

**2003 DRAFTING REQUEST**

**Senate Amendment (SA-SSA1-SB44)**

Received: 06/18/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Mary Panzer (608) 266-7513

By/Representing: Jere Bauer

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Correctional System - prisons  
Munis - miscellaneous

Extra Copies: rpn

Submit via email: YES

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

Carbon copy (CC:) to: jere.bauer@legis.state.wi.us  
bryon.wornson@legis.state.wi.us

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Utility costs incurred by municipalities associated with prisons

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**Instructions:**

Permit New Lisbon to obtain reimbursement from DOC for utilities that it would have received had the prison been operating from May 2002; minimum of \$215,000; from appropriation 20.410 (1) (a)

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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>
/?	mdsida 06/18/2003	kgilfoy 06/18/2003		_____			
/1			pgreensl 06/18/2003	_____	lemery 06/18/2003	lemery 06/18/2003	

Vers.   Drafted   Reviewed   Typed   Proofed   Submitted   Jacketed   Required

FE Sent For:

**<END>**

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1?	mdsida	1-6/18 KMP	6/18 rpb	6/18 SJB			

FE Sent For:

<END>

June 13, 2003

Representative John Gard  
Speaker, Wisconsin State Assembly  
State Capitol, Room 211 West  
*Hand-Delivered*

Dear Speaker Gard,

Thank you for meeting with me earlier today and allowing me to help you complete a fix of the City of New Lisbon dilemma with regard to the long-delayed opening of the state's prison there.

Following my meeting with you, I met with Senator Mary Panzer. I informed her that you are okay with a provision in a technical budget amendment as outlined below. She informed me that she also is okay with the planned technical amendment.

The purpose of the funding is to make the City of New Lisbon whole for the debt service costs it was obliged to incur in order to have the New Lisbon Correctional Institution ready by the date the state originally intended to fill it with prisoners.

The prison is now slated to have prisoners in it as of April 2004. This is twenty-three months beyond the original date the state directed New Lisbon to have the prison ready for occupancy. As directed, the City of New Lisbon had the necessary utilities online by the state's schedule for full staffing in May 2002.

In May 2002, the State took official possession of the facilities. For the purpose of the utilities serving the prison, the state "opened" the prison when it had staff commence work in the facility in May 2002.

Therefore, City of New Lisbon, seeks only to be made whole for the agreed period from when the prison was "opened". That period will be twenty-three months, assuming the prison becomes occupied with prisoners in April 2004. When prisoner occupancy occurs, utility fee payments from the state to the City will, from then on, service the City's utility debts.

According to City of New Lisbon documentation (attached), \$217,742.84 is the amount that will make the City whole for debt service incurred to accommodate the State's directive for the prison's 'opening' date.

According to the Legislative Fiscal Bureau, the Department of Corrections (DOC) has approximately \$1.6 million in their base budget for maintenance of prison facilities. As I discussed with you and Senator Panzer, the technical amendment would direct DOC to use these funds to make its payment to the City of New Lisbon.

Thank you again for your understanding and help with this fix that will repair the state's damaged relationship with one of its cities.

You raise the idea of a less-than-full payment to the City. However, I must point out that the long-delayed prison opening has caused the city significant costs and problem in several other ways. The utility costs they have had to 'eat' have been the most difficult for residents to swallow. Therefore, while I am open to discussing this point further, on behalf of the City, I hope that will not be necessary.

With kindest regard,

Senator Dale Schultz

Attachment

cc Senator Mary Panzer

To Michael Dsida, LFB fax 4-6948  
From Tom Jackson, Senator Dale Schultz, 6-0703

Cost to the New Lisbon Utilities to extend utility service to the Prison:

Water & Sewer Extensions	\$ 867,157
Electric Extension	\$ 190,933
Engineering for Water & Sewer Extensions	\$ <u>175,689</u>
<b>Total</b>	<b>\$ 1,233,779</b>

Cost of utilities extensions spread over 20 years                      \$ 1,233,779 / 20 years / 12 months = \$5,140.75 per month

Cost of Debt Issued to Pay for Water & Sewer Extensions            \$53,402 per year / 12 months = \$4,326.33 per month

The New Lisbon Correctional Institution was completed and ready for occupancy in May 2002. If the prison opens in April 2004, that would be a delay of 23 months. At a cost of \$9,467.06 per month, the total amount the New Lisbon Utilities is requesting to be reimbursed due to the delayed opening is \$217,742.84. This would approximately cover the capital costs that have resulted due to extending utility service to the Prison, but does not take into consideration increased operating and maintenance expenses that are currently being incurred due to the prison.

## Dsida, Michael

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**From:** Bauer Jr., Jere  
**Sent:** Wednesday, June 18, 2003 4:09 PM  
**To:** Dsida, Michael  
**Subject:** RE: here it is

See chnages below.

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

**From:** Dsida, Michael  
**Sent:** Wednesday, June 18, 2003 4:04 PM  
**To:** Bauer Jr., Jere  
**Subject:** here it is

(1x) Utility costs incurred by municipalities in connection with certain prisons. Before April 30, 2004, a city that was incorporated in 1889 and that is located in a county that was created in 1856 may apply to the department of corrections for reimbursement **[Swain, Sandy]** of ~~for the amortized cost~~ **[Swain, Sandy]** s, including debt service, for the period beginning on May 1, 2002, and ending on March 31, 2004, of extending utility service in connection with the construction of a prison if the construction of the prison was authorized by the building commission in September 1998. The department of corrections shall pay the city at least \$215,000 of those costs no later than June 30, 2004, from the appropriation account under section 20.410 (1) (a) of the statutes."

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
michael.dsida@state.legis.wi.us



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBb06770  
MGD:.....

D - Note

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

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

4:45 pm

1 At the locations indicated, amend the substitute amendment as follows:  
2 ✓ 1. Page 1057, line 3: after that line insert:  
3 "(1x) UTILITY COSTS INCURRED BY MUNICIPALITIES IN CONNECTION WITH CERTAIN  
4 PRISONS. Before April 30, 2004, a city that was incorporated in 1889 and that is  
5 located in a county that was created in 1856 may apply to the department of  
6 corrections for reimbursement for <sup>of costs</sup> ~~the amortized cost~~ including debt service, for the  
7 period beginning on May 1, 2002, and ending on March 31, 2004, of extending utility  
8 service in connection with the construction of a prison if the construction of the prison  
9 was authorized by the building commission in September 1998. The department of



1 corrections shall pay the city at least \$215,000 of those costs no later than June 30,  
2 2004, from the appropriation account under section 20.410 (1) (a) of the statutes.”.

3 (END)

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

0677  
LRBb0687/1dn  
MGD:kmg:rs



June 18, 2003

Senator Panzer:

Based on the instructions that I received, this language should enable New Lisbon to obtain reimbursement for certain expenses that it incurred in association with the construction of the prison there. But it is possible that a Wisconsin court would find that this 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 is "private or local." One 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). The other 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).

This amendment appears general on its face but is applicable only to a particular class (cities that were incorporated in 1889 and that are located in a county created in 1856). Under the *Brookfield* test, this amendment is unconstitutional unless all of the following are true:

1. The classification is based upon substantial distinctions that make one class really different from another.
2. The classification is germane to the purpose of the law.
3. The class is open to additional members.
4. The law applies equally to all members of the class.
5. The characteristics of each class are so different from those of the other classes that substantially different treatment is justified.

If a court were to find that this amendment is specific as to persons, places, or things, the amendment could still be ruled constitutional if it were viewed as having a "direct and immediate effect on a specific statewide concern or interest." *Milwaukee Brewers*,

130 Wis. 2d at 115. The amendment might be less open to challenge on this ground if it contained some explanation (perhaps in the form of a statement of legislative intent) of how it addresses a statewide concern or interest.

Although it is difficult to predict the potential for and outcome of any court action on this amendment, should it become law, I thought you should at least be aware of the issues involved.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

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

LRBb0677/1dn  
MGD:kmg:pg

Senator Panzer:

Based on the instructions that I received, this language should enable New Lisbon to obtain reimbursement for certain expenses that it incurred in association with the construction of the prison there. But it is possible that a Wisconsin court would find that this 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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Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBb0677/1  
MGD:kmg:pg

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

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

**1.** Page 1057, line 3: after that line insert:

“(1x) UTILITY COSTS INCURRED BY MUNICIPALITIES IN CONNECTION WITH CERTAIN PRISONS. Before April 30, 2004, a city that was incorporated in 1889 and that is located in a county that was created in 1856 may apply to the department of corrections for reimbursement of costs, including debt service, for the period beginning on May 1, 2002, and ending on March 31, 2004, of extending utility service in connection with the construction of a prison if the construction of the prison was authorized by the building commission in September 1998. The department of corrections shall pay the city at least \$215,000 of those costs no later than June 30, 2004, from the appropriation account under section 20.410 (1) (a) of the statutes.”.

(END)