

2003 ASSEMBLY JOINT RESOLUTION

1 **To create** section 11 of article VIII of the constitution; **relating to:** elector approval
2 for certain taxing, spending, and bonding decisions by the state and local
3 governmental units, emergency taxes, required reserves, refunds of amounts
4 in excess of the approved amounts, and reduction of tax rates to reflect the
5 excess of revenues over expenditures (first consideration).

Analysis by the Legislative Reference Bureau

This proposed constitutional amendment, proposed to the 2003 legislature on first consideration, requires elector approval for certain taxing, spending, and bonding decisions by the state and local governmental units, such as exceeding a spending limit or imposing new taxes, increasing tax rates, extending expiring taxes, or making tax changes causing net tax revenue gains; requires that emergency taxes imposed by the state meet certain conditions; requires governmental units to establish an emergency fund and a budget stabilization fund; and requires governmental units to refund amounts in excess of the approved amounts and reduce tax rates to reflect the excess of revenues over expenditures.

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

6 ***Resolved by the assembly, the senate concurring, That:***

7 **SECTION 1.** Section 11 of article VIII of the constitution is created to read:

1 [Article VIII] Section 11 (1) In this section:

2 (a) “Ballot issue” means a question presented pursuant to this section to the
3 electors for approval at an election.

4 (b) “Emergency” means a sudden unexpected happening; an unforeseen
5 occurrence or condition; a perplexing contingency or complication of circumstances;
6 a sudden or unexpected occasion for action; an exigency; or a pressing necessity. The
7 term excludes economic conditions, revenue shortfalls, and salary and fringe benefit
8 increases of a governmental unit.

9 (c) “Fiscal year spending” means all expenditures and reserve increases under
10 subs. (7) and (8) of a governmental unit except, as to both, those for refunds made in
11 the current or next fiscal year or those from gifts, federal funds, collections for
12 another governmental unit, pension fund earnings, net proceeds of the state lottery
13 authorized pursuant to section 24 (6) of article IV, reserve transfers or expenditures,
14 damage awards, or real property sales, and except for the payment of principal and
15 interest for bonding authorized pursuant to sub. (4) (c).

16 (d) “Governmental unit” means the state; any city, village, town, or county; or
17 any school district or special purpose district, other than a sewerage district or water
18 district, authorized by law to levy taxes or charge fees.

19 (e) “Inflation” means the percentage change in the United States Bureau of
20 Labor Statistics Consumer Price Index for Milwaukee–Racine, all items, all urban
21 consumers, or its successor index.

22 (f) “Population” means either the periodic census conducted by the United
23 States department of commerce or its successor agency, or the annual update of such
24 census.

1 (2) (a) This section first applies to a governmental unit on the first day of the
2 first fiscal year of the governmental unit that occurs after the ratification of this
3 paragraph, or as otherwise stated in this section.

4 (b) All provisions of this section are self-executing and severable.

5 (c) Any individual or class of individuals have standing to bring a suit to enforce
6 this section. A court of record shall award a successful plaintiff costs and reasonable
7 attorney fees in the suit, but may not allow a governmental unit to recover costs and
8 reasonable attorney fees unless a suit against it is ruled frivolous.

9 (3) (a) The maximum annual percentage change in fiscal year spending by the
10 state equals inflation in the previous calendar year as compared to the year previous
11 to that year, plus the percentage change in the state population in the previous
12 calendar year if a positive number, adjusted for spending changes approved by the
13 electors under this section after the year in which the ratification of this paragraph
14 occurs.

15 (b) The maximum annual percentage change in fiscal year spending by a school
16 district or technical college district equals inflation in the previous calendar year,
17 plus the percentage change in its pupil enrollment in the previous calendar year as
18 compared to the year previous to that year if a positive number, adjusted for spending
19 changes approved by the electors under this section after the year in which the
20 ratification of this paragraph occurs.

21 (c) The maximum annual percentage change in fiscal year spending by a
22 governmental unit, other than the state, a school district, or a technical college
23 district, equals inflation in the previous calendar year, plus the percentage change
24 in new construction and improvements and additions to, and reconstructions of,
25 existing construction of real property in the governmental unit in the previous

1 calendar year as compared to the year previous to that year if a positive number,
2 adjusted for spending changes approved by the electors under this section after the
3 year in which the ratification of this paragraph occurs.

4 (d) Population under this subsection shall be adjusted to match the population
5 under each federal decennial census.

6 (e) The legislature, by law, shall provide a mechanism to adjust the amount of
7 a limitation under this section to reflect any subsequent transfer of all or any part
8 of the cost of providing a governmental function. The mechanism shall adjust the
9 amount of a limitation so that total costs are not increased as a result of the transfer.
10 The adjustment mechanism provided for in this paragraph shall be used in
11 determining a limitation under this section beginning with the fiscal year
12 immediately following the transfer.

13 (f) The legislature, by law, shall provide a mechanism to adjust the amount of
14 a limitation under this section to reflect the cost of providing a governmental
15 function on account of any subsequent annexation; creation of a new governmental
16 unit; or consolidation, or change in the boundaries, of a governmental unit. The
17 mechanism shall adjust the amount of limitation so that total costs are not increased
18 as a result of the annexation, creation, consolidation, or change in boundaries. The
19 adjustment mechanism provided for in this paragraph shall be used in determining
20 a limitation under this section beginning with the fiscal year immediately following
21 the annexation, creation of a new governmental unit, or consolidation or change in
22 the boundaries of a governmental unit.

23 (4) Beginning on the first day that occurs after the ratification of this
24 paragraph, a governmental unit must have elector approval under this section in
25 advance for any of the following:

1 (a) Exceeding a spending limit under this section, but no approval may be given
2 under this section for exceeding a spending limit on a permanent basis.

3 (b) Unless it is an emergency tax meeting the requirements of sub. (6) (b), a new
4 tax, tax rate increase, extension of an expiring tax, or a tax change causing a net tax
5 revenue gain to the governmental unit, including one required under section 5 of this
6 article, section 4 of article X or section 3 (3) or (4) of article XI.

7 (c) Authorizing bonding other than bonding to refund or refinance outstanding
8 bonds.

9 (5) (a) A ballot issue may be submitted only at an election at which either
10 members of the legislature or members of the judiciary are regularly elected or at a
11 primary election held to nominate candidates to be voted for at such an election, or
12 on the Tuesday next succeeding the first Monday of November in odd-numbered
13 years.

14 (b) A ballot question for an increase in spending, taxation, or bonding shall
15 begin “SHALL (GOVERNMENTAL UNIT) SPENDING LIMITS BE EXCEEDED
16 BY (full fiscal year dollar amount in excess of the limit)?”; or “SHALL
17 (GOVERNMENTAL UNIT) TAXES BE INCREASED BY (first, or, if phased in, final,
18 full fiscal year dollar increase) ANNUALLY?”; or “SHALL (GOVERNMENTAL
19 UNIT) BONDING BE INCREASED BY (INCREASE)?”.

20 (6) (a) This section does not grant new taxing power.

21 (b) Any emergency tax imposed by the state must meet all of the following
22 conditions:

23 1. Two-thirds of the members elected to each house of the legislature must
24 declare the emergency and impose the tax by separate recorded roll call votes.

1 2. Emergency tax revenue may be spent only after the reserve under sub. (8)
2 is depleted, and must be refunded under this section within 180 days after the
3 emergency ends if not spent on the emergency.

4 3. An emergency tax that is not approved at the first election permitted under
5 sub. (5) (a) that occurs at least 60 days after the declaration shall expire at the end
6 of the taxable year in which the election is held.

7 (7) (a) Each governmental unit shall reserve in a budget stabilization fund for
8 the first fiscal year that occurs after the ratification of this paragraph 1 percent or
9 more, for the 2nd fiscal year that occurs after the ratification of this paragraph 2
10 percent or more, for the 3rd fiscal year that occurs after the ratification of this
11 paragraph 3 percent or more, and for all later fiscal years, except as provided in par.
12 (b), 4 percent but not more than 15 percent, of its fiscal year estimated spending.

13 (b) Unused reserves under this subsection become part of the next year's
14 reserve in the budget stabilization fund.

15 (c) If the use of the reserve under this subsection decreases the reserve below
16 4 percent in the 4th fiscal year that occurs after the ratification of this paragraph or
17 a later year, the governmental unit, beginning in the 4th fiscal year that occurs after
18 the ratification of this paragraph, shall reserve, in addition to the unused reserve
19 from the previous year, 1 percent or more for the first year after the reserve is
20 decreased below 4 percent, 2 percent or more for the 2nd year after the reserve is
21 decreased below 4 percent, 3 percent or more for the 3rd year after the reserve is
22 decreased below 4 percent, and 4 percent or more for the 4th year after the reserve
23 is decreased below 4 percent.

24 (d) Money reserved under this subsection may not be expended by the state
25 unless two-thirds of the members elected to each house of the legislature, or by a

1 governmental unit other than the state unless two-thirds of the members of the
2 governing body of the governmental unit, declare the necessity for the expenditure
3 and make the expenditure by separate recorded roll call votes.

4 (8) (a) Each governmental unit shall reserve in an emergency fund for the first
5 fiscal year that occurs after the ratification of this paragraph 1 percent but not more
6 than 3 percent, for the 2nd fiscal year that occurs after the ratification of this
7 paragraph 2 percent but not more than 3 percent, and for all later fiscal years, except
8 as provided in par. (b), 3 percent, of its fiscal year estimated spending.

9 (b) Unused reserves under this subsection become part of the next year's
10 reserve in the emergency fund.

11 (c) If the use of the reserve under this subsection decreases the reserve below
12 3 percent in the 3rd fiscal year that occurs after the ratification of this paragraph or
13 a later year, the governmental unit, beginning in the 3rd fiscal year that occurs after
14 the ratification of this paragraph, shall reserve, in addition to the unused reserve
15 from the previous year, 1 percent or more for the first year after the reserve is
16 decreased below 3 percent, 2 percent or more for the 2nd year after the reserve is
17 decreased below 3 percent, and 3 percent for the 3rd year after the reserve is
18 decreased below 3 percent but the emergency fund may not exceed 3 percent.

19 (d) Money reserved under this subsection may not be expended by the state
20 unless a majority of the members elected to each house of the legislature, or by a
21 governmental unit other than the state unless a majority of the members of the
22 governing body of the governmental unit, declare the necessity for the expenditure
23 and make the expenditure by separate recorded roll call votes.

1 (9) (a) A governmental unit shall reduce tax rates for the next tax year to reflect
2 the excess of revenues over expenditures in a tax year, unless the electors under this
3 section approve a taxing or spending change.

4 (b) A governmental unit shall refund revenue collected, kept, or spent in
5 violation of this section since 4 full fiscal years before a suit is filed with 10 percent
6 annual simple interest from the date of the initial violation. Notwithstanding
7 section 1 of this article, a governmental unit may use any reasonable method for a
8 refund under this section, including a temporary tax credit or rate reduction, and a
9 refund need not be proportional when previous payments are impractical to identify
10 or return.

11 **SECTION 2. Numbering of new provision.** The new section 11 of article VIII
12 of the constitution created in this joint resolution shall be designated by the next
13 higher open whole section number in that article if, before the ratification by the
14 people of the amendment proposed in this joint resolution, any other ratified
15 amendment has created a section 11 of article VIII of the constitution of this state.
16 If one or more joint resolutions create a section 11 of article VIII simultaneously with
17 the ratification by the people of the amendment proposed in this joint resolution, the
18 sections created shall be numbered and placed in a sequence so that the sections
19 created by the joint resolution having the lowest enrolled joint resolution number
20 have the numbers designated in that joint resolution and the sections created by the
21 other joint resolutions have numbers that are in the same ascending order as are the
22 numbers of the enrolled joint resolutions creating the sections.

