

2003 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB44)

Received: 06/13/2003

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Mary Panzer (608) 266-7513

By/Representing: Tad

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: **Munis - miscellaneous
Counties - miscellaneous**

Extra Copies:

Submit via email: YES

Requester's email: **Sen.Panzer@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Fees imposed by municipalities and counties must be reasonable, supported by written findings

Instructions:

See Attached. Codify "Milwaukee v. Milwaukee S.& T. Corp.", 6 Wis. 2d 299 (1959). Any fee of any kind that a muni or county imposes must bear a reasonable relationship to the service for which it is imposed.

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	mshovers 06/16/2003	jdye 06/16/2003	chaskett 06/16/2003	_____	sbasford 06/16/2003	sbasford 06/16/2003	

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1?	mshovers	1 6/16 jld	1 6/16 cph	acm/cph 6/16			
11 MES 6/13/03							

FE Sent For:

<END>

Ottman, Tad**From:** richard chandler [rgcwis@charter.net]**Sent:** Wednesday, June 11, 2003 9:24 AM**To:** Ottman, Tad**Subject:** Fw: suggested fee language

Tad --

I'm forwarding the e-mail Tom Larson sent yesterday on the suggested fee language to make sure it gets to you. I'll call you later today after our meeting with Gard and our other contacts to discuss where we are on the bond issuance and TIF items.

Thanks,
Rick Chandler

----- Original Message -----

From: Larson, Tom**To:** 'tad.ottman@legis.state.wi.us'**Cc:** 'msemmann@wisbuild.org'; Theo, Mike - VP Public Affairs; Richard Chandler (E-mail); Jerry Deschane (E-mail)**Sent:** Tuesday, June 10, 2003 11:56 AM**Subject:** FW: suggested fee language

Tad,

Here are our proposed modifications to Mark Petronsky's draft.

Any fee charged by a political subdivision (city, village, town, county) ~~under its police power~~ shall bear a reasonable relationship to the service for which the fee is charged. ~~expenses incurred or benefits provided by the political subdivision.~~ The political subdivision shall make written findings to show that its decision complies with the standard in this section ~~— This section applies to~~ for fees that are established or increased after the effective date of this section.

In case the strikeouts and highlighted additions don't show up, here is an edited version of Mark's draft.

Any fee charged by a political subdivision (city, village, town, county) shall bear a reasonable relationship to the service for which the fee is charged. The political subdivision shall make written findings to show that its decision complies with the standard in this section for fees that are established or increased after the effective date of this section.

written findings only apply to fees imposed on or after effective date

Justifications

-- Striking of "under its police power" -- I fear that this language would create a loophole, allowing communities to charge "unreasonable" amount for those fees that are not authorized under a community's police power.

-- Replacing "expenses incurred or benefits provided by the political subdivision" with "to the service for which the fee is charged" -- Again, we are worried that this language will create a loophole for communities by allowing them to justify a fee on the basis that it bears a rational relationship to ALL of the city's expenses or benefits, not just those related to the service. Such an interpretation would allow communities to justify whatever fee they want, no matter how exorbitant.

-- Combining the last two sentences -- As drafted, the language would apply only to fees enacted prospectively by local communities, and thus would seemingly authorize the enactment of unreasonable fees as long as they were enacted prior to the effective date of this law. Based on Mark's comments, it appears that he was just trying to say that the written findings would not be required for fees enacted prior to the effective date of this law. We

06/11/2003

agree with this objective and have combined the last two sentences to make this more clear.

If you have any further questions, please contact us. Thanks.

Tom Larson

Thomas D. Larson - Director of Land Use and Environmental Affairs
Wisconsin REALTORS Association
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Madison, WI 53704-7337
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Ottman, Tad

From: Patronsky, Mark
Sent: Monday, June 09, 2003 12:21 PM
To: Ottman, Tad
Subject: RE: fees charged by local governments

Tad---

I am responding informally, rather than by Legislative Council memo, so that you can have a quick response.

In thinking about this, I think the best approach is to keep the language as simple as possible. The current common law is simple--police power fees must be reasonable. Any detail that is added to the statutes in terms of standards for this decision will only raise many more questions, and may add new standards, rather than merely restating common law. I think it will be important that the drafting instructions for the LRB be accompanied by this memo, and a statement of your intent to restate the common law, and no more (other than the addition of the written finding). This way the courts will continue to give wide latitude to the legislative decisions of local government. If this is not your intent, I will be happy to assist with a more detailed draft or with suggestions for additional statutory standards for local fees.

Here is my suggestion for statutory language:

Any fee charged by a political subdivision (city, village, town, county) under its police power shall bear a reasonable relationship to the expenses incurred or benefits provided by the political subdivision. The political subdivision shall make written findings to show that its decision complies with the standard in this section. This section applies to fees that are established or increased after the effective date of this section.

Here are a couple of questions and comments:

--"Fee" is defined in relation to the police power. This distinguishes it from the taxing authority, and distinguishes it from proprietary functions such as landfill operation. There may be other distinctions that I can't think of at the moment. The draft could have a much more detailed definition, but I believe it would be a challenge to draft.

--The language suggested regarding the actual costs as a cap on fees is not included in my draft. This seems to add another standard on top of the reasonableness standard.

--The draft does not state whether the measure of the fee is the program as a whole, or whether the fee must be reasonable in relation to the individuals who pay the fee. I expect that local governments may take either approach now, and the reasonableness standard in the draft will continue to allow that flexibility.

--The language suggested regarding a finding that the fees are necessary is not included in my draft. The necessity for a fee does not appear to be part of the common law standard.

--I added, as a suggestion, the last sentence, to avoid an argument that all existing fees must have a written finding.

I hope this is of use to you.

Mark Patronsky
Legislative Council
266-9280

-----Original Message-----

From: Ottman, Tad
Sent: Friday, June 06, 2003 2:13 PM
To: Patronsky, Mark
Subject: fees charged by local governments

Mark,

Here's the language that is being contemplated. The case they refer to is Milwaukee v. Milwaukee & S.T. Corp., 6 Wis.(2d) 299, 309-11 (1959). The other reference they use is 71 Am.

Jur. 2d, State and Local Taxation, sec. 13.

What I am looking for is some suggestions on language that makes it clear that fees charged by local units of government are for actual costs incurred by the government and that they are allocated fairly. Further, there must be some finding of fact and written demonstration of how the fee or fee increase was arrived at.

Thanks for your help.

Tad Ottman

As you will see, we are not trying to change the law, but simply asking for that existing case law be codified. For purposes of making a motion, the following language should be sufficient:

- Ø Any fee charged by local units of government for a government-related service may not exceed the actual costs incurred by the local unit of government to provide that service. In other words, the government fee must be fair and reasonable and bear a reasonable relationship to the benefits conferred on those receiving the services (i.e., it cannot be used to benefit the general public).
- Ø Before imposing a new fee or increasing an existing fee, the local unit of government must perform a needs assessment to demonstrate the fee or fee increase is both necessary and reasonable.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBb04497

MES...:.....

fmr jld

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SENATE AMENDMENT,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 44

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

2 1. Page ⁵⁹⁸ ~~2~~, line ⁶⁹ ~~2~~ after that line insert:

3 "SECTION ^{1532P} ~~22~~. 66.0628 of the statutes is created to read:

4 **66.0628 Fees imposed by a political subdivision.** (1) In this section,
5 "political subdivision" means a city, village, town, or county.

6 (2) Any fee that is imposed by a political subdivision shall bear a reasonable
7 relationship to the service for which the fee is imposed.

8 (3) With regard to a fee that is first imposed, or an existing fee that is increased,
9 on or after the effective date of this subsection ^{reviser inserts} [new date], a political subdivision

1 shall issue written findings ^{that} ~~which~~ demonstrate that the fee meets the standard in
2 sub. (2).”

3 (END)

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 44**

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

2 **1.** Page 598, line 6: after that line insert:

3 **"SECTION 1532p.** 66.0628 of the statutes is created to read:

4 **66.0628 Fees imposed by a political subdivision.** (1) In this section,
5 "political subdivision" means a city, village, town, or county.

6 (2) Any fee that is imposed by a political subdivision shall bear a reasonable
7 relationship to the service for which the fee is imposed.

8 (3) With regard to a fee that is first imposed, or an existing fee that is increased,
9 on or after the effective date of this subsection [revisor inserts date], a political
10 subdivision shall issue written findings that demonstrate that the fee meets the
11 standard in sub. (2).".

12 (END)