of two or more  
5 municipalities that impose a room tax under sub. (1m) (a) and that enter into a joint  
6 contract with a destination marketing organization to promote tourism and generate  
7 overnight hotel or motel stays in their municipalities.

8           **SECTION 3.** 66.0615 (1) (aj) of the statutes is created to read:

9           66.0615 (1) (aj) "Destination marketing organization" means one of the  
10 following:

11           1. A nonprofit organization that came into existence before January 1, 2004,  
12 and whose primary purposes are to promote tourism in an area and to generate  
13 overnight stays in hotels or motels in an area.

14           2. If an area does not have an organization described in subd. 1. that serves the  
15 area and that is in existence on January 1, 2004, a nonprofit organization that came  
16 into existence after December 31, 2003, and whose primary purposes are to promote  
17 tourism in an area and to generate overnight stays in hotels or motels in an area.

18           **SECTION 4.** 66.0615 (1) (em) of the statutes is created to read:

19           66.0615 (1) (em) "Tourism committee" means a committee created by a  
20 municipality, under sub. (1m) (h), after December 31, 2003, in an area that does not  
21 have in existence on January 1, 2004, a destination marketing organization, and

1 whose primary purposes are to promote tourism in an area and to generate overnight  
2 stays in hotels or motels in an area.

\*\*\*\*NOTE: I used the term "tourism committee" instead of "tourism commission"  
because the latter is already a defined term in s. 66.0615. ✓

3 **SECTION 5.** 66.0615 (1) (fm) of the statutes is created to read:

4 66.0615 (1) (fm) "Tourism-related retailers" has the meaning given in s.  
5 66.1113 (1) (d). ✓

6 **SECTION 6.** 66.0615 (1m) (a) of the statutes is amended to read: ✓

7 66.0615 (1m) (a) The governing body of a municipality may enact an ordinance,  
8 and a district, under par. (e), may adopt a resolution, imposing a tax on the privilege  
9 of furnishing, at retail, except sales for resale, rooms or lodging to transients by  
10 hotelkeepers, motel operators and other persons furnishing accommodations that  
11 are available to the public, irrespective of whether membership is required for use  
12 of the accommodations. A tax imposed under this paragraph is not subject to the  
13 selective sales tax imposed by s. 77.52 (2) (a) 1. and may not be imposed on sales to  
14 the federal government and persons listed under s. 77.54 (9a). A tax imposed under  
15 this paragraph by a municipality shall be paid to the municipality and ~~may shall,~~  
16 subject to par. (d), be forwarded to a commission if one is created under par. (e), as  
17 provided in par. (d) destination marketing organization, as described under par. (g)  
18 or, if such an organization does not exist in the municipality, to a tourism committee,  
19 as described under par. (h). Except as provided in par. (am), a tax imposed under this  
20 paragraph by a municipality may not exceed 8%. Except as provided in par. (am),  
21 if a tax greater than 8% under this paragraph is in effect on May 13, 1994, the  
22 municipality imposing the tax shall reduce the tax to 8%, effective on June 1, 1994.

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 & 150 ss. 565 to 567; Stats. 1999 s. 66.0615.

23 **SECTION 7.** 66.0615 (1m) (d) 1. of the statutes is amended to read:

1           66.0615 (1m) (d) 1. A municipality that first imposes a room tax under par. (a)  
2 after May 13, 1994, shall spend at least 70% of the amount collected on tourism  
3 promotion and development. Any amount of room tax collected that must be spent  
4 on tourism promotion and development shall either be spent directly by the  
5 ~~municipality on tourism promotion and development or shall~~ be forwarded to the  
6 ~~commission for its municipality or zone if the municipality has created a commission~~  
7 a destination marketing organization, as described under par. (g) or, if such an  
8 organization does not exist in the municipality, to a tourism committee, as described  
9 under par. (h).

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615.

10           **SECTION 8.** 66.0615 (1m) (d) 2. of the statutes is amended to read:

11           66.0615 (1m) (d) 2. If a municipality collects a room tax on May 13, 1994, it may  
12 retain not more than the same percentage of the room tax that it retains on May 13,  
13 1994. If a municipality that collects a room tax on May 1, 1994, increases its room  
14 tax after May 1, 1994, the municipality may retain not more than the same  
15 percentage of the room tax that it retains on May 1, 1994, except that if the  
16 municipality is not exempt under par. (am) from the maximum tax that may be  
17 imposed under par. (a), the municipality shall spend <sup>(plain)</sup> ~~forward~~ at least 70% of the ←  
18 increased amount of room tax that it begins collecting after May 1, 1994, on tourism  
19 promotion and development. Any amount of room tax collected that must be spent  
20 on tourism promotion and development shall either be spent directly by the  
21 ~~municipality on tourism promotion and development or shall~~ be forwarded to the  
22 ~~commission for its municipality or zone if the municipality has created a commission~~  
23 a destination marketing organization, as described under par. (g) or, if such an

1 organization does not exist in the municipality, to a tourism committee, as described  
2 under par. (h). ✓

3 History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615.

3 SECTION 9. 66.0615 (1m) (g) of the statutes is created to read: ✓

4 66.0615 (1m) (g) 1. If a single municipality imposes a room tax under par. (a),  
5 the municipality shall contract with a destination marketing organization in its  
6 area. If no destination marketing organization exists in the municipality, the  
7 municipality shall create a tourism committee under par. (h). ✓

8 2. With regard to a destination marketing organization that provides services  
9 to a single municipality, the organization shall be governed by a board that has no  
10 more than 29 members. The governing board shall be composed of the following  
11 members:

12 a. At least 67 percent of the members of the board shall represent  
13 tourism-related retailers. ✓

14 b. At least 33 percent of the members of the board shall represent the hotel or  
15 motel industry. ✓

16 c. At least 51 percent of the members of the board shall represent the hotel  
17 industry, the motel industry, the restaurant industry, the tourist attraction industry,  
18 or the private golf course industry.

19 3. Two or more municipalities that impose a room tax under par. (a) may enter  
20 into a contract under s. 66.0301 to jointly promote their areas. If each of the  
21 contracting municipalities impose<sup>s</sup> a room tax at the same rate, the municipalities  
22 may enter into a contract with a single destination marketing organization <sup>in their area</sup> to which  
23 the municipalities forward the room tax revenues collected in their areas. A  
24 destination marketing organization that provides services to two or more

STET.  
leave  
as  
typed

single

in  
their  
area

1 municipalities under this subdivision shall be governed by a board that has no more  
2 than 29 members. The governing board shall be composed of the following members:

3 a. At least 51 percent of the members of the board shall represent the hotel  
4 industry, the motel industry, the restaurant industry, the tourist attraction industry,  
5 or the private golf course industry.

6 b. At least 25 percent of the members of the board shall represent the hotel or  
7 motel industry.

8 4. A destination marketing organization's governing board shall do at least all  
9 of the following:

10 ~~a. Monitor the collection of room taxes from the area~~

11 ~~a.~~ Meet regularly and, from among its members, elect a chairperson, vice  
12 chairperson, and secretary.

13 ~~b.~~ Promote tourism in the area and engage in activities that generate overnight  
14 stays in hotels or motels in the area.

15 ~~c.~~ Prepare, and provide to <sup>each</sup> the municipality from which it receives ~~its~~ room tax  
16 revenues, at least annually, a complete accounting of the receipts, expenses, and  
17 expenditures of the board.

\*\*\*NOTE: Your instructions did not provide many details on the responsibilities of the DMO. Does subd. 4. meet your intent?

→ SEC# CR; 66.0615 (1m)(h)

18 (h) 1. If no destination marketing organization exists in a single municipality  
19 that imposes a room tax under par. (a), the municipality shall create a tourism  
20 committee to which it shall forward its room tax revenues. The tourism committee  
21 shall consist of <sup>6</sup> ~~six~~ members, who shall be appointed by the principal elected official  
22 in the municipality. Committee members shall serve for a one-year term, at the  
23 pleasure of the appointing official, and may be reappointed. Two of the committee

④ 66.0615 (1m)  
②

1 members shall represent the hotel or motel industry. Two of the committee members  
2 shall represent tourism-related retailers, other than representatives of the hotel or  
3 motel industry. Two members shall be electors who reside in the municipality, and  
4 may be individuals who hold elective public office.

\*\*\*\*NOTE: Your instructions stated that two members shall be "city  
representatives." I'm not sure if you meant elected officials, municipal employees, or just  
electors of the municipality. Does the last sentence of par. (h) 1. reflect your intent? Are  
the other provisions of this subdivision OK? ✓

5 2. A tourism committee shall contract with a nonprofit entity to provide  
6 tourism development and promotion services to the municipality, and shall forward  
7 to the entity all of the ~~municipality's~~ room tax revenues. *it receives from the municipality*  
8 The primary purposes of the nonprofit entity shall be to promote tourism in the municipality and to generate  
9 overnight stays in hotels or motels in the municipality. The nonprofit entity shall be  
10 governed by a board. The governing board shall be composed of the following  
11 members:

- 12 a. At least 51 percent of the members shall represent tourism-related retailers.
- 13 b. At least 25 percent of the members shall represent the hotel or motel  
14 industry.

\*\*\*\*NOTE: I used the term "nonprofit entity" instead of "tourism entity" because the  
latter is already a defined term in s. 66.0615. Your instructions did not provide any  
guidance on the maximum number of members of the board of a nonprofit entity. Do you  
want to provide any more detail in this area? ✓

15 3. The *governing board of a* nonprofit entity described under subd. 2. shall do at least all of the  
16 following:

- 17 ~~a. Monitor the collection of room taxes from the area.~~
- 18 a. *My* Meet regularly and, from among its members, elect a chairperson, vice  
19 chairperson and secretary.

1 *b, d* Promote tourism in the area and engage in activities that generate overnight  
2 stays in hotels or motels in the area.

3 *c, d* Prepare, and provide to the tourism committee from which it receives *(12)*  
4 room tax revenues, at least annually, a complete accounting of the receipts, expenses,  
5 and expenditures of the board.

\*\*\*\*NOTE: Your instructions did not provide many details on the responsibilities of the nonprofit entity. Does subd. 4. meet your intent?

6 SECTION 10. Nonstatutory provisions. *ae*

7 (1) DISSOLUTION OF A COMMISSION. If a commission under section 66.0615 (1) *(a)*  
8 of the statutes *as affected by this act* is in existence on or after the effective date of this subsection *am*

9 ~~revision inserted~~, it shall wind up its affairs and dissolve, and the dissolution  
10 shall take effect on March 31, 2005. Such a commission shall terminate any  
11 contracts that it may have with a tourism entity under section 66.0615 (1) (f) of the  
12 statutes, or any similar organization that performs the functions of a tourism entity.  
13 Before dissolution, a commission shall pay off all of its outstanding liabilities. If a  
14 commission does not have sufficient assets to pay off its liabilities, the liabilities shall  
15 become the responsibility of the municipality that created the commission. After  
16 paying off all of its outstanding liabilities, a commission shall distribute any  
17 unallocated assets to the municipality that created the commission. If more than one  
18 municipality created a commission, the outstanding liabilities of a commission that  
19 the commission is not able to pay off shall be allocated among the creating  
20 municipalities based on the percentage of room tax revenue <sup>S</sup> that each municipality  
21 forwarded to the commission during the last 12 months before the dissolution of the  
22 commission, and unallocated assets of a commission shall be distributed to such  
23 municipalities based on the same percentage.

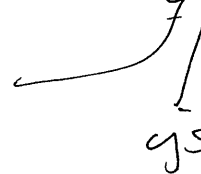




**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3775/?dn

MES:.....

Handwritten signature and initials, possibly 'gjs', with a line pointing to the 'MES' text above.

Representative Pettis:

I have had a number of conversations with Trisha Pugel of the Wisconsin Innkeepers Association to flesh out some of the details that were left out of the drafting instructions that I needed to complete the draft. A number of issues still need to be resolved, so Trisha and I thought that it would be best to produce a preliminary draft for your initial review. Some of my questions are contained in the body of the draft, as "\*\*\*\* NOTES."

Another issue that needs to be resolved is who should appoint the members of the Destination Marketing Organizations (DMOs). As drafted, municipal room tax revenues are forwarded to DMOs or, in some cases, other nonprofit entities. These private entities spend the room tax revenues they receive on loosely-specified purposes. See ss. 66.0615 (1m) (g) 4. <sup>b</sup>c. and (h) 3. <sup>b</sup>c.

The problem I see with this, and which I raised with Trisha, is that there is really no public oversight or direction as to how this public money is being spent. I added a reporting requirement in ss. 66.0615 (1m) (g) 4. <sup>b</sup>d. and (h) 3. <sup>b</sup>d., but the governing body of a DMO or other nonprofit entity under sub. (1m) (h) is not accountable to any public official — the members of the board are appointed by their organizations. <sup>c</sup>

One problem I see with this lack of oversight is that someone could argue that such a system violates that part of the public purpose doctrine which requires that the taxing jurisdiction that imposes a tax must be the taxing jurisdiction that spends the tax's proceeds. See *Brodhead v. City of Milwaukee*, 18 Wis. 658, 671 (1865); *State ex. rel. New Richmond v. Davidson*, 114 Wis. 563, 757 (1902); *Owen v. Donald*, 160 Wis. 21, 125 (1915); *State ex. rel. Wisconsin Dev. Authority v. Dammann*, 228 Wis. 147, 183 (1938); *State ex. rel. American Legion 1941 Con v. Corp. v. Smith*, 235 Wis. 443, 451 (1940); *State ex. rel. Warren v. Nusbaum*, 59 Wis. 2d 391 (1973); *Buse v. Smith*, 74 Wis. 2d 550, 577 (1976) and *Sigma Tau Gamma Fraternity House v. City of Menomonie*, 93 Wis. 2d 392, 412-413 (1980). As drafted, the unit of government that raises the tax isn't really spending the tax's proceeds — the proceeds are being spent by a separate, nongovernmental entity over which the unit of government that imposed the tax has no control.

Trisha agrees that this lack of public oversight of what may be considerable amounts of public money may be a problem, but she wasn't sure how her organization would like to solve the problem or what your intent is on this issue. We agreed that I would just

produce a preliminary draft for your review and that a future draft would address this issue.

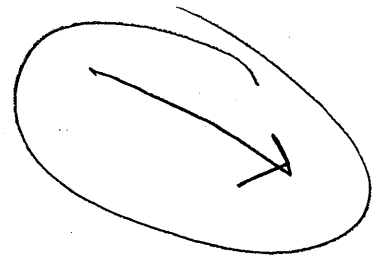
It is also possible that if this bill becomes law, a city or village that imposes a room tax could challenge the bill as a violation of its constitutional and statutory home rule powers because the bill requires that cities, villages, and towns forward their room tax revenues to a nonprofit organization (towns, however, do not have these home rule powers.)

Article XI, section 3, of the Wisconsin Constitution, as well as ss. 61.34 (1) and 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. Although this bill would affect all cities and villages equally, it could be argued that requiring a city or village to give all of its room tax revenues to a nonprofit organization, over which the city or village has no control, violates Article XI, section 3, of the constitution on the grounds that how a city or village spends its own money generated by its own local tax is an issue of local affairs and not a matter of statewide concern.

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

There is one other problem I see with the draft. The nonstatutory section of the bill dissolves commissions, as defined under s. 66.0615 (1) (a) of the statutes, and requires them to terminate contracts that they may have with nonprofit organizations that provide staff, development, or promotional services for the tourism industry. See the definition of "tourism entity" in s. 66.0615 (1) (f). This could lead to the bill being challenged as possibly violating the federal and state constitutional prohibitions against the the legislative impairment of contracts.



STET: leave  
as typed

02/28/94

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0648/1dn  
MES:kmg:ks

↓  
NO \$

This substitute amendment is drafted according to your instructions in that it includes a provision which prohibits the enforcement of certain restrictive covenants that restrict or prohibit the erection, maintenance or use of a television or radio antenna or satellite dish under certain circumstances.

It is possible that a court could find that this provision violates the federal or state constitutional proscriptions against a legislative impairment of the obligation of contracts. [See article I, section 10, of the U.S. constitution and article I, section 12, of the Wisconsin constitution.] It should be noted, however, that "[t]he constitutional proscription against impairment of the obligation of contract is not absolute." *State ex rel. Cannon v. Moran*, 111 Wis. 2d 544, 553 (1983), citing, in part, *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398, 428 (1934). "Under certain circumstances the obligation of contract may be obliged to yield to the compelling interest of the public — the exercise of the police power." *Cannon* at 554, citing *State ex. rel. Building Owners v. Adamany*, 64 Wis. 2d 280, 292 (1974).

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⊖ In general, when a court determines whether challenged legislation interferes with the constitutional protections afforded contracts, the court must determine whether the legislation impairs an existing contract, whether the impairment is substantial and whether the legislative purpose justifies the impairment. See *Laskaris v. City of Wisconsin Dells*, 131 Wis. 2d 525 (Ct. Apps., 1986) and *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 103 S. Ct. 697 (1983).

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⊖ I have not conducted exhaustive research on this topic and it is impossible to predict how a court would decide a challenge brought against ~~created by this~~ should it become law, but I believe that you should at least be aware of this issue. Please let me know if you have any further questions on this topic.

this bill

Marc E. Shovers  
Legislative Attorney  
266-0129  
M E S

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

LRB-3775/P1dn  
MES:cjs:jf

November 21, 2003

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