

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1601/2dn
MES:sac:rs

December 19, 2013

Rep. Loudenbeck:

I believe that this bill meets your intent in that it amends the definition of “tourism promotion and development” to include public snowmobile trails and authorizes a municipality to fund with room tax revenues the development and maintenance of snowmobile trails that are located in that municipality.

Under the bill, a municipality that collects room tax revenue and wishes to spend it on snowmobile trails must forward to a county the amount that it wants to spend on this aspect of tourism promotion and development. You should be aware that there is some chance that, should this provision be enacted, it could be challenged as a violation of that part of the public purpose doctrine that requires that “[A] tax must be spent at the level at which it is raised.” *State ex rel. Wisconsin Dev. Authority v. Dammann*, 228 Wis. 147, 183 (1938). In other words, the public purpose doctrine prohibits one governmental unit from transferring a portion of its tax revenue to another governmental unit for general purposes.

One could argue, however, that the public purpose doctrine would not apply to this situation because, under the bill, the room tax revenue that is raised by the municipality and spent by the county must be spent on snowmobile trails that are located in the municipality. Therefore one could argue that, although the tax revenue is raised at one level of government and transferred and spent by another unit of government, the money is spent specifically to benefit the unit of government that raised the tax revenue. Although I have no idea how a court would rule on such a challenge, you should at least be aware of the issue. Please let me know if you have any questions about this issue.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov