

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1031/P1dn

JK:jld:rs

February 14, 2011

Representative Wanggaard:

Please review this draft carefully to ensure that it is consistent with your intent.

Also, please be aware that the business expansion credit, as created in the bill, could be challenged as a violation of the uniformity clause of article VIII, section 1, of the Wisconsin Constitution. The uniformity clause requires that the taxation of real property be uniform.

The Wisconsin Supreme Court has held that reducing the taxes on some property but not exempting the property is a partial exemption that violates the uniformity clause. See *State ex rel. La Follette v. Torphy*, 85 Wis. 2d 94, 105-108 (1978) and *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 427-428 (1859). A court could find that the business expansion credit created in the bill creates a partial exemption because it disproportionately reduces the tax liability of business owners based only the increased value resulting from new improvements and personal property acquisitions. The uniformity problem is further exacerbated by the fact that persons who own similar property, but who have no new improvements or acquisitions, will not receive the credit.

Please also note that, although the lottery and gaming credit provides tax relief only to homeowners, revenue from the lottery fund is not subject to the uniformity clause, but revenue from the general fund is. Therefore, using general fund revenue to pay for a portion of a tax credit that is provided only to some business property owners may also violate the uniformity clause. A similar issue arose with adoption of the first dollar credit under s. 79.10 (5m), which originally was to apply only to principal residences, but which was amended to apply to all improvements in order to avoid uniformity clause issues.

Although I am not certain how a court would rule on a constitutional challenge to the bill, should it become law, you should be aware of possible challenges to the bill. Please contact me if you have any questions.

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