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# Wisconsin Briefs

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Brief 98-13

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## CONSTITUTIONAL AMENDMENTS GIVEN “FIRST CONSIDERATION” APPROVAL BY THE 1997 WISCONSIN LEGISLATURE

### INTRODUCTION

Two proposals to amend the Wisconsin Constitution were adopted on first consideration by the 1997 Wisconsin Legislature and are eligible for second consideration by the 1999 Legislature. They relate to: 1) distributing state lottery, bingo and pari-mutuel proceeds for property tax relief to state residents and 2) authorizing a 4-year term of office for district attorneys.

Sections Affected	Resolutions	Subject
Article IV, Sec. 24 (3), (5) and (6) (a)	1997 Assembly Joint Resolution 80 (Enrolled Joint Resolution 19)	Distributing state lottery, bingo and pari-mutuel proceeds for property tax relief to state residents
Article VI, Sec. 4 (1) and (7)	1997 Assembly Joint Resolution 43 (Enrolled Joint Resolution 20)	Authorizing a 4-year term of office for district attorneys

Legislative passage of a constitutional amendment on “first consideration” is the first step in the amending process. According to Article XII, Section 1, of the Wisconsin Constitution, amendments must be adopted by two successive legislatures and ratified by the electorate.

On first consideration, a proposed change is introduced as a joint resolution that does not have to be submitted to the governor for approval. If the resolution is adopted by both houses, a second joint resolution embodying the identical constitutional text must be introduced on “second consideration” in the next legislature, and the wording of the proposed amendment must be approved without change. The second joint resolution specifies the wording of the ballot question(s) and sets the date for submitting the question(s) to the people at a statewide election. (The portions of the joint resolution relating to the ballot can be amended.)

## I. DISTRIBUTION OF STATE LOTTERY, BINGO AND PARI-MUTUEL BETTING PROCEEDS FOR PROPERTY TAX RELIEF TO STATE RESIDENTS

### A. Analysis

This proposed constitutional amendment, approved on first consideration by the 1997 Legislature, provides that the net proceeds from the state lottery and all moneys received by the state from pari-mutuel on-track betting and bingo (other than moneys used for regulation and enforcement purposes), plus any earnings attributed to those amounts, must be distributed for property tax relief to residents of Wisconsin. The distribution may not vary based on the income or age of the person receiving the property tax relief.

The proposed amendment also provides that the distributions are not subject to the uniformity clause of the Wisconsin Constitution (Article VIII, Section 1), which requires that all classes of property must be treated equally for the purposes of property taxation, a restriction that applies to property tax credits as well.

### B. Text

Section 1. [Article IV] Section 24 (3) The legislature may authorize the following bingo games licensed by the state, but all profits shall accrue to the licensed organization and no salaries, fees or profits may be paid to any other organization or person: bingo games operated by religious, charitable, service, fraternal or veterans' organizations or those to which contributions are deductible for federal or state income tax purposes. All moneys received by the state that are attributable to bingo games shall be used for property tax relief for residents of this state as provided by law. The distribution of moneys that are attributable to bingo games may not vary based on the income or age of the person provided the property tax relief. The distribution of moneys that are attributable to bingo games shall not be subject to the uniformity requirement of section 1 of article VIII. In this subsection, the distribution of all moneys attributable to bingo games shall include any earnings on the moneys received by the state that are attributable to bingo games, but shall not include any moneys used for the regulation of, and enforcement of law relating to, bingo games.

[Article IV] Section 24 (5) This section shall not prohibit pari-mutuel on-track betting as provided by law. The state may not own or operate any facility or enterprise for pari-mutuel betting, or lease any state-owned land to any other owner or operator for such purposes. All moneys received by the state that are attributable to pari-mutuel on-track betting shall be used for property tax relief for residents of this state as provided by law. The distribution of moneys that are attributable to pari-mutuel on-track betting may not vary based on the income or age of the person provided the property tax relief. The distribution of moneys that are attributable to pari-mutuel on-track betting shall not be subject to the uniformity requirement of section 1 of article VIII. In this subsection, the distribution of all moneys attributable to pari-mutuel on-track betting shall include any earnings on the moneys received by the state that are attributable to pari-mutuel on-track betting, but shall not include any moneys used for the regulation of, and enforcement of law relating to, pari-mutuel on-track betting.

[Article IV] Section 24 (6) (a) The legislature may authorize the creation of a lottery to be operated by the state as provided by law. The expenditure of public funds or of revenues derived from lottery operations to engage in promotional advertising of the Wis-

consin state lottery is prohibited. Any advertising of the state lottery shall indicate the odds of a specific lottery ticket to be selected as the winning ticket for each prize amount offered. The net proceeds of the state lottery shall be deposited in the treasury of the state, to be used for property tax relief for residents of this state as provided by law. The distribution of the net proceeds of the state lottery may not vary based on the income or age of the person provided the property tax relief. The distribution of the net proceeds of the state lottery shall not be subject to the uniformity requirement of section 1 of article VIII. In this paragraph, the distribution of the net proceeds of the state lottery shall include any earnings on the net proceeds of the state lottery.

### C. Background

Following voter ratification of a constitutional amendment to permit a state lottery, the legislature created the Wisconsin Lottery in 1987 Wisconsin Act 119. The amendment required that the net proceeds from the lottery be used for property tax relief, as determined by the legislature.

From 1988 to 1992, lottery proceeds were applied to finance general school equalization aids, farmland tax relief credits and district attorney salaries. Disagreement about whether expenditures for school aids and attorney salaries were proper methods of delivering property tax relief led to a class action suit. Governor Tommy Thompson's veto of 1991 Wisconsin Act 39 that resulted in an \$83 million transfer of lottery profits to the general fund also was questioned.

In May of 1992, Dane County Circuit Judge Michael Nowakowski ruled that using lottery profits to supplement school aids was unconstitutional. He declared that the intent of the voters in ratifying the 1987 lottery amendment was to provide for direct property tax relief which is "separate, different and extra" and that adding funds to existing state aid programs might or might not result in an actual dollar-for-dollar reduction of property taxes.

The legislature responded by enacting 1991 Wisconsin Act 39 to create a lottery credit for school property tax relief as a vehicle for distribution of lottery revenues and direct reduction of local property taxes. Owners of principal residences were eligible for the credit, which was related to the amount of property taxes they owed toward the local school levy.

In October 1996, Dane County Circuit Judge Angela Bartell ruled in a suit brought by the Wisconsin Out-of-State Landowners Association that providing property tax credits only to owners of primary residences in Wisconsin violated the uniformity clause of the state constitution. The decision held that homes owned by out-of-state residents, second homes owned by state residents and commercial property could not be excluded from the lottery property tax relief program. Due to the timing of the court ruling, the state was unable to create a mechanism before year's end to distribute the lottery property tax credit for 1996.

The 1997 Legislature enacted a new lottery credit distribution plan as part of 1997 Wisconsin Act 27 (the biennial budget act). The new mechanism provides a lottery credit to every parcel of land in Wisconsin whether it is residential, agricultural, business or commercial. Thus, the credit is also paid to out-of-state residents who own property in Wisconsin. The average lottery property tax credit for 1997 was \$80 (1996 and 1997 credits were combined) compared to a high of \$168 paid to resident home owners in 1992.

In contrast to the existing distribution mechanism, 1997 Assembly Joint Resolution 80 (Enrolled Joint Resolution 19) provides that the property tax credit, resulting from state proceeds from the lottery, pari-mutuel on-track betting and bingo, will be paid to "residents" of this state, as defined by law. Projected figures suggest that, under the new distribution

method, the average tax credit could go from \$45 per recipient in 1998 to \$105 in 1999, if the enabling constitutional amendment is ratified by the voters.

**D. Legislative Action**

The legislative history of 1997 Assembly Joint Resolution 80, as recorded in the *Bulletin of Proceedings*, is excerpted below:

**Assembly Joint Resolution 80**

To amend section 24 (3), (5) and (6) (a) of article IV of the constitution; relating to: the distribution of the net proceeds of the state lottery and certain moneys received by the state that are attributable to pari-mutuel on-track betting and bingo.

1997	11-11. A.	Introduced by Representatives <b>M. Lehman, Walker, Goetsch, Wood, Harsdorf, Travis, Kaufert, Black, Ladwig, Huebsch, Hasenohrl, Schafer, Ainsworth, Ryba, Dobyys, Musser, Albers, Sykora, Skindrud and Hahn</b> ; cosponsored by Senators <b>Ellis and Panzer</b> .	
	11-11. A.	Read first time and referred to committee on Elections and Constitutional Law . . .	400
	11-12. A.	Public hearing held.	
	11-12. A.	Assembly substitute amendment 1 offered by committee on Elections and Constitutional Law . . . . .	405
	11-13. A.	Report Assembly substitute amendment 1 adoption, Ayes 8, Noes 0, adoption as amended recommended by committee on Elections and Constitutional Law, Ayes 7, Noes 1. . . . .	407
	11-18. A.	Read a second time . . . . .	411
	11-18. A.	Assembly substitute amendment 1 <b>adopted</b> . . . . .	411
	11-18. A.	Read a third time and <b>adopted</b> , Ayes 95, Noes 1 . . . . .	411
	11-19. S.	Read first time and referred to committee on Judiciary, Campaign Finance Reform and Consumer Affairs . . . . .	353
1998	03-10. S.	Report concurrence, Ayes 4, Noes 0 recommended by committee on Judiciary, Campaign Finance Reform and Consumer Affairs. . . . .	488
	03-12. S.	Read a second time . . . . .	509
	03-12. S.	Senate substitute amendment 1 offered by Senators Decker, Burke, Moen, Chvala, Plache, C. Potter, Grobschmidt and Shibilski . . . . .	509
	03-12. S.	Senate amendment 1 to Senate substitute amendment 1 offered by Senator Wineke . . . . .	509
	03-12. S.	Senate amendment 1 to Senate substitute amendment 1 rejected, Ayes 29, Noes 3 . . . . .	509
	03-12. S.	Senate substitute amendment 1 <b>adopted</b> . . . . .	509
	03-12. S.	Senate substitute amendment 2 offered by Senator Wineke . . . . .	509
	03-12. S.	Senate substitute amendment 2 withdrawn and returned to author . . . . .	509
	03-12. S.	Read a third time and <b>concurred in</b> as amended, Ayes 24, Noes 8 . . . . .	510
	03-16. A.	Received from Senate amended and concurred in as amended (Senate substitute amendment 1 adopted) . . . . .	660
	03-18. A.	Senate substitute amendment 1 <b>concurred in</b> . . . . .	672
	06-17. A.	Deposited in the office of the Secretary of State . . . . .	949
		Enrolled Joint Resolution 19.	
	06-17. A.	Published 6-29-98, 8-4-98, 9-1-98, 10-6-98 . . . . .	949

**II. AUTHORIZING 4-YEAR TERM OF OFFICE FOR DISTRICT ATTORNEYS**

**A. Analysis**

This proposed constitutional amendment would extend the elected term for district attorneys from two years to four years, beginning with those officers elected at the first general election following ratification of the amendment.

Because a separate resolution to amend the same section of the constitution (4-year term for sheriffs) was adopted on second consideration by the 1997 legislature and will be submitted to the voters this fall, 1997 AJR 43 had to be drafted to reflect the wording of the constitution once the November 1998 referendum has or has not passed. The need to reconcile the district attorneys' amendment with the results of the referendum on the sheriffs' term returned 1997 AJR 43 to "first consideration" stage. Second consideration in the 1999 Legislature would still be necessary.

## B. Text

**SECTION 1.** Section 4 (1) of article VI of the constitution is amended to read:

[Article VI] Section 4 (1) Sheriffs, coroners, registers of deeds, ~~district attorneys~~, and all other elected county officers except judicial officers, ~~district attorneys~~ and chief executive officers, shall be chosen by the electors of the respective counties once in every 2 years.

**SECTION 2.** Section 4 (7) of article VI of the constitution is created to read:

[Article VI] Section 4 (7) Beginning with the first general election which occurs following ratification of this subsection, district attorneys shall be chosen by the electors of the respective counties once in every 4 years.

**SECTION 3. Reconciliation.** If the amendment of section 4 (1) of article VI of the constitution as proposed by 1997 Senate Joint Resolution 43 is ratified by the people prior to the ratification of this amendment, section 4 (1) of article VI of the constitution shall, in lieu of the treatment shown in SECTION 1, be amended as follows:

[Article VI] Section 4 (1) Except as provided in sub. (2), coroners, registers of deeds, ~~district attorneys~~, and all other elected officers except judicial officers, sheriffs, ~~district attorneys~~ and chief executive officers, shall be chosen by the electors of the respective counties once in every 2 years.

## C. Background

Every session of the Wisconsin Legislature since 1971 has included constitutional amendment proposals to extend the term of various county officials. In fact, county officers have sought to have their terms extended from two to four years since the 1920s, and they were optimistic they would be successful after the Wisconsin Constitution was amended in 1967 to create four-year terms for the statewide offices of governor, lieutenant governor, secretary of state, treasurer and attorney general, beginning in 1971.

From the 1971 legislative session through the 1997 session, a total of 23 senate joint resolutions and 28 assembly joint resolutions to extend the terms of county offices have been introduced, but it was not until the 1995 session that any of the resolutions passed both houses on first consideration. 1995 Senate Joint Resolution 30 apparently represented the first time that a joint resolution had been introduced to specifically and solely provide for an extended term of office for district attorneys.

1997 AJR 43, which was supposed to be the second consideration of the district attorney amendment, eventually passed, but, because the constitutional language of 1995 SJR 30 was amended during the legislative process, 1997 AJR 43 reverted to "first consideration" status. It will require passage on second consideration in the 1999 Legislature if it is to advance to referendum.

A detailed listing of the various legislative proposals to extend the terms of county officials from 1971 through 1995 is available in LRB Informational Memorandum 95-1, "Extended Terms for Legislators and County Officers".

D. Legislative Action

The legislative history of 1997 Assembly Joint Resolution 43, as recorded in the *Bulletin of Proceedings*, is excerpted below:

Assembly Joint Resolution 43

To amend section 4 (1) of article VI; and to create section 4 (6) of article VI of the constitution; relating to: 4-year terms of office for districtattorneys.

1997

- 03-25. A. Introduced by Representatives **Foti, Kunicki, Lazich, Ainsworth, Bock, Boyle, Brandemuehl, Coggs, Dobyns, Duff, Goetsch, Green, Gronemus, Grothman, Gunderson, Handrick, Hanson, Hasenohrl, Hoven, Huebsch, Hutchison, Jensen, Jeskewitz, Johnsrud, Kedzie, Kelso, Klusman, Kreibich, Krusick, Ladwig, F. Lasee, M. Lehman, Murat, Nass, Olsen, Ott, Otte, Ourada, Owens, Plale, Porter, Powers, Ryba, Schafer, Seratti, Springer, Staskunas, Sykora, Turner, Underheim, Vander Loop, Vrakas, Walker and L. Young**; cosponsored by Senators **Burke, Huelsman, Breske, Buetner, Clausing, Darling, Drzewiecki, Farrow, Fitzgerald, George, Grobschmidt, A. Lasee, Panzer, C. Potter, Risser, Rosenzweig, Rude, Schultz, Shibilski, Weeden and Welch**.
- 03-25. A. Read first time and referred to committee on Elections and Constitutional Law . . . 108
- 04-17. A. Public hearing held.
- 05-01. A. Assembly substitute amendment 1 offered by committee on Elections and Constitutional Law . . . . . 149
- 05-01. A. Assembly amendment 1 to Assembly substitute amendment 1 offered by committee on Elections and Constitutional Law . . . . . 149
- 05-15. A. Report adoption recommended by committee on Elections and Constitutional Law, Ayes 7, Noes 1. . . . . 150
- 05-22. A. Read a second time . . . . . 173

- 05-28. A. Read a third time and **adopted**, Ayes 84, Noes 12, Paired 2 . . . . . 183
- 06-11. S. Received from Assembly . . . . . 194
- 06-11. S. Read and referred to committee on Judiciary, Campaign Finance Reform and Consumer Affairs . . . . . 195

1998

- 04-01. S. Failed to concur in pursuant to Senate Joint Resolution 1 . . . . . 575
- 04-21. S. Revived pursuant to Senate Joint Resolution 47 . . . . . 600
- 04-21. S. Withdrawn from committee on Judiciary, Campaign Finance Reform and Consumer Affairs and referred to committee on State Government Operations and Corrections pursuant to Senate Joint Resolution 47 . . . . . 604
- 04-27. S. Executive action taken.
- 04-30. S. Report concurrence, Ayes 5, Noes 0 recommended by committee on State Government Operations and Corrections 635
- 05-05. S. Read a second time . . . . . 663
- 05-05. S. Senate substitute amendment 1 offered by Senators Rude, Welch, Weeden, Schultz, Darling, Zien, Rosenzweig, Drzewiecki, Farrow, Panzer and Lazich 665
- 05-05. S. Senate substitute amendment 1 **adopted** . 665
- 05-05. S. Read a third time and **concurred in** as amended, Ayes 31, Noes 2 . . . . . 665
- 05-06. A. Received from Senate amended and concurred in as amended (Senate substitute amendment 1 adopted) . . . . . 860
- 05-07. A. Senate substitute amendment 1 **concurred in**, Ayes 82, Noes 15 . . . . . 882
- 06-17. A. Deposited in the office of the Secretary of State . . . . . 949
- 06-17. A. Published 6-29-98, 8-4-98, 9-1-98, 10-6-98 . . . . . 949