



Wisconsin Briefs

from the Legislative
Reference Bureau

Brief 99-6

March 1999

CONSTITUTIONAL AMENDMENTS TO BE CONSIDERED BY THE WISCONSIN VOTERS, APRIL 6, 1999

The 1999 Wisconsin Legislature gave its final approval on second consideration to one constitutional amendment proposal and placed it on the April 6, 1999, ballot.

| Section Affected or Created | Joint 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 |
| | 1999 Assembly Joint Resolution 2 (Enrolled Joint Resolution 2) | |

Amendment Process. Article XII, Section 1, of the Wisconsin Constitution requires that constitutional amendments must be adopted by two successive legislatures and ratified by the electorate before taking effect. A proposed change is introduced in the legislature for “first consideration” in the form of a joint resolution, which must pass both houses but does not have to be submitted to the governor for approval. If the resolution is adopted on first consideration, a new joint resolution embodying the identical constitutional text must be approved on “second consideration” in the next legislature. The second joint resolution specifies the wording of the ballot question(s) and sets the referendum date. The third and final step is submitting the question(s) to a statewide referendum vote where a majority of those casting ballots must ratify the amendment.

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

A. Ballot Question

The question will appear on the ballot in this form:

“Distribution of gambling proceeds. Shall section 24 (3), (5) and (6) (a) of article IV of the constitution be amended to require that the net proceeds of the state lottery and of moneys received by the state from bingo games and pari-mutuel on-track betting be used for property tax relief for residents of this state as provided by law, but subject to the condition that the distribution not vary based on the income or age of the person provided property tax relief?”

Prepared by Gary Watchke, Legislative Analyst

B. Analysis by the Legislative Reference Bureau

The following is extracted from the Legislative Reference Bureau analysis of 1999 AJR 2:

This proposed constitutional amendment amends section 24 (3), (5) and (6) (a) of article IV of the state constitution. Section 24 (3), (5) and (6) (a) of article IV contains the state constitution's limitation on the power of the legislature to authorize gambling. The proposed constitutional amendment provides that all moneys received by the state that are attributable to bingo games and pari-mutuel on-track betting (other than moneys used for the regulation of, and enforcement of law relating to, bingo games and pari-mutuel on-track betting) and the net proceeds of the state lottery must be used for property tax relief for residents of this state. The proposed constitutional amendment also provides that the distribution of these moneys may not vary based on the income or age of the person provided the property tax relief. Finally, the proposed constitutional amendment provides that the distribution of these moneys is not subject to the uniformity requirement of section 1 of article VIII of the state constitution.

C. Attorney General's Explanatory Statement

On February 22, 1999, Attorney General James E. Doyle provided the following explanatory statement of the effect of the proposed amendment as required by Section 10.01 (2) (c), Wisconsin Statutes:

Article IV, § 24 (3) and (5) of the Wisconsin Constitution concerning bingo games and pari-mutuel on-track betting do not presently make provisions for use of the moneys received by the state. Article IV, § 24 (6) (a) of the Wisconsin Constitution concerning the lottery presently provides that the net proceeds of the state lottery shall be deposited in the treasury of the state to be used for property tax relief.

The proposed amendment provides that all moneys received by the state attributable to bingo games and pari-mutuel on-track betting, except for moneys used for the regulation of, and enforcement of laws relating to bingo games and pari-mutuel on-track betting, and the net proceeds of the state lottery must be used for property tax relief for residents of this state. The proposed amendment also provides that the distribution of these moneys may not vary based on the income or age of the person provided the property tax relief and exempts the distribution of these moneys from the uniformity requirement of article VIII, § 1 of the Wisconsin Constitution.

A "yes" vote on this constitutional amendment would mean that the moneys received by the state that are attributable to bingo games and pari-mutuel on-track betting, other than moneys used for the regulation of and enforcement of laws relating to bingo games and pari-mutuel on-track betting, and the net proceeds of the state lottery would be used for property tax relief for residents of this state and that the distribution of those moneys would not vary based on the income or age of the person provided the property tax relief. A "yes" vote would also mean that the distribution of these moneys would not be subject to the uniformity requirement of article VIII, § 1 of the Wisconsin Constitution. A "no" vote would keep the present language of article IV, § 24 of the Wisconsin Constitution which makes no provision for moneys received by the state attributable to bingo games or pari-mutuel on-track betting and which provides that the net proceeds of the state lottery must be used for property tax relief but does not limit that relief to residents of this state.

D. Text**Section 24 (3) of article IV of the constitution is amended to read:**

[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.

Section 24 (5) of article IV of the constitution is amended to read:

[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.

Section 24 (6) of article IV of the constitution is amended to read:

[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 Wisconsin 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.

E. 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, the proposed amendment provides that the property tax credit, resulting from net 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 increase from \$45 per recipient in 1998 to \$105 in 1999.

If the constitutional amendment proposal is ratified by the voters, it would be necessary for the legislature to enact implementing legislation to address a number of issues, including whether both homeowners and renters are to share the credit and whether the credit should be limited to farm residences or expanded to also include farmland.

F. Legislative Action

First Consideration — The legislative history for 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 **M. Lehman, Walker, Goetsch, Wood, Harsdorf, Travis, Kaufert, Black, Ladwig, Huebsch, Hasenohrl, Schafer, Ainsworth, Ryba, Dobyns, Musser, Albers, Sykora, Skindrud** and **Hahn**; cosponsored by Senators **Ellis** and **Panzer**.
- 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 **adopted** 411
- 11-18. A. Read a third time and **adopted**, 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 **adopted** 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 **concurred in** 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 **concurred in** 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

Second Consideration — The legislative history for 1999 Assembly Joint Resolution 2, as recorded in the *Bulletin of Proceedings*, is excerpted below:

Assembly Joint Resolution 2

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 (2nd consideration).

1999

- 01-07. A. Introduced by Representatives **M. Lehman, Jensen, Gard, Wood, Spillner, Bock, Musser, Plale, Kreuser, Porter, Kaufert, Goetsch, Owens, Ourada, Stone, Hasenohrl, Huber, Olsen, Black, Kreibich, Freese, Sykora, Ott, Cullen, Hahn, Meyer, Ladwig, Ainsworth, Gunderson, Carpenter, Plouff, Suder, Petrowski and Gronemus**; cosponsored by Senators **Decker, Clausing, Breske, Plache, Jauch, Drzewiecki, Erpenbach, Baumgart, Schultz, Roessler and Moen.**
- 01-07. A. Read first time and referred to committee on Ways and Means 14
- 01-12. A. Report adoption recommended by committee on Ways and Means, Ayes 15, Noes 0. 18

- 01-14. A. Read a second time 25
- 1-14. A. Read a third time and **adopted**, Ayes 96, Noes 1 25
- 01-20. S. Read first time and referred to committee on Judiciary and Consumer Affairs 20
- 01-26. S. Report concurrence, Ayes 5, Noes 0 recommended by committee on Judiciary and Consumer Affairs. 21
- 01-28. S. Read a second time 35
- 01-28. S. Read a third time and **concurred in**, Ayes 31, Noes 1 35
- 02-17. A. Deposited in the office of the Secretary of State
Enrolled Joint Resolution 2..
- 02-17. A. Published 2-26-99 72