

**2003 DRAFTING REQUEST**

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

Received: **06/18/2003**

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: **Rick Olin**

Addl. Drafters:

Subject: **Munis - 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

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**Topic:**

Levy limit exception for city of Fond du Lac

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**Instructions:**

See Attached. Same as b0605/1, w/ changes suggested by Rick Olin

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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 06/18/2003	kgilfoy 06/18/2003		_____			
/1			chaskett 06/18/2003	_____	lemery 06/18/2003	lemery 06/18/2003	
/2	mshovers	kgilfoy	chaskett	_____	lemery	lemery	

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	06/18/2003	06/18/2003	06/18/2003 _____		06/18/2003	06/18/2003	

FE Sent For:

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1?	mshovers	1/1	1/1	Ch/cph			
1/1	MES	6/18/03	6/18	6/18			

FE Sent For:

<END>

PANZER

June 13, 2003

To: Representative Steve Foti

From: Representative John Townsend

Subj.: Proposed Levy Limit

tent  
OK

**The language in the proposed levy limit , unless changed, would create an inequitable condition not envisioned by the drafters.**

Suggest that wording in the annexation section of the proposed levy limit be changed to the following: *Municipalities annexing property in the year 2003 be permitted to apply their 2003 mil rate to the current assessed value of the annexed property.* This suggestion is based upon the situation described below.

In approximately 1948 Mercury Marine purchased property in the town of Fond du Lac for a manufacturing operation. This location was desirable for several reasons:

- Adjacent to a major highway
- Near the county airport
- Proximity to the City of Fond du Lac

Today Mercury Marine is the largest employer in the Fond du Lac area, employing over 3,000 people, selling their products world wide.

Since 1948 the City of Fond du Lac has likewise grown expanding its boundaries until they completely surrounded the Mercury Marine complex, making it a town island. This island situation is illustrated in block 21 of the attached plot map. In 1991 the City of Fond du Lac and Mercury Marine negotiated an annexation agreement. This agreement contained two key provisions:

- Mercury Marine property would be officially annexed into the city on January 1, 2003.
- Mercury Marine would pay to the City of Fond du Lac a fee for services provided by the city until such time that Mercury Marine became part of the city.

On January 1, 2003 the Mercury Marine property was officially annexed into the city. Under the wording of the proposed levy limit the city will receive less revenue. This is a situation that was not envisioned by the drafters. **Strongly recommend that the wording of the proposed levy limit be modified to prevent inequities as described in this memo.**

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

LR000000/100  
MES:jld:cph

June 17, 2003

Note to file -  
This p-note was  
submitted w/ b0605//,  
on which this amendment  
is based -- no need  
to resend p-note.

Senator Panzer:

Based on the instructions I received, this language may address the problem faced by the city of Fond du Lac and Mercury Marine, although the instructions make it seem as if the town of Fond du Lac consists entirely of the Mercury Marine complex. If this is true, I don't know whether this amendment works. Is the city of Fond du Lac providing services to Mercury Marine under a contract, or is the city actually providing the services to the town? Now that the Mercury Marine complex has been annexed to the city, is there still a town of Fond du Lac? You may want to have this amendment reviewed by city officials to ensure that it addresses their concerns.

I don't know whether the amendment affects any other cities or villages but, if I made the amendment any more specific so that it clearly applied only to the city of Fond du Lac, it could be subject to a court challenge as a possible violation of the "private or local" provisions of art. IV, sec. 18 of the Wisconsin Constitution.

Even as drafted, it is possible that a challenge to this amendment could be raised. 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 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 is general on its face but is applicable only to a particular class (cities or villages that have been providing services to a town for at least 10 years, and then annex part of the town territory). 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.

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.

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



State of Wisconsin  
2003 - 2004 LEGISLATURE

redraft  
from

60712/1

→ LRBb060574

MES:jld:cph

ikj

**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 596, line 10: delete "If" and substitute "Except as provided in par. (e),  
3 if".

4 **2.** Page 596, line 22: after that line insert:

5 "(e) If a city or village, which has been providing services for a fee to a town for  
6 at least 10 years, annexes territory from that town, the city's or village's levy increase  
7 limit otherwise applicable under this section is increased in the current year by an  
8 amount equal to the city's or village's mill rate applied to the current assessed value  
9 of the annexed territory and the levy increase limit otherwise applicable under this  
10 section in the current year for the town from which the territory is annexed is  
11 decreased by ~~that same amount~~ as determined by the department of revenue."

12

(END)

→ the town's mill rate applied to, the town's current assessed  
value of the annexed territory



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBb0712/1  
MES:jld&kj/cph

*King*  
*Fmk*

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10          section in the current year for the town from which the territory is annexed is

1 decreased by the town's mill rate applied to the ~~current~~ assessed value of the annexed  
2 territory, as determined by the department of revenue.”.

3

(END)

*as of the last year that the territory  
was subject to taxation by the town*



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBb0712/2  
MES:jld/kjf/kmg:cph

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1 territory as of the last year that the territory was subject to taxation by the town, as  
2 determined by the department of revenue.”.

3 (END)