



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON TAX EXEMPTIONS FOR
RESIDENTIAL PROPERTY (COLUMBUS PARK)

FROM: Mary Matthias, Senior Staff Attorney, and Laura Rose, Deputy Director

RE: Recommendations Made to the Special Committee

DATE: November 2, 2004

This Memo sets forth recommendations for legislation made by members of the Special committee and persons testifying to the committee. The purpose of this Memo is to form a framework for initial discussion of issues and alternatives relative to the committee's charge. It is not intended to be an exhaustive list of all legislative alternatives relating to property leased as residential housing by a tax-exempt entity. The committee may wish to pursue other alternatives that are not presented in this paper, or recommend that the law remain unchanged.

Many of the recommendations in this paper are not exclusive of one another; a legislative proposal could incorporate more than one of these, or other, recommendations.

Most of these proposals would require considerable refinement by the committee before they could be drafted as legislative recommendations. Committee staff will conduct research as necessary, including analyzing whether a proposal raises any constitutional issues, and provide additional information and options pertaining to any recommendations that the committee wishes to pursue further.

The recommendations have been grouped into six general categories:

- a. Obtain more information about the extent and impact of the property tax exemption.
- b. Retain, but modify or narrow the current exemption for benevolent associations.
- c. Retain the current exemption; create three new exemption categories; require the state to reimburse taxing jurisdictions for foregone property tax revenue.
- d. Retain the current exemption but require payments for municipal services by tax-exempt entities.

- e. Retain the current exemption but require review or periodic reauthorization.
- f. Repeal the current exemption; replace the exemption with an alternative funding mechanism for needy individuals or certain benevolent entities.

A. OBTAIN MORE INFORMATION

1. Require or request an audit of tax-exempt residential property in Wisconsin by the Legislative Audit Bureau (LAB).

Persons testifying to the committee have commented that the actual value, number, and locations of parcels that are leased by tax-exempt entities as residential housing in Wisconsin are not known. Because these properties are tax-exempt, they are not assessed for tax purposes, and because ownership of these properties tends to remain unchanged, appraisals of these properties are made infrequently.

The Special Committee could draft legislation requiring the LAB to undertake an audit of tax-exempt residential housing or send a letter to the co-chairs of the Joint Legislative Audit Committee requesting such an audit. The legislation or the letter could specify the information the committee believes should be gathered and the issues upon which the committee believes an audit should be focused.

An audit of this topic would not be completed before the committee completes its work. The information obtained by the audit would, however, be presented to the Legislature and would be available to the public. It is also likely that public hearings on the audit would be held by the Joint Legislative Audit Committee.

B. RETAIN BUT MODIFY OR NARROW THE CURRENT EXEMPTION FOR BENEVOLENT ASSOCIATIONS

2. Create a definition of benevolent association, or specify the required activities necessary to obtain eligibility for the property tax exemption under s. 70.11 (4), Stats.

The Legislature has adopted numerous exemptions for the property tax for both real and personal property, which are set forth in ch. 70, Stats. Section 70.11 (intro.) and (4), Stats., generally exempt property owned and used exclusively by educational institutions, churches, and religious, educational or benevolent associations, including benevolent nursing homes and retirement homes for the aged, women's clubs, historical societies, certain library associations, and fraternal societies.

Prior to 1969, the word "benevolent" was interpreted as requiring charity, meaning providing services without regard to ability to pay. [[*St. Joseph's Hospital Assoc. v. Ashland County* \(1897\), 96 Wis. 636, 639, 72 N. W. 43.](#)]

In 1969, the Wisconsin Supreme Court issued an interpretation of the term "benevolent" as it is used in s. 70.11 (4), in the case *Milwaukee Protestant Home v. City of Milwaukee*, 41 Wis. 2d 284, 164 N.W.2d 289 (1969). The Court stated that the word "benevolent" has no in-built implication or requirement of almsgiving. The Court said that to help retired persons of moderate means live out their remaining years is "benevolent" whether or not it is also considered, as we would consider it to be "charitable."

The Legislature has not required that a benevolent association maintaining a retirement home for the aged and operating it not for profit must extend free services to at least some of its residents. Under s. 70.11, Stats., it is the basic nature of the institution and the dominant purpose of the operation that controls.

Persistent confusion over the meaning of the word “benevolent” led to the formation of a task force within the Department of Revenue, the Benevolent Retirement Home for the Aged Task Force. The task force was directed to examine the property tax exemption for benevolent retirement homes and all problems associated with it. The task force was unable to come to an agreement defining the term “benevolent.”

The committee may wish to examine this issue by considering one of the following alternatives:

- a. Clarify the definition of “benevolent” for the purposes of the property tax exemption currently provided to retirement homes by defining “benevolent retirement home for the aged” as follows:

“Property owned by a nonprofit organization providing housing for five or more individuals which may provide care or services that are above the level of room and board and is exempt from federal taxation under s. 501(c) of the Internal Revenue Code. A benevolent retirement home for the aged includes either: (a) not for profit nursing homes, community based residential facilities, and residential care apartment complexes; or (b) senior housing facilities that meet the requirements for “housing for older persons: under ss. 106.50 (1m) (m) and 106.50 (5m) (a) 1., Stats., and satisfy the requirements under s. 501(c) of the IRC, as interpreted in Internal Revenue Service ruling.”

- b. Define “benevolent” to require a specific, defined notion of “charity.”
- c. Continue to utilize the definition of “benevolent” set forth in *Milwaukee Protestant Home*.

3. Create a statutory definition of “nonprofit” and apply this definition to s. 70.11 (4), in order to provide more clarification on which entities are eligible for the property tax exemption under that statute.

Current s. 70.11 (4), Stats., refers to property “not used for profit” in order to qualify for exemption from general property taxes. Several state statutes define “nonprofit organization” but there is no definition of “nonprofit” used in ch. 70. The most common statutory definition of “nonprofit organization” is an organization described in sec. 501(c) of the Internal Revenue Code. In ch. 181, relating to nonstock corporations, “nonprofit corporation” is defined as a corporation that does not make distributions, except as authorized under s. 181.1302 (1), (2) and (3), Stats.

The committee may wish to consider the following alternatives:

- a. Specifically define “nonprofit” in ch. 70 as “an organization described in sec. 501(c) of the Internal Revenue Code.”

- b. Create a state-specific definition of “nonprofit organization.”
- c. Keep the term “nonprofit” undefined in ch. 70.

4. Adopt an “age test,” in addition to an “income test,” for benevolent retirement homes for the aged in order for the home to qualify for the property tax exemption under s. 70.11 (4), Stats.

In *Milwaukee Protestant Home*, above, the Court stated that retirement homes for the aged that help persons of moderate means live out their remaining years were deserving of the property tax exemption under s. 70.11 (4), Stats. However, the Court did not establish a definition of “aged,” nor is there a definition in the statutes that applies to the homes referred to in s. 70.11 (4).

It has been suggested that a definition of “aged” be created in order to more clearly define, and perhaps narrow, the types of facilities that would qualify for the property tax exemption under s. 70.11 (4). “Elderly person” and “elder person” are defined in several different statutes, but not in ch. 70, and the age at which a person is considered elderly ranges from age 55 to age 65.

The committee may wish to consider the following alternatives:

- a. Define “aged person” for the purpose of determining which “benevolent retirement homes for the aged” qualify for the property tax exemption under s. 70.11 (4); establish the age at some point between age 55 and age 65.
- b. Leave the term “aged” undefined in ch. 70.

5. Create specific property tax exemptions for certain types of facilities, rather than keeping the broad exemption for “benevolent retirement homes for the aged” in current law.

Persons testifying before the committee at its September 28, 2004 meeting suggested that s. 70.11, Stats., be amended to specify that nonprofit organizations that provide housing to individuals through leases remain tax-exempt; to permit the use of lease proceeds by those organizations to further the benevolent purposes of the organization; and to specifically exempt from property taxes non-profit skilled nursing facilities, community-based residential facilities, residential care apartment complexes, and senior housing because they are all health and service related.

6. Amend the provision in s. 70.11 (intro.) that specifies the purposes for which a tax-exempt organizations that lease property as residential housing may spend the leasehold income from that property.

Under current law, if property owned by a tax-exempt organization is leased as residential housing, the property retains its tax exemption only if the owner uses all of the leasehold income for *maintenance of the leased property or construction debt retirement of the leased property or both*. [s. 70.11 (intro.), Stats.] This is commonly referred to as the “rent use” requirement.” “Maintenance” is not defined. As discussed in Staff Brief 04-5, prepared for the Special Committee, in *Columbus Park Housing Association v. City of Kenosha*, 267 Wis. 2d 59, 761 N.W.2d 633 (2003), the Wisconsin Supreme Court stated that the rent use requirement applies to tax-exempt entities that rent property as residential housing.

Several persons testifying to the committee stated that many tax-exempt entities that lease property as residential housing are currently using leasehold income for purposes that appear not to be permitted under the statute, and that if they were required to do so, they might face financial difficulties. According to the City of Kenosha, the city is currently in litigation with the Columbus Park Housing Association over issues pertaining to the use of leasehold income by a tax-exempt entity.

The committee may wish to consider the following options:

- a. Maintain current law.
- b. Exempt property leased by a tax-exempt entity as residential housing from the rent use requirement, just as that type of property was exempted from the “lessee identity” requirement in Wisconsin Act 195.
- c. Amend the statute to permit the use of leasehold income for additional costs associated with the operation and administration of the leased property, such as utilities, management costs, legal and accounting expenses, reserve funds, and retirement of debt other than construction debt.
- d. Amend the statute to permit the use of leasehold income for the purposes under item b., above, and for any purpose related to the benevolent activities of the tax-exempt entity, including providing services to residents.
- e. Amend the statute to specify other specific purposes for which leasehold income may be spent by a tax-exempt entity that leases property as residential housing.

7. Limit the tax-exemption for property owned by a benevolent association that is leased as residential housing to properties that are leased to persons of low or moderate incomes.

Several persons testifying to the committee commented that some tax-exempt benevolent associations lease property as elderly housing to individuals who are not low or moderate income, but rather have substantial incomes and assets. It was stated that some benevolent associations require large endowments of up to several hundred thousand dollars, in addition to monthly fees, for the housing they provide. It was stated that it is unfair to allow persons who are not financially needy to live in tax-exempt housing, while persons of lesser means are required to pay property taxes, either directly as homeowners, or indirectly as renters.

The committee may wish to consider the following options:

- a. Retain current law.
- b. Limit the tax-exemption for property owned by a benevolent association that is leased as residential housing to properties that are leased to persons of low or moderate incomes. The committee could explore utilizing the following as income limits:
 - 1) Homestead Tax Credit income limits, which are included as an enclosure.
 - 2) Income limits used for WHEDA’s Low-Income Housing Tax Credit Program. Under that program:

Credit is allocated **only** on the residential portion of buildings that is set-aside for low-to-moderate income persons. Owners **must** make **one** of the following minimum rent and income elections for available rental units:

- A minimum 20% of units must be rented to households with incomes not exceeding 50% of county median income, adjusted for family size
- OR
- A minimum 40% of units must be rented to households with incomes not exceeding 60% of county median income adjusted for family size.

Gross rent, **including utilities**, paid by households in set-aside units may not exceed 30% of maximum qualifying income based on 1.5 persons per bedroom.

- 3) A specified percentage of county median income. Only units occupied by persons whose income is below the specified percentage would be tax-exempt. All other units would be subject to the property tax.
- 4) Some other limit or formula.

8. Limit the tax exemption for property owned by a benevolent association that is leased as residential housing to residential units that have a value below a certain limit; provide that any residential units with a value above that limit are subject to the property tax.

Persons testifying to the committee stated that some tax-exempt benevolent associations lease as elderly housing residential units that could be considered “luxury” accommodations. It was stated that it is inappropriate to exempt this type of residential property from property taxes.

If the committee chooses to pursue this option, it will have to determine how to establish appropriate residential unit values, and may wish to consider whether variations in allowable values would be appropriate in different regions of the state, or for different types of facilities.

9. Amend the statutory provision that establishes a 10-acre limitation on the amount of land (along with improvements on that land) owned by a single entity that may be property tax exempt under s. 70.11 (4), Stats.

Section 70.11 (4), Stats., limits to 10 acres the amount of land owned by a single entity (other than a church or religious association using land for educational purposes), that may be exempt from property taxes under that section. Persons testifying to the committee stated that in some situations, such as a campus setting providing housing and associated facilities for seniors, 10 acres is not a sufficient amount of land and therefore the allowable amount of exempt land should be increased.

Others speaking to the committee stated that the 10-acre allowance was too generous and results in too much property being removed from the tax rolls.

The following recommendations relating to the 10-acre limit have been made to the committee:

- a. Repeal the 10-acre limitation.
- b. Repeal the 10-acre limit for “benevolent associations” and instead establish a dollar-value limit on the total amount of property owned by a benevolent association that may be exempt from taxes. Under this proposal, the property of a benevolent association would be tax exempt up to an established threshold based on the total assessed value of the property. Any property owned by the entity that exceeded the threshold would be taxed at its full value.
- c. Reduce the 10-acre exemption to a smaller acreage amount for “benevolent associations” and prohibit corporate/entity spin-offs to circumvent the reduced acreage limit.

10. For benevolent associations, retain the property tax exemption for land “necessary for the location and convenience of buildings,” up to an acreage limit; repeal the tax exemption on the improvements on the land.

Under this proposal, the land owned by a benevolent association would remain tax exempt, up to a certain unspecified acreage limit. However, any improvements to the land, including all buildings, would be assessed and taxed at their fair market value.

C. RETAIN CURRENT EXEMPTIONS, CREATE THREE NEW EXEMPTION CATEGORIES, AND REQUIRE THE STATE TO REIMBURSE TAXING JURISDICTIONS FOR ALL FOREGONE PROPERTY TAX REVENUE

Under this proposal, the current exemptions in s. 70.11 (4), Stats., would be retained without change.

In addition, three new categories of exempt property under s. 70.11 (4) would be created: affordable rental housing; special needs housing; and elderly housing. The 10-acre limitation would not apply to these categories of property, and the beneficial owner of the property under each of these categories would be required to be an organization that the Internal Revenue Service has determined is described in sec. 501(c)(3) of the Internal Revenue Code. Further, there would be no restriction on the use of rent proceeds by entities under these categories.

The newly created exemption category of “affordable rental housing” would be limited to housing occupied by persons meeting certain specified low-income guidelines.

The newly created exemption category of “elderly housing” would be limited to housing that falls under a certain value threshold and that houses residents who meet certain specified age requirements.

The newly created exemption category of “special needs” housing would include any housing licensed by Wisconsin as a nursing home, community-based residential facility, or residential care

apartment complex. In addition, emergency shelters for victims of domestic violence, the homeless, and the like, providing housing generally for not more than 30 days, would be exempt.

Under this proposal, all exempt property--including property currently exempt under s. 70.11 (4), Stats., and the three new categories, would be assessed each year in the same manner that taxable property is assessed. Annually, the assessor would present an invoice to the state for the amount of tax that would have been collectible, had the property been taxable. The state would pay the invoice to the taxing jurisdiction.

D. RETAIN THE CURRENT EXEMPTION BUT REQUIRE OR AUTHORIZE PAYMENTS FOR MUNICIPAL SERVICES BY TAX-EXEMPT ENTITIES

Several of the recommendations set forth below would require entities that are exempt from property taxes under s. 70.11 (4) to make payments to municipalities for services provided to the entity. These recommendations should be closely analyzed for conformance with art. VIII, s. 1, Wis. Const., the Uniformity Clause, and with equal protection requirements of the state and federal constitution.

The Uniformity Clause provides, in pertinent part, that “The rule of taxation shall be uniform but the legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods.” The Uniformity Clause was intended to prevent the Legislature and local officials from granting preferential tax treatment to influential property owners and “to protect the citizen against unequal, and consequently unjust taxation.” *Weeks v. Milwaukee*, 10 Wis. 186, 201 (1860). The Court has held that the Uniformity Clause allows the Legislature to select some property for taxation and to completely exempt other property from taxation. Property selected for taxation must be taxed in its entirety and at the same rate as all other property in the same taxation district.

The Attorney General issued an opinion, dated April 4, 1990, stating that a legislative proposal that would have authorized municipalities to impose service fees on certain categories of tax-exempt property most likely violated the Uniformity Clause. The Attorney General stated that the courts would probably find that the municipal service fee was a “disguised property tax” and would run afoul of the Uniformity Clause’s requirement that property be either taxed in its entirety at the same rate as all other property in the same taxation district or be absolutely exempt.

However, it is not clear that a court would consider service fees as constituting tax on property, thus triggering the requirements of the Uniformity Clause. On two occasions, the Wisconsin Supreme Court has held that laws which appeared to create nonuniform property taxation were not invalid under the Uniformity Clause because, in effect, they were not property tax laws subject to the uniformity requirement. In *Barnes v. City of West Allis*, 275 Wis. 31, 81 N.W.2d 75 (1957), the Wisconsin Supreme Court upheld the validity of mobile home parking fees. Under the statute, mobile home parking fees were computed by each municipality and were based upon the cost of providing municipal and school services to owners of mobile homes which were exempt from property taxation. The Court held that the mobile home parking fee was an “excise tax” and not a property tax subject to the Uniformity Clause.

In *Harvey v. Morgan*, 30 Wis. 2d 1, 139 N.W.2d 585 (1966), the Wisconsin Supreme Court held that the homestead tax credit program, was a “relief law,” rather than a tax law and therefore, was not subject to the Uniformity Clause. The homestead tax credit program at issue provided income tax credits to owners or renters who were 65 years of age or older, whose household income did not exceed \$3,000 and who paid either rent or a real property tax on their homesteads. The homestead tax credit

program resulted in nonuniform property tax burdens after the state tax credit was accounted for. However, because the Court concluded that the homestead tax credit program was a “relief law” rather than a property tax law, it concluded that the uniformity requirement did not apply.

Thus, it is possible that a court could conclude that a municipal service fee is not a property tax subject to the Uniformity Clause.

These recommendations should also be analyzed for conformance with the Equal Protection provisions of the state and federal constitutions. In general, those provisions require that statutory classifications (such as classes of tax-exempt property that are required or not required to pay municipal service fees) must be based upon substantial distinctions that make one class really different from another. The Attorney General’s 1990 opinion discussed above found that the proposed service fees may have violated equal protection provisions.

11. Legislatively mandate payments in lieu of taxes (PILOTS) for benevolent associations that are exempt from property taxes under s. 70.11 (4).

12. Amend s. 66.0627, Stats., to effectively allow imposition of charges against all properties that receive municipal services, so that tax-exempt entities would pay for services provided by a city, village, or town at the same rate that nonexempt entities pay for those services.

Section 66.0627 provides as follows:

66.0627 Special charges for current services.

(1) In this section, "service" includes snow and ice removal, weed elimination, street sprinkling, oiling and tarring, repair of sidewalks or curb and gutter, garbage and refuse disposal, recycling, storm water management, including construction of storm water management facilities, tree care, removal and disposition of dead animals under [s. 60.23 \(20\)](#), soil conservation work under [s. 92.115](#), and snow removal under [s. 86.105](#).

(2) Except as provided in [sub. \(5\)](#), the governing body of a city, village or town may impose a special charge against real property for current services rendered by allocating all or part of the cost of the service to the property served. The authority under this section is in addition to any other method provided by law.

(3) (a) Except as provided in [par. \(b\)](#), the governing body of the city, village or town may determine the manner of providing notice of a special charge.

(b) Before a special charge for street tarring or the repair of sidewalks, curbs or gutters may be imposed, a public hearing shall be held by the governing body on whether the service in question will be funded in whole or in part by a special charge. Any interested person may testify at the hearing. Notice of the hearing shall be by class 1 notice under [ch. 985](#), published at least 20 days before the hearing. A copy of the notice shall be mailed at least 10 days before the hearing to each interested person

whose address is known or can be ascertained with reasonable diligence. The notice under this paragraph shall state the date, time and location of the hearing, the subject matter of the hearing and that any interested person may testify.

(4) A special charge is not payable in installments. If a special charge is not paid within the time determined by the governing body, the special charge is delinquent. A delinquent special charge becomes a lien on the property against which it is imposed as of the date of delinquency. The delinquent special charge shall be included in the current or next tax roll for collection and settlement under [ch. 74](#).

(5) Except with respect to storm water management, including construction of storm water management facilities, no special charge may be imposed under this section to collect arrearages owed a municipal public utility.

(6) If a special charge imposed under this section is held invalid because this section is found unconstitutional, the governing body may reassess the special charge under any applicable law.

13. If “benevolent association” is exempt from property tax, subject the exempt entity to a “special tax” or “special charge” that would have the effect of entity paying for local services. See s. 74.01 (4) and (5), Stats., for respective definitions of “special charge” and “special tax,” and see s. 70.112, “property exempted from taxation because of special tax.”

Section 74.01 (4) and (5), Stats., provides as follows:

74.01 (4) "Special charge" means an amount entered in the tax roll as a charge against real property to compensate for all or part of the costs to a public body of providing services to the property. "Special charge" includes any interest and penalties assessed for nonpayment of the special charge before it is placed in the tax roll. "Special charge" also includes penalties under [s. 70.995 \(12\)](#).

(5) "Special tax" means any amount entered in the tax roll which is not a general property tax, special assessment or special charge. "Special tax" includes any interest and penalties assessed for nonpayment of the tax before it is placed in the tax roll and any charge under [s. 287.093 \(1\) \(a\) 2](#), that is placed on the tax roll under [s. 287.093 \(2\)](#).

Section 70.112, Stats., provides as follows:

70.112 Property exempted from taxation because of special tax. The property described in this section is exempted from general property taxes:

(1) **Money and intangible personalty.** Money and all intangible personal property, such as credit, checks, share drafts, other drafts, notes, bonds, stocks and other written instruments.

(4) Special property and gross receipts taxes or license fees.

(a) All special property assessed under [ss. 76.01](#) to [76.26](#) and property of any light, heat, and power company taxed under [s. 76.28](#), car line company, and electric cooperative association that is used and useful in the operation of the business of such company or association. If a general structure for which an exemption is sought under this section is used and useful in part in the operation of any public utility assessed under [ss. 76.01](#) to [76.26](#) or of the business of any light, heat, and power company taxed under [s. 76.28](#), car line company, or electric cooperative association and in part for nonoperating purposes of the public utility or company or association, that general structure shall be assessed for taxation under this chapter at the percentage of its full market value that fairly measures and represents the extent of its use for nonoperating purposes. Nothing provided in this paragraph shall exclude any real estate or any property which is separately accounted for under [s. 196.59](#) from special assessments for local improvements under [s. 66.0705](#).

(b) If real or tangible personal property is used more than 50%, as determined by the department of revenue, in the operation of a telephone company that is subject to the tax imposed under [s. 76.81](#), the department of revenue shall assess the property and that property shall be exempt from the general property taxes imposed under this chapter. If real or tangible personal property is used less than 50%, as determined by the department of revenue, in the operation of a telephone company that is subject to the tax imposed under [s. 76.81](#), the taxation district in which the property is located shall assess the property and that property shall be subject to the general property taxes imposed under this chapter.

(5) Motor vehicles, bicycles, snowmobiles. Every automobile, motor bicycle, motor bus, motorcycle, motor truck, moped, road tractor, school bus, snowmobile, truck tractor, or other similar motor vehicle, or trailer or semitrailer used in connection therewith.

(6) Aircraft. Every aircraft.

(7) Mobile homes. Every mobile home subject to a monthly parking fee under [s. 66.0435](#).

14. Repeal the current exemption for “benevolent associations” but authorize municipalities to return to such entities a specified portion of the tax collected.

Wisconsin Constitution Article III, Section 1, provides “The rule of taxation shall be uniform but the legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods.” Under this proposal, taxes would be assessed on property that is now exempt, but municipalities would be authorized to return a portion of the amount collected to benevolent associations.

E. RETAIN THE CURRENT EXEMPTIONS BUT REQUIRE REVIEW OR PERIODIC REAUTHORIZATION OF THE EXEMPTIONS

15. Call for California style referendums to infuse public input and awareness into exemptions.

Wisconsin does not have any statewide initiative process that would allow electors to propose new state laws or constitutional amendments by petition and vote on them in a referendum election. However, residents of Wisconsin cities and villages do have the indirect initiative at their disposal to propose enactment of local ordinances. In addition, statewide and local referenda are required in numerous circumstances, and the state legislature or local governmental bodies may, at their discretion, submit questions to the voters in the form of binding or advisory referenda.

The California constitutional provision authorizing referenda provides as follows:

ARTICLE 2 VOTING, INITIATIVE AND REFERENDUM, AND RECALL

SEC. 9. (a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.

(b) A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after the enactment date of the statute, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors. In the case of a statute enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, the petition may not be presented on or after January 1 next following the enactment date unless a copy of the petition is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II before January 1.

(c) The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election.

The Governor may call a special statewide election for the measure.

16. Enact a sunset date on the property-tax exemption for property owned by a benevolent association that is leased as residential housing, to require the Legislature to periodically review and decide whether, and for how long, to renew particular exemptions. This periodic review by the Legislature is contemplated by s. 16.425 (1), Stats.

Section 16.425, Stats., provides as follows:

(1) DECLARATION OF POLICY. Because state policy objectives are sought and achieved by both governmental expenditures and tax exemption, and because both have an impact on the government's capacity to lower tax rates or raise expenditures, both should receive regular comprehensive review by the governor and the legislature in the budgetary process. This section seeks to facilitate such comprehensive review by providing for the generation of information concerning tax exemptions and other similar devices comparable to expenditure information.

(2) DEFINITION. For the purposes of this section "tax exemption device" means any tax provision which exempts, in whole or in part, certain persons, income, goods, services, or property from the impact of established taxes, including, but not limited because of failure of enumeration, to those devices known as tax deductions, tax allowances, tax exclusions, tax credits and tax exemptions.

(3) REPORT ON TAX EXEMPTION DEVICES. The department of revenue shall, in each even-numbered year on the date prescribed for it by the secretary, furnish to the secretary a report detailing the approximate costs in lost revenue, the policy purposes and to the extent possible, indicators of effectiveness in achieving such purposes, for all state tax exemption devices, including those based on the internal revenue code, in effect at the time of the report. The report need relate only to [chs. 71, 76](#) and [77](#) tax exemption devices and to property tax exemptions for which reports are required under [s. 70.337](#). The report shall be prepared in such a manner as to facilitate the making of comparisons with the information reported in [s. 16.46 \(1\)](#) to [\(6\)](#).

F. REPEAL THE CURRENT EXEMPTION; REPLACE EXEMPTION WITH AN ALTERNATIVE FUNDING MECHANISM FOR NEEDY INDIVIDUALS OR CERTAIN BENEVOLENT ENTITIES

17. Examine residential property tax exemptions under s. 70.11 (4) to evaluate: (a) the benefit claimed by granting the exemption; (b) whether there is a link between the property taxes foregone and the benefit claimed; and (c) whether there is a more efficient and accountable method for providing the benefit.

The public benefits asserted by providing a property tax exemption under s. 70.11 (4) to educational, religious, and benevolent institutions include, for elderly housing, providing a continuum of care to residents of the housing facilities and allowing the individuals to remain in housing should they become impoverished and unable to pay for their care at a later date. For low-income housing, the benefit asserted is an ability to provide lower cost housing due to lower expenses incurred as a result of the exemption from property taxes.

The audit proposed in Item #1 would provide a method for evaluating the amount of tax revenue foregone as a result of the property tax exemption under s. 70.11 (4), Stats. Once this amount is estimated, currently exempt entities could be evaluated to determine how the amount of foregone tax revenue corresponds to the amount of financial benefit provided to the residents of the housing. Finally,

alternative methods of providing benefits deemed to be socially useful could be examined to determine if these benefits could be provided in a more efficient manner than through a property tax exemption.

18. Delegate authority to local governing bodies to grant the property tax exemption to benevolent institutions under s. 70.11 (4), based on whether the local governing body determines that the institution provides a benefit that sufficiently lessens governmental burdens in a community.

Currently, local governing bodies are provided with some authority to determine whether tax benefits should accrue to certain entities. For example, under the tax incremental financing (TIF) law, in s. 66.1105, Stats., the local legislative body must present information to the joint review board reviewing the TIF proposal that shows, among other things, that the benefits of the tax incremental district will ultimately outweigh the tax increments received. In addition, s. 70.11 (20) (d), Stats., provides that property held in trust in the public interest may receive a tax exemption if certain requirements are fulfilled, including a provision that the county board in a county where the property is located has not determined that the property is not being held in trust in the public interest, or not made the other requisite determinations.

The committee may wish to consider the following alternatives:

- a. Provide the local property taxing authorities with the ability to grant tax benefits to benevolent associations based on a showing by the association to the taxing authority that the benefits provided to the community by the association outweigh the amount of benefit provided in uncollected property tax payments.
- b. Retain current law.

19. Permit counties and first class cities to impose a tax for the purpose of raising revenue to provide grants to “benevolent associations” located in the county or first class city.

Section 45.10, Stats., provides an example of authority provided to counties to levy a tax for a specific purpose (in that case, aiding needy veterans). That statute provides as follows:

45.10 County tax for needy veterans. Every county board shall annually levy, in addition to all other taxes, a tax sufficient to carry out the purposes of this section, such tax to be levied and collected as other county taxes for the purpose of providing aid to needy veterans, the needy spouses, surviving spouses, minor and dependent children of such veterans and the needy parents of such veterans entitled to aid under ss. 45.10 to 45.15, and to carry out the purposes of ss. 45.16 to 45.185. Aid may not be denied solely on the basis that a person otherwise eligible therefor owns a homestead which the person occupies as such.

If the property tax exemption for benevolent institutions under s. 70.11 (4), Stats., was eliminated, providing counties and larger cities with the authority to levy a similar type of tax would provide a method for granting aid to benevolent institutions formerly granted the property tax exemption, so that these institutions could continue their benevolent work.

The committee may wish to consider the following alternatives:

- a. Create a statute which either permits or requires counties and cities of the first class to levy a tax, from which the revenue gathered will be used to provide grants to benevolent institutions.
- b. Retain current law.

20. Expand eligibility for the homestead tax credit and provide relief to residents of benevolent retirement homes for the aged, instead of providing relief indirectly to these residents through the property tax exemption granted to the benevolent institution.

Currently, the homestead tax credit is a state credit that is available to homeowners and renters with annual household income of less than \$24,500 for the year 2003. Only the first \$1,450 of property taxes or rent paid is considered when calculating the homestead tax credit. The maximum amount of credit a household can receive is \$1,160, which would apply if the household income was \$8,000 or less and the household's property taxes or rent was at least \$1,450.

It has been suggested that if the primary benefit of retaining the property tax exemption for benevolent retirement homes for the aged is to permit residents to continue to receive care that is not subsidized by the government, that a more direct and effective way to target this benefit would be to provide a more generous homestead tax credit. This would target funds more directly to persons with lower income, regardless of age. Individuals residing in these facilities who exceed the homestead income limit may not need the tax benefit provided by the property tax exemption.

21. Amend s. 70.11 (4), Stats., to create an exception that the property tax exemption for "benevolent associations" would not apply when profits are made.

Section 70.11, Stats., sets forth property tax exemptions. Section 70.11 (4m) provides a tax exemption for real property owned and used and personal property used exclusively for the purposes of any hospital of 10 beds or more devoted primarily to the diagnosis, treatment, or care of the sick, injured, or disabled. However, this exemption does not apply to property used for commercial purposes.

In *FH Healthcare Development, Inc., and United/Dynacare, LLC. V. City of Wauwatosa*, 2004 Wisc. App. LEXIS 659 (Ct. App. 2004), the court interpreted the language in s. 70.11 (4m) that provides that the exemption "does not apply to property used for commercial purposes." In that case, the plaintiff, United/Dynacare, was a for-profit limited liability company (LLC) that provided laboratory services not only for Froedtert Hospital and the Medical College of Wisconsin (MCW), but for other clients. These services were billed on a market-based pricing structure and generated income.

United/Dynacare's equipment was physically located within the Froedtert Hospital Healthcare Development (FHHD) building. FHHD was a nonprofit, nonstock corporation that was formed in order to help Froedtert Hospital with the financing, construction, and maintenance of buildings used by the hospital.

United/Dynacare claimed a tax exemption for its laboratory equipment in 2001. The exemption was denied by the City of Wauwatosa. United/Dynacare sued the city to recover the amount of taxes levied against it.

The Court of Appeals found that United/Dynacare was subject to the property tax. It interpreted the language in s. 70.11 (4m) as follows:

“ . . .if the property, regardless of whether it is used “exclusively for the purposes of any hospital. . .devoted primarily to the diagnosis, treatment or care of the sick, injured, or disabled” is used for commercial purposes, it does not qualify for the exemption. . .commercial purposes are those through which profits are made.” [2004 Wisc. App. LEXIS 659 at 13-14.]

The court went on to say that property may be reasonably necessary to the primary and secondary purposes of the hospital, but a strict but reasonable construction of s. 70.11 (4m) is that the property fails to qualify for the exemption because it nevertheless is used for a commercial purpose. In this case, laboratory services for clients other than Froedtert and MCW generated millions of dollars in net revenue for United/Dynacare, which is a commercial purpose for which profits are made.

The committee may wish to consider the following alternatives:

- a. Amend s. 70.11 (4), Stats., to provide that if property of an educational, religious, and benevolent institutions; women's clubs; historical societies; fraternities; libraries that is used for commercial purposes is not entitled to a property tax exemption when used for those purposes.
- b. Retain current law.

MM:LR:ksm
Enclosure