

**MICHAEL BEST
& FRIEDRICH LLP**
Attorneys at Law

www.mbf-law.com

100 East Wisconsin Avenue
Suite 3300
Milwaukee, Wisconsin 53202-4108
FAX (414) 277-0656
Telephone (414) 271-6560

Author: Christopher C. Mohrman
Writer's Direct Line: (414) 347-4766
Email: ccmohrman@mbf-law.com

Offices in
Madison, Wisconsin
Manitowoc, Wisconsin
Lehigh Valley, Pennsylvania
Chicago, Illinois
(Michael Best & Friedrich LLC)

Member Lex Mundi,
A Global Network of more than
150 Independent Firms

September 30, 2003

Via Facsimile & U.S. Mail

Fax No. 202-219-3923

General Counsel
Federal Elections Commission
999 E. Street, NW
Washington, D.C. 20463

Re: MUR 5387

Dear General Counsel:

Enclosed for filing please find the Response to MUR 5387.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

Christopher Mohrman / kmb

Christopher C. Mohrman

CCM:kmb
Enclosure

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2003 OCT -6 A 10:46

RESPONSE TO MUR 5387

INTRODUCTION

As the Federal Elections Commission ("FEC") is all too well aware, the use of the complaint process is open to abuse. This is just such an instance. The Complaint by the Democratic Party of Wisconsin ("DPW") against Senator Welch¹ is frivolous, and amounts to nothing more than harassment of a sitting state office holder whom the DPW would like to muzzle. Unfortunately, even a frivolous complaint must be processed by the FEC and answered by the relevant campaign committees. All of this takes time and resources, both taxpayer and private. The DPW's Complaint is a perfect example of why the FEC should adopt provisions that allow both the FEC and the respondent to recover the costs thrust upon them by the filer of a frivolous complaint.

Because of the complexity of the new campaign finance laws, representatives of Senator Welch investigated the use of these funds for the radio ads in question. Because the funds expended were from a state committee, Senator Welch first sought advice from the Wisconsin Elections Board ("WEB"). Attached as Exhibit A is a communication from Mr. Kevin Kennedy, the Executive Director of the WEB. Mr. Kennedy opined:

The activities you described, publicizing the political website that provides information about a potential legislative override of the Governor's veto of the property tax freeze, meet the political purpose test in the opinion of the Elections Board staff. This makes the expenditure a legitimate use of state campaign funds.

Mr. Kennedy did specifically note that while his office could determine that the expenditure was for a legitimate state political purpose, he could not provide guidance on the application of federal law. Therefore, representatives of Senator Welch contacted the FEC hotline. In discussion with the FEC staff, representatives of Senator Welch were informed, after reading the text of the radio ads to FEC staff, that the radio ad did not appear to have any connection to a federal election. Further, FEC staff cited 11 C.F.R. § 300.72 as providing an exemption for state officials communicating regarding state political matters.

The DPW's complaint is frivolous for two fundamental reasons. First, the radio ads the DPW complains of do not even colorably meet the definition of a "communication" found in 2 U.S.C. § 431(20)(A)(iii), nor were any expenditures made "in connection" with an election for

¹ Three letters were received from the FEC addressed to the following (1) Citizens for Welch, Senator Welch's state committee, (2) Welch for Wisconsin, Senator Welch's federal committee, and (3) Senator Welch personally. All contain the same control number of MUR 5387. This letter responds to all three communications. Senator Welch received the letters on September 15, 2003. According to FEC rules, Senator Welch would have until September 30, 2003 to respond. This response was transmitted to the FEC on September 30, 2003.

federal office. Second, the radio ads are clearly allowed by 2 U.S.C. § 441(i)(f)(2) and 11 C.F.R. § 300.72.

BACKGROUND

In June, 2003, the Wisconsin Legislature adopted a budget for the state of Wisconsin. That budget included a provision limiting the increases that local units of government could adopt in their property tax levy. The provision was generally referred to as the "property tax freeze." Senator Welch is the co-chair of the Joint Finance Committee, the committee of the Wisconsin Legislature responsible for recommending a budget to the entire Legislature. Senator Welch and a group of other Legislators were the first to propose the property tax freeze. Senator Welch actively worked to gain passage of the property tax freeze by the Joint Finance Committee and the Legislature as a whole. In the popular press, Senator Welch was referred to as the "Father of the Freeze."

Wisconsin Governor Doyle, exercising his partial veto power, vetoed the property tax freeze from the Wisconsin State budget. Because the budget originated in the State Senate, the State Senate would be the first to consider an override of Governor Doyle's veto of the property tax freeze. In Wisconsin, a two-thirds vote of both the Senate and the Assembly is necessary to override the veto of the Governor. In the weeks leading up to the override vote in the State Senate, the property tax freeze dominated the media and public discussion. Business and labor groups both engaged in extensive paid radio campaigns to support and oppose, respectively, the override of the Governor's veto by the State Senate. The paid persuasion efforts were focused upon several State Senators who were undecided in how they would vote on the override. Senator Welch, as others who had strong positions either for or against the property tax freeze in an effort to save the provision he had authored from the veto, chose to use his state committee to air radio ads in markets targeted at the undecided State Senators. The radio ads gave a quick description of the Governor's veto and directed listeners to a web site (www.taxfreeze.org) that had been developed by the Speaker of the Assembly, John Gard, to inform the public about the property tax freeze. The website did not contain anything remotely related to any federal office, federal issue, or campaign for federal office. The website content was exclusively about the impact of the proposed state property tax freeze and Governor Doyle's veto of the provision. The content of the website is attached hereto as Exhibit B.

The communications in question are two radio ads, a 10-second and a 15-second version. Following is the text of the two radio ads:

15 seconds

"Hi folks, I'm Wisconsin Senator Bob Welch.
Republicans think your taxes are too high and passed a three-year property tax freeze.
Governor Doyle vetoed the freeze.
You can help override that veto. Find out how at taxfreeze.org.
Paid for by Citizens for Welch, Richard Rathjen Treasurer."

10 seconds

"I'm Wisconsin Senator Bob Welch.

Republicans passed a property tax freeze.

Governor Doyle vetoed the freeze.

You can help override that veto ... visit taxfreeze.org.

Paid for by Citizens for Welch, Rich Rathjen Treasurer."

The radio ads ran for approximately a week in markets targeted at undecided Wisconsin State Senators. A total of approximately \$5,000 was expended by Citizens for Welch, Senator Welch's state committee

As detailed above, Senator Welch consulted with both the WEB and the FEC regarding the radio ads.

ARGUMENT

A. THE RADIO ADS ARE CLEARLY NOT IN CONNECTION WITH AN ELECTION FOR FEDERAL OFFICE, DO NOT PROMOTE OR SUPPORT ANY CANDIDATE FOR A FEDERAL OFFICE, AND ARE NOT A "COMMUNICATION" AS DEFINED BY 2 U.S.C. § 431(20)(A)(iii).

As the DPW implicitly concedes, absolutely nothing in the content of the radio ads or the website could even arguably be termed, "in connection with an election for Federal office" or could be construed in a way that "promotes or supports a candidate for that office." The DPW's sole contention is that because the radio ads use the "Welch" name, the state account is being used to, "build name recognition for his federal campaign." In short, the DPW demands that the FEC now adopt a rule that the mere use of the name of an incumbent state official who is also a federal candidate in a communication renders it a "federal election activity."

Since Wisconsin state law mandates that the state committee's name be included in any communication (See Wis Stat. § 11.30(2) ("The source of every printed advertisement ... television or radio advertisement or other disbursement or incurred obligation shall clearly appear thereon.))), the DPW's contention would mean that, in Wisconsin, once a state official became a candidate for federal office, the state official would be prohibited from using his or her state committee for any purpose whatsoever because state committee names universally include the name of the state elected official.

Specifically, to consider the DPW's complaint, the FEC would need to determine that the radio ads either, were "in connection with an election for Federal office," under 2 U.S.C. § 441i(e)(1), or that the radio ad "promotes or supports a candidate for that office [U.S. Senate]" under 2 U.S.C. § 431(20)(A)(iii). Given the facts of this case, neither of those determinations can be made.

The FEC has already defined the phrase "in connection with an election in which a candidate for federal office appears on the ballot," which is nearly identical to the phrase in 2

U.S.C. § 441i(e)(1), and utilized by the FEC to determine what is a "Federal election activity," in 11 C.F.R. 100.24(a)(1)(i) as follows:

"The period of time beginning on the date of the earliest filing deadline for access to the primary election ballot for Federal candidates as determined by State law...."

Under Wisconsin law, nomination papers to participate in the primary for U.S. Senate may not be circulated until June 1 of the election year. Wis. Stat. § 8.15(1). Therefore, June 1, 2004, is the earliest filing deadline for such access, and period of time that, according to 11 C.F.R. 100.24(a)(1)(i), that the Federal election activity would occur. But the fact that the federal election in question was more than fourteen months away is not the only point belying any connection to the Federal election. The timing was not coincidental. The timing of these radio ads coincided not with any federal electoral purpose, but with a major vote with long-range political significance to be taken in the Wisconsin State Senate.

As to the second test, the radio ads clearly do not support or oppose any candidate for the office of U.S. Senate. In fact, the radio ads do not support or oppose any candidate. The radio ads support the adoption of the provision referred to as the property tax freeze in Wisconsin's state budget. The radio ads support an action, override of a veto, then pending before the Wisconsin State Senate. While the radio ads are clear on their face, the website referred to reinforces the point. The website was designed by Speaker John Gard to place political pressure on Governor Doyle to support the property tax freeze. Not even the DPW has asserted that the website has any federal implications whatsoever. See Exhibit B.

Finally, while not dispositive of the federal law questions, the FEC should give consideration to the opinion rendered by the relevant officials here in the state of Wisconsin that the radio ads met a legitimate state political purpose. The staff and Executive Director of the WEB, being in Wisconsin, had the opportunity to view this matter in the context of the local political environment. Within that context, the Executive Director provided written verification of the appropriateness of the expenditure from a state political committee. See Exhibit A.

B. THE RADIO ADS ARE SPECIFICALLY ALLOWED UNDER 2 U.S.C. § 441i(f)(2) and 11 C.F.R. § 300.72.

The FEC need not reach this second issue because the radio ads were clearly not in connection with a federal election nor do they promote a candidate for federal office. However, state officials are specifically allowed to expend state funds in connection with state campaigns if the communication involved refers only to the state official. That is precisely the case here.

In short, Federal law recognizes that a sitting state legislator does not lose his or her ability to operate a state committee for legitimate state political purposes upon forming a committee for federal office. The property tax freeze will be one of the most important issues in virtually every election for state and local office in Wisconsin in the coming years. It is the dominant issue in Wisconsin state politics.

11 C.F.R. § 300.72 makes it clear that the provisions cited by the DPW in their complaint do not apply to the radio ads:

if the public communication is in connection with an election for State or local office and refers to one or more candidates for State or local office or to a State or local officeholder but does not promote, support, attack, or oppose any candidate for Federal office.

As discussed above, the radio ads do not support, attack, or oppose any candidate for federal office. The radio ads support the property tax freeze and the pending veto override vote in the Wisconsin State Senate. Neither the incumbent U.S. Senator nor any other federal official or candidate was supported or opposed for any federal office.

Senator Welch is a State officeholder. The only other official mentioned, Governor Doyle, is also a State officeholder. Governor Doyle stands for reelection in 2006, however Governor Doyle already has paid campaign staff and is actively seeking funds and support for that state campaign. Governor Doyle is not a federal candidate. The public communications in question were made in connection with the election for state and local office holders in Senator Welch's district and across Wisconsin². As representatives of Senator Welch were informed when first discussing the issue with FEC staff, 11 C.F.R. § 300.72 allows this expenditure.

Likewise, because both Senator Welch and Governor Doyle "held" state office at the time of the expenditure and the expenditure was for a legitimate state political purpose, the specific exemption in 2 U.S.C. § 441(f)(2) applies.

As noted, the FEC need not reach these statutory provisions because they would only be applicable if the communication were a federal campaign activity, which they clearly were not. However, the existence of 2 U.S.C. § 441(f)(2) and 11 C.F.R. § 300.72 demonstrate the clear intention of Congress to allow traditional and legitimate state political activity by state office holders to continue while that incumbent state office holder also pursues federal office. That is precisely what occurred here.

CONCLUSION

What is obvious to all in Wisconsin should now be clear to the FEC. The DPW desperately wants to silence anyone who speaks in favor of freezing property taxes in Wisconsin. Because the State Senator who is the "Father" of the state property tax freeze also has declared his intention to run for U.S. Senate in 2004, the DPW is improperly using the specter of an FEC

² It should be noted that nominations for Senator Welch's seat are not due until the 2nd Tuesday in July, 2004. Senator Welch's status as a federal candidate does not mean that his state committee may not expend resources related to legitimate state political purposes and reasonably calculated to influence state and local elections. In this regard, the FEC should give consideration to the determination by the WEB that these expenditures constituted a legitimate state political purpose.

investigation in an attempt to intimidate and harass him into silence on purely state issues. The DPW's political tactic is a horrific waste of the taxpayer's resources and a scandalous abuse of the law. We urge that the FEC consider provisions so that such abuses are no longer free for those who advance frivolous complaints to achieve unrelated political ends.

Federal law allows Senator Welch to appropriately use his state committee for legitimate state political purposes that are not related to the federal election. Senator Welch did just that in fighting for the state property tax freeze. Out of an abundance of caution, Senator Welch confirmed this understanding of the law with both the state and federal authorities.

The DPW's frivolous complaint must be dismissed

Dated this 30th day of September, 2003.

MICHAEL BEST & FRIEDRICH LLP

By: Christopher C. Mohrman /kmb
Christopher C. Mohrman, SBN 1031205
100 East Wisconsin Avenue
Suite 3300
Milwaukee, Wisconsin 53202-4108
(414) 271-6560

STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent

MUR 5387NAME OF COUNSEL: Christopher C. MohrmanFIRM: Michael Best & Friedrich LLPADDRESS: 100 East Wisconsin AvenueSuite 3300Milwaukee, Wisconsin 53202TELEPHONE: (414) 271-6560FAX: (414) 277-0656


The above-named individual is hereby designated as my counsel
and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission.

Robert Welch

9-30-03

Date

Print Name



Signature

CANDIDATE

Title

RESPONDENT'S NAME: Citizens for Welch & Robert Welch PersonallyADDRESS: W5370 Highway 21P.O. Box 523Redgranite, Wisconsin 54970TELEPHONE: HOME [REDACTED]BUSINESS (920) 229-4655

STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent

MUR 5387

NAME OF COUNSEL: CHRISTOPHER MOHRMAN

FIRM: MICHAEL BEST & FRIEDRICH

ADDRESS: 100 E WISCONSIN AVE

SUITE 3300

MILWAUKEE, WI 53202

TELEPHONE: (414) 271-6500

FAX: (414) 277-0656

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

JOHN J. HILLER

Print Name

9/24/03
Date

[Signature]
Signature

TREAS
Title

RESPONDENT'S NAME: WELCH FOR WISCONSIN

ADDRESS: PO Box 523

REDGRANITE, WI

TREAS - 10500 N. Port Washington Rd #203 Mequon, WI 53092

TELEPHONE: HOME [REDACTED]

BUSINESS (262) 331-4455

Email exchange between Citizens for Welch and State Elections Board

From: "Kennedy, Kevin" <Kevin.Kennedy@seb.state.wi.us>
To: 'Citizens For Welch' <
CC: *SEB Campaign Finance Group <SEBCFG2@state.wi.us>
Subject: RE: State Senate Campaign Expenditure
Date: Tue, 5 Aug 2003 09:48:29 -0500

Dear Senator Welch

Wisconsin law permits a registrant to use campaign funds for a political purpose. Your committee is still registered with our office. The activities you described, publicizing the political website that provides information about a potential legislative override of the Governor's veto of the property tax freeze, meet the political purpose test in the opinion of the Elections Board staff. This makes the expenditure a legitimate use of state campaign funds.

Our office cannot provide any guidance on the application of federal law to this activity.

Kevin Kennedy, Executive Director
Wisconsin State Elections Board
132 East Wilson Street, Suite 200
PO Box 2973
Madison, WI 53701-2973

608-266-8087
608-267-0500 (Fax)

kevin.kennedy@seb.state.wi.us
<http://elections.state.wi.us>

-----Original Message-----

From: Citizens For Welch [mailto:xxxxxxxxxxxxxxxxx]
Sent: Monday, August 04, 2003 12:43 PM
To: kevin.kennedy@seb.state.wi.us
Subject: State Senate Campaign Expenditure

Dear Kevin,

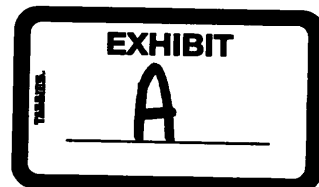
I am writing to ask for written confirmation of the verbal approval a member of my finance committee received from Dennis Morvak last week that, as a declared candidate for US Senate, it is still appropriate for me to expend moneys from my state senate campaign fund to publicize an issue currently pending in the state legislature - namely, the potential override of the Governor's veto of the property tax freeze - and direct people to visit a website privately maintained by another member of the Legislature that is dedicated to this issue.

I appreciate your timely response to this request.

Sincerely,

Bob Welch

-XXX-



WWW.TAXFREEZE.ORG

**SIGN
OUR
PETITION!**

**GOV. DOYLE'S
BROKEN
PROMISE**

**HOT FACTS
ABOUT THE
FREEZE**

**LETTERS
TO THE
EDITOR**



**Property
Tax
Increases**

Dear Friends,

I want to thank you for joining us in the fight for lower property taxes. In just over one month, thousands of you let your views be heard on this important issue.

The fight for the freeze was about taking a stand. Republicans chose to stand with taxpayers, and your support emboldened us to make that stand. Your voice and your passion was echoed by individuals and groups around the state. Thanks to people like you, state taxpayer groups, members of the media, and the Issues Mobilization Committee of the state's Chamber of Commerce, the freeze turned into a statewide grassroots movement the likes of which Wisconsin has not seen in years.

I want to assure you that this movement and this fight will continue despite the Governor's veto and the unfortunate choice of Democrats in the legislature to stand up for the special interests instead of with the taxpayers. We have already passed the freeze again in the Assembly as separate legislation. It is my hope that, as lawmakers continue to hear from folks like you from around the state, we will generate support sufficient to overcome the governor's and the legislative Democrats' obstructionism. If we are to overcome their obstruction, we will consider going around them, amending the Wisconsin Constitution and letting the voters themselves have the final say on this issue.

Thank you again for your support for the freeze. Our fight has only begun. With your

EXHIBIT

B

continued help I know we will win.

Sincerely,
John Gard
Assembly Speaker



PETITION

**GOV. DOYLE'S
BROKEN
PROMISE**

**HOT FACTS
ABOUT THE
FREEZE**

**LETTERS
TO THE
EDITOR**

HOME

PETITION

Dear Governor Doyle:

When you ran for governor last year, you promised that you not raise taxes. The non-partisan Legislative Fiscal Bureau I estimated that the budget that you proposed this February would increase my property taxes by up to 13%.

The budget the legislature has now sent to you includes a plan for freezing those property taxes for the next three years and increasing the sales, income or corporate taxes.

My taxes are too high already. I cannot afford a property tax increase. I urge you to keep your "no tax increase" promise and sign the property tax freeze now before you.

The legislature has kept its word and has not raised taxes. I am counting on you to keep your word and sign the freeze.

Sincerely,

(* The information you provide will not be sold to anyone.)

Name:

Address:

City:

State:

Zip:

Email:**Send Message**

[PLEASE NOTE: Due to the volume of petitions being submitted, you may not see a confirmation message after you click on "Send Message" button. Please be assured, however, that your information is being submitted. Thank you for your support!]

GOVERNOR DOYLE'S BROKEN PROMISE



**SIGN
OUR
PETITION!**

**HOT FACTS
ABOUT THE
FREEZE**

**LETTERS
TO THE
EDITOR**

HOME

NOTABLE DOYLE QUOTES

"I believe that the people of Wisconsin already pay their fair whether it's income taxes or sales taxes or property taxes, the Wisconsin cannot afford a tax increase - and they shouldn't!"
Doyle in the press release.

- Milwaukee Journal-Sentinel, March 15, 2003

"I have said time and again that we are not in this fiscal mess because taxes are too low, or because the taxpayers have not done their fair share. I will not raise taxes."

- Doyle campaign website <http://www.doyle2002.com/news/10>

"And I am proud to announce that despite a fiscal crisis of historic proportions, we have balanced this budget without raising taxes."

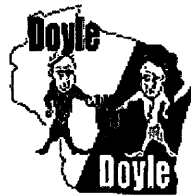
- Doyle budget address, February 18, 2003

"A tax is a tax. Tax increases would send the economy into a spiral of cost jobs and hurt business."

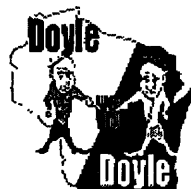
- Doyle Department of Administration Secretary, Marc Marott: State Journal, 2/9/03

DOYLE VS. DOYLE

(Documents in MS Word Format)



Doyle vs. Doyle #1



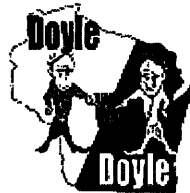
Doyle vs. Doyle #2



Doyle vs. Doyle #3



Doyle vs. Doyle #4



Doyle vs. Doyle #5

HOT FACTS ABOUT THE FREEZE



**SIGN
OUR
PETITION!**

**GOV. DOYLE'S
BROKEN
PROMISE**

**LETTERS
TO THE
EDITOR**

HOME

- Property Tax Levies at all levels of government will be frozen for 5 years
- County and municipal levies may only increase to reflect percentage change in tax base due to new construction
- Local taxing units may exceed the freeze if they receive approval to do so from the taxpayers via referendum.
- According to the non-partisan Legislative Fiscal Bureau, the freeze will result in a \$133 property tax decrease in 2003 and a \$254 decrease in 2004 for the median valued home (\$132,796) in Wisconsin.

Click [here](#) to read the State of Wisconsin Legislative Fiscal Bureau paper on what the freeze means to you. (.pdf format).

Click [here](#) to read the State of Wisconsin Legislative Fiscal Bureau paper that describes the proposed property tax freeze (pdf format).



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax (608) 267-6873

June 11, 2003

TO Representative John Gard
Room 211 West, State Capitol

FROM Fred Ammerman, Program Supervisor

SUBJECT Impact of Proposed Fiscal Controls on Five Homes

At your request, I am providing the attached table on the estimated impact of the fiscal controls proposed by the Joint Committee on Finance on five homes with January 1, 2003, values ranging from \$50,000 to \$200,000 that are taxed at the statewide average tax rate. You asked that I compare the estimated taxes on these homes under SB 44, based on the assumption that local governments would levy to replace 100% of state aid decreases, with the estimated taxes under the proposed fiscal controls.

If you have any questions about this material, please let me know.

FA/sas
Attachment

ATTACHMENT

Comparison of Tax Bills Under SB 44 (Governor) and Under Joint Finance Proposal For Five Hypothetical Residences Taxes at the Statewide Average Tax Rate

| | <u>2002(03)</u> | <u>2003(04)</u> | <u>2004(05)</u> |
|------------------------------|-----------------|-----------------|-----------------|
| Home Value | \$47,619 | \$50,000 | \$52,500 |
| Taxes Under SB 44 | \$900 | \$972 | \$1,031 |
| Change to Prior Year | | \$72 | \$59 |
| Percent Change to Prior Year | | 8 0% | 6 1% |
| Taxes Under Joint Finance | \$900 | \$911 | \$921 |
| Change to Prior Year | | \$11 | \$10 |
| Percent Change to Prior Year | | 1 2% | 1 1% |
| Change to SB 44 | | -\$61 | -\$110 |
| Percent Change to SB 44 | | -6 3% | -10 7% |
| Home Value | \$126,473 | \$132,796 | \$139,436 |
| Taxes Under SB 44 | \$2,517 | \$2,704 | \$2,861 |
| Change to Prior Year | | \$187 | \$157 |
| Percent Change to Prior Year | | 7 4% | 5 8% |
| Taxes Under Joint Finance | \$2,517 | \$2,542 | \$2,568 |
| Change to Prior Year | | \$25 | \$26 |
| Percent Change to Prior Year | | 1 0% | 1 0% |
| Change to SB 44 | | -\$162 | -\$293 |
| Percent Change to SB 44 | | -6 0% | -10 2% |
| Home Value | \$142,857 | \$150,000 | \$157,500 |
| Taxes Under SB 44 | \$2,852 | \$3,065 | \$3,241 |
| Change to Prior Year | | \$213 | \$176 |
| Percent Change to Prior Year | | 7 5% | 5 7% |
| Taxes Under Joint Finance | \$2,852 | \$2,881 | \$2,909 |
| Change to Prior Year | | \$29 | \$28 |
| Percent Change to Prior Year | | 1 0% | 1 0% |
| Change to SB 44 | | -\$184 | -\$332 |
| Percent Change to SB 44 | | -6 0% | -10 2% |

| | <u>2002(03)</u> | <u>2003(04)</u> | <u>2004(05)</u> |
|------------------------------|-----------------|-----------------|-----------------|
| Home Value | \$166,667 | \$175,000 | \$183,750 |
| Taxes Under SB 44 | \$3,341 | \$3,588 | \$3,793 |
| Change to Prior Year | | \$247 | \$205 |
| Percent Change to Prior Year | | 7 4% | 5 7% |
| Taxes Under Joint Finance | \$3,341 | \$3,374 | \$3,407 |
| Change to Prior Year | | \$33 | \$33 |
| Percent Change to Prior Year | | 1 0% | 1 0% |
| Change to SB 44 | | -\$214 | -\$386 |
| Percent Change to SB 44 | | -6 0% | -10 2% |
| Home Value | \$190,476 | \$200,000 | \$210,000 |
| Taxes Under SB 44 | \$3,828 | \$4,111 | \$4,346 |
| Change to Prior Year | | \$283 | \$235 |
| Percent Change to Prior Year | | 7 4% | 5 7% |
| Taxes Under Joint Finance | \$3,828 | \$3,866 | \$3,904 |
| Change to Prior Year | | \$38 | \$38 |
| Percent Change to Prior Year | | 1 0% | 1 0% |
| Change to SB 44 | | -\$245 | -\$442 |
| Percent Change to SB 44 | | -6 0% | -10 2% |



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax (608) 267-6873

June 4, 2003

TO. Senator Alberta Darling
Representative Dean Kaufert

FROM Fred Ammerman and Dave Loppnow

SUBJECT: Proposed Fiscal Control on Local and State Property Taxes

At your request, this memorandum provides information on your proposal to limit increases in property taxes

Description of Proposal

The proposal would limit the rate of increase in the tax levy of each municipality and county to the jurisdiction's percentage change in tax base due to new construction, as determined for January 1 equalized values in the year of the levy. The increase in tax levies of technical college districts would be limited to 2.6% per year. The control would apply to taxes levied in 2003 (payable in 2004), 2004 (payable in 2005), and 2005 (payable in 2006). The proposal would authorize several adjustments to the allowable levy. First, a local government would be required to decrease its levy to reflect the cost of a transferred service if it transfers a service to another governmental unit. Conversely, a local government could increase its levy to reflect the cost of a transferred service if the local government assumes responsibility for providing a service previously performed by another governmental unit. In addition, the allowable levy for municipalities involved in annexations would be adjusted to reflect the levy on that property in the prior year. Also, a local government could increase its levy to repay debt approved prior to the effective date of the biennial budget act. Finally, municipalities, counties, and technical college districts would be permitted to increase their levies by amounts approved both by their governing body in a resolution and by the electors of the corresponding jurisdiction in a referendum. In 2004, such a referendum would have to be held at the same time as the spring primary or election or September primary or November general election. Towns with populations under 2,000 could exceed the levy limit if the increase is approved at the annual town meeting. Because the limitation would be in effect for only three years, the fiscal controls imposed on counties and technical colleges under current law would remain in effect.

For school districts, the per pupil adjustment under revenue limits would be reduced to \$120 in 2003-04 and to \$100 in 2004-05 and thereafter. Additional general school aids funding of \$32.2 million in 2003-04 and \$56.6 million in 2004-05 would be provided, and non-special education four-year-old kindergarten pupils would be counted as 0.25. The proposed low revenue ceiling under revenue limits of \$7,400 in 2003-04 and \$7,800 in 2004-05 would be modified to require a two-thirds vote of the school board to use this revenue limit provision. Based on these provisions, it is estimated that the school property tax levy would increase by 2.6% annually, excluding the effects of the low revenue ceiling. To the extent that eligible school districts would use the low revenue ceiling, the school levy would increase by more than the 2.6% estimate. As an example, if one-half of the estimated available low revenue ceiling authority would be used, the growth rates in the school property tax levy could increase by an estimated 0.3% in 2003-04 and 0.9% in 2004-05.

Effect on Property Taxes

Between 1996 and 2001, new construction, on average, added 2.6% to the statewide tax base each year. Based on the assumption that this trend will continue, statewide property tax levies would increase at a slightly higher rate over the next two years because the levies of special purpose districts and the levy for the state forestry tax would not be limited. For 2002(03), gross property taxes are estimated at \$7,362.4 million on a statewide basis. Under your proposal, annual increases of 2.7% are estimated, which would result in statewide gross property taxes of \$7,558.9 million in 2003(04) and \$7,761.6 million in 2003(04). The levies over the next two years could be somewhat higher if referenda are adopted or if additional amounts are needed to fund debt approved prior to the effective date of the biennial budget act. The estimated statewide tax levies are reported by type of taxing jurisdiction on Table 1. The table also includes estimates of tax levies under policies and provisions included under current law and proposed under SB 44.

Finally, Table 1 includes estimates of the impact of the various tax amounts on the median-valued home taxed at the statewide average tax rate. Due to new construction, there will be more tax base in 2003 and 2004 than in 2002, so the estimated tax increase on a median-valued home under each set of assumptions is less than the estimated rate of increase in statewide tax levies. Even though statewide tax levies are estimated to increase at approximately the same rate as additional tax base due to new construction under your proposal, the taxes on a median-valued home are estimated to increase by about 1% each year. This occurs due to the interaction of the rates of change assumed for home values (5%), statewide equalized values (7%), and property tax levies (2.7%). For properties with lower rates of change in their values, the resulting tax bill increase would be lower, and tax bill reductions would occur for some properties.

TABLE 1

Property Tax Estimates Under Current Law, SB 44 and Fiscal Control Proposal

| | Preliminary 2002(03) | Current Law | | SB 44 (Governor) | | Fiscal Control Proposal | |
|---------------------------------|-------------------------|-------------|-----------|------------------|-----------|-------------------------|-----------|
| | | 2003(04) | 2004(05) | 2003(04) | 2004(05) | 2003(04) | 2004(05) |
| Tax Levies (In Millions) | | | | | | | |
| Municipalities | \$1,794.7 | \$1,912.3 | \$2,027.1 | \$1,947.3 | \$2,064.2 | \$1,841.4 | \$1,889.3 |
| Counties | 1,490.5 | 1,597.3 | 1,701.2 | 1,597.3 | 1,701.2 | 1,529.3 | 1,569.1 |
| School Districts | 3,192.0 | 3,295.7 | 3,426.1 | 3,427.5 | 3,687.0 | 3,275.0 | 3,360.2 |
| Technical College Districts | 541.9 | 579.8 | 620.4 | 579.8 | 620.4 | 556.0 | 570.5 |
| Other Non-TID Jurisdictions | 150.5 | 160.4 | 170.7 | 160.4 | 170.7 | 160.4 | 170.7 |
| Tax Increment Districts | 192.8 | 202.0 | 212.6 | 206.5 | 220.6 | 196.8 | 201.8 |
| Gross Property Tax Levies | \$7,362.4 | \$7,747.5 | \$8,158.1 | \$7,918.8 | \$8,464.1 | \$7,558.9 | \$7,761.6 |
| Change to Prior Year | | 385.1 | 410.6 | 556.4 | 545.3 | 196.5 | 202.7 |
| Change to Current Law | | | | 171.3 | 306.0 | -188.6 | -396.5 |
| Change to SB 44 | | | | | | -359.9 | -702.5 |
| Percent Change | | | | | | | |
| Municipalities | | 6.6% | 6.0% | 8.5% | 6.0% | 2.6% | 2.6% |
| Counties | | 7.2 | 6.5 | 7.2 | 6.5 | 2.6 | 2.6 |
| School Districts | | 3.2 | 4.0 | 7.4 | 7.6 | 2.6 | 2.6 |
| Technical College Districts | | 7.0 | 7.0 | 7.0 | 7.0 | 2.6 | 2.6 |
| Other Non-TID Jurisdictions | | 6.6 | 6.4 | 6.6 | 6.4 | 6.6 | 6.4 |
| Tax Increment Districts | | 4.8 | 5.2 | 7.1 | 6.8 | 2.1 | 2.5 |
| Gross Property Tax Levies | | 5.2% | 5.3% | 7.6% | 6.9% | 2.7% | 2.7% |
| Tax Bill Estimate | | | | | | | |
| Median-Valued Home | \$126,473 | \$132,796 | \$139,436 | \$132,796 | \$139,436 | \$132,796 | \$139,436 |
| Tax Bill Estimate | \$2,517 | \$2,611 | \$2,712 | \$2,675 | \$2,823 | \$2,542 | \$2,568 |
| Change to Prior Year | | 94 | 101 | 158 | 148 | 25 | 26 |
| Change to Current Law | | | | 64 | 111 | -69 | -144 |
| Change to SB 44 | | | | | | -133 | -255 |
| Percent Change to Prior Year | | 3.7% | 3.9% | 6.3% | 5.5% | 1.0% | 1.0% |

Estimated Effect on Local Government Expenditures

The property tax is the largest tax source for Wisconsin local governments, and the combination of property taxes and unrestricted state aids funds the majority of local governments' discretionary spending. Many of the other revenues raised by local governments are dedicated funding for specific services, similar to the state's program and segregated revenues. Table 2 reports the combined effects of your proposed aid levels and fiscal control on local governments' discretionary spending financed from these sources.

TABLE 2

**Estimated Combined Effect of Proposed Fiscal Control and Aid Levels
on Local Government Discretionary Spending (\$ in Millions)**

| | <u>2002(03)</u> | <u>2003(04)</u> | <u>2004(05)</u> |
|------------------------------------|-----------------|-----------------|-----------------|
| School Districts | | | |
| Property Tax Levy | \$3,192.0 | \$3,275.0 | \$3,360.2 |
| Unrestricted State Aid | <u>4,147.2</u> | <u>4,210.4</u> | <u>4,245.2</u> |
| Total | \$7,339.2 | \$7,485.4 | \$7,605.4 |
| Percent Change | | 2.0% | 1.6% |
| Municipalities | | | |
| Property Tax Levy | \$1,794.7 | \$1,841.4 | \$1,889.3 |
| Unrestricted State Aid | <u>846.1</u> | <u>756.7</u> | <u>756.7</u> |
| Total | \$2,640.8 | \$2,598.1 | \$2,646.0 |
| Percent Change | | -1.6% | 1.8% |
| Counties | | | |
| Property Tax Levy | \$1,490.5 | \$1,529.3 | \$1,569.1 |
| Unrestricted State Aid | <u>193.6</u> | <u>174.2</u> | <u>174.2</u> |
| Total | \$1,684.1 | \$1,703.5 | \$1,743.3 |
| Percent Change | | 1.2% | 2.3% |
| Technical College Districts | | | |
| Property Tax Levy | \$541.9 | \$556.0 | \$570.5 |
| Unrestricted State Aid | <u>118.4</u> | <u>118.4</u> | <u>118.4</u> |
| Total | \$660.3 | \$674.4 | \$688.9 |
| Percent Change | | 2.1% | 2.2% |

If you have any questions on this information, please let us know.

FA/DL/lah