



Wisconsin Briefs from the Legislative Reference Bureau

Brief 91-4 (Rev.)

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CONSTITUTIONAL AMENDMENT TO BE CONSIDERED BY THE WISCONSIN ELECTORATE

April 2, 1991

I. INTRODUCTION

One constitutional amendment will be submitted to the Wisconsin electorate for ratification on April 2, 1991. The adopted amendment proposal would permit the state to become directly involved in making affordable housing available to persons of low or moderate income.

The proposed amendment affects Section 10 of Article VIII of the Wisconsin Constitution.

Section Affected	Joint Resolution	Subject
Article VIII, Sec. 10	Proposed by 1989 AJR-101 (Enrolled JR-55) (1st consideration); 1991 AJR-7 (Enrolled JR-2) (2nd consideration)	Providing housing for persons of low or moderate income

Passage by the legislature of a constitutional amendment on "first consideration" is only the first of a 3-part amendment process that is provided by Article XII, Section 1, of the Wisconsin Constitution. Amendments to the Wisconsin Constitution must be adopted by 2 successive legislatures and ratified by the electorate before becoming effective. A proposed change is introduced in the legislature in the form of a joint resolution for first consideration. If the joint resolution is adopted by both houses in one legislative session, a new joint resolution embodying the identical constitutional text must be introduced on "second consideration" in the following session and approved again without amendment before the proposal can be placed on the ballot. The joint resolution adopted on second consideration also specifies the wording of the ballot question and sets the date for submitting the question(s) to the people at a statewide election. Joint resolutions are not submitted to the governor for approval.

II. PROVIDING AFFORDABLE HOUSING FOR PERSONS OF LOW OR MODERATE INCOME

ARTICLE VIII, Section 10

Amendment Proposed by 1989 AJR-101 (JR-55) and 1991 AJR-7 (JR-2)

A. Ballot Question:

The question will appear on the ballot in this form:

“*Affordable housing.* Shall a new provision be created in section 10 of article VIII of the constitution, permitting the state to acquire, improve or construct housing for persons of low or moderate income?”

B. Analysis by the Legislative Reference Bureau

The proposed amendment would change the internal improvements clause of the Wisconsin Constitution by allowing the state to spend money from the treasury for housing for persons of low or moderate income.

The following extract is from the Legislative Reference Bureau analysis accompanying AJR-7:

This constitutional amendment permits (but does not require) appropriation of state moneys for the “acquisition, improvement or construction of housing of primary benefit to persons of low or moderate income”.

The constitutional amendment does not change section 7 (2) (a) 1 of article VIII of the constitution, which provides that the state may contract public debt, backed by the state’s full faith, credit and taxing power, to “acquire, construct, develop, extend, enlarge or improve land, waters, property, highways, buildings, equipment or facilities for public purposes”. The amendment does not authorize a new bonding purpose similar to the authorization now given in section 7 (2) (a) 2 of article VIII of the constitution, to “make funds available for veterans’ housing loans”.

Section 10 of article VIII of the state constitution restricts state participation in “works of internal improvement”. In 1908, the people of Wisconsin ratified an amendment to that section authorizing the appropriation of state moneys for the construction or improvement of public highways. In 1924, the people added the authorization permitting state appropriations for acquiring, preserving and developing the forests of the state; in 1945, for the development, improvement or construction of airports or other aeronautical projects; in 1949, for the acquisition, improvement or construction of veterans’ housing; and in 1960, for the improvement of port facilities. The proposed amendment will authorize state appropriations of “money in the treasury or ... raised by taxation” for the acquisition, improvement or construction of housing of primary benefit to persons of low or moderate income.

Under section 2 of article VIII of the state constitution, each appropriation of state moneys must be authorized by law. Appropriation laws can be passed only in compliance with the procedural requirements of section 8 of article VIII of the state constitution.

The substantive change proposed in this constitutional amendment is limited to SECTION 2. SECTION 1 of the constitutional amendment merely breaks section 10 of article VIII of the constitution into subsections and paragraphs to facilitate future amendment and to avoid conflict with other proposed amendments to that section of the constitution, which may be considered by the legislature.

C. Attorney General’s Explanatory Statement

Article VIII, section 10 of the Wisconsin Constitution prohibits the state from contracting any debt for works of internal improvement or from being a party in carrying on any work of internal improvement. The term “internal improvement” is not susceptible to easy definition. Generally, the constitutional prohibition has been construed as prohibiting the state from engaging in projects which one might expect to be undertaken for profit or to benefit the property interests of private promoters as distinguished from interests which are primarily and preponderantly an essential function of government. Therefore, the building of a state capitol is not a work of internal improvement but the building of a shipping canal is. Article VIII, section 10 has been amended over the years to allow the state to construct public highways, develop and construct airports, acquire, improve and construct

veterans housing, improve port facilities, and acquire, preserve and develop forests. In 1989 the Wisconsin Supreme Court held that article VIII, section 10 prohibited the state from making loans to private real estate developers for privately owned housing, part of which was to be available for persons of low and moderate income.

A "yes" vote on this constitutional amendment would add another exception to the general prohibition against internal improvements in article VIII, section 10. A "yes" vote would authorize the state to acquire, improve or construct housing for persons of low or moderate income. A "no" vote would retain the present language of article VIII, section 10 of the Wisconsin Constitution and would continue the prohibition against works of internal improvement with only the exceptions now allowed.

D. Text

(NOTE: Scored material would be added; stricken material would be deleted.)

SECTION 1. Section 10 of article VIII of the constitution is amended to read:

[Article VIII] Section 10. ~~The~~ Except as further provided in this section, the state shall may never contract any debt for works of internal improvement, or be a party in carrying on such works; ~~but whenever,~~

(1) Whenever grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works and shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion. ~~Provided, that the~~

(2) The state may appropriate money in the treasury or to be thereafter raised by taxation for ~~the;~~

(a) The construction or improvement of public highways ~~or the.~~

(b) The development, improvement and construction of airports or other aeronautical projects ~~or the.~~

(c) The acquisition, improvement or construction of veterans' housing ~~or the.~~

(d) The improvement of port facilities. ~~Provided, that the~~

(3) The state may appropriate moneys for the purpose of acquiring, preserving and developing the forests of the state; ~~but of.~~ Of the moneys appropriated under the authority of this ~~section~~ subsection in any one year an amount not to exceed two-tenths of one mill of the taxable property of the state as determined by the last preceding state assessment may be raised by a tax on property.

SECTION 2. Section 10 (2) (e) of article VIII of the constitution is created to read:

[Article VIII] Section 10 (2) (e) The acquisition, improvement or construction of housing of primary benefit to persons of low or moderate income.

E. Background

1. Existing State Housing Programs

At the present time, most state housing programs are administered through the Wisconsin Housing and Economic Development Authority (WHEDA) which is a quasi-public nonstock and nonprofit corporation. The authority is authorized to sell bonds and use the proceeds to fund loans to eligible homebuyers, housing developers and businesses at below-market interest rates. These bonds are not the debt of the State of Wisconsin, and they are not backed by "the full faith and credit" of Wisconsin as are the general obligation bonds of the state.

WHEDA was created by Chapter 287, Laws of 1971, to help alleviate the shortage of affordable housing for low- and moderate-income persons and families. Since the state constitution prohibited the state from incurring public debt or engaging in works of internal improvement (which implicitly included housing), WHEDA was created to issue "revenue bonds" for housing-related purposes. The bonds are repaid from the revenues of WHEDA's housing programs and, while the state attempts to protect the integrity of revenue bonds, it will not pledge its taxing power to repay them.

In addition to the housing efforts of WHEDA, the Department of Veterans Affairs administers a veterans' home loan program which can be funded by state general obligation bonding because the constitution was amended in 1949 to permit this exception to the ban on state debt for internal improvements. In addition, the Department of Development administers the small cities community development block grant programs, and the newly created Division of Housing in the Department of Administration has been given authority and funding to help low- and moderate-income families purchase and rent homes. (See Part 2b which follows for additional information.)

2. Recent Legislative Efforts to Provide State Aid for Housing

a. 1985 Legislation Ruled Unconstitutional

As part of 1985 WisAct 29 (budget act), the Wisconsin Legislature appropriated \$1 million for low and moderate income housing. The act also authorized the state through the Department of Development to make loans to private real estate developers for development or construction of privately owned housing projects.

When the State Building Commission, which was supposed to contract for \$1 million in revenue obligation bonding to finance the program, refused to do so because it questioned the constitutionality of such action, the Department of Development petitioned the Supreme Court to provide a declaratory judgment on the constitutionality question and the court granted the petition on July 21, 1986.

According to the court, the basic question in *State of Wisconsin ex rel. Department of Development v. State of Wisconsin Building Commission*, 139 Wis. 2d 1 (1987), was whether the program would violate Article VIII, Section 10, of the Wisconsin Constitution banning state involvement in internal improvements.

The court in a unanimous decision held that the law, by authorizing the state through its Department of Development to make loans to private real estate developers for privately owned housing, made the state a party to carrying out internal improvements, which the constitution prohibits, even though the state is not contracting any debt. The court did indicate financing through a quasi-public corporation, such as the Wisconsin Housing and Economic Development Authority, was permissible.

The court concluded:

We may not ignore the plain wording of the State Constitution. Its words are clear: "The state shall never contract any debt for works of internal improvement, or be a party to such works...." It has been interpreted by the court many times. The six amendments to this provision against "internal improvements" show that the legislature and in turn the voters of this state have not been adverse to changing the state's role when the collective perception is that change is needed.

If the majority of the legislature is of the opinion that the state should directly engage in financing housing rather than acting through an independent authority, which method has previously been accepted by this court as not violating the Constitution, then it may submit a referendum to the voters to amend the internal improvements provision or to repeal the ban on internal improvements entirely.

As has often been said, it is this court's function to interpret the State Constitution, not to amend it. The power to amend the Constitution lies only with the legislature and the people of Wisconsin. (139 Wis. 2d 1, 21)

b. 1989 WisAct 31 Housing Assistance Provisions

On January 6, 1988, Governor Tommy Thompson signed Executive Order 33, creating the State Housing Task Force. The task force members were asked to examine housing needs in the state and to recommend programs to remedy any shortcomings. The task force issued its final report in November 1988 and many of its recommendations were

included in the governor's 1989-91 budget bill (introduced as 1989 Senate Bill 31 and enacted as 1989 WisAct 31).

As part of the budget act, the legislature appropriated \$7.5 million for housing assistance and created a Division of Housing in the Department of Administration to administer the programs.

Although the bulk of the monies (\$6.5 million) was targeted to provide for low-income housing aid, the act also provided funds for mortgage insurance assistance and grants to local housing organizations. The governor, in vetoing the Housing Policy Task Force that was initially created by the legislature, stated that he would appoint the task force by executive order because he felt the membership should be expanded to include additional representatives from the private sector. The governor's partial veto also resulted in the creation of a Housing Advisory Council by deleting the words "Trust Fund" from its name "to more accurately reflect the mission of the council".

c. The 1991 Wisconsin Legislature Acts Quickly

The 1991 Legislature moved quickly to adopt the constitutional amendment proposal on second consideration in order to meet the deadline for the April 2, 1991, ballot.

Although the debate was brief in both houses, there were several arguments advanced in support of or opposition to the proposed constitutional amendment. Proponents argued that the change would authorize the state to develop or participate in housing programs that currently cannot be financed by state funding, including rehabilitation of older homes or forming of partnerships with private investors to develop low-cost housing. In addition, proponents claimed that amending the constitution would enable Wisconsin to take advantage of an estimated \$30-\$40 million in matching federal funds expected for low- and moderate-income housing under the Cranston-Gonzalez Affordable Housing Act of 1990 (Public Law 101-625).

Opponents, on the other hand, claimed that the measure would simply lead to building large public housing units in urban areas, rather than assisting housing in rural or suburban areas. Opponents also claimed that approving the constitutional change would create a huge desire for funding dollars that the state may not be in a position to accommodate. Some opponents argued for a "go slow" approach to allow time for more hearings throughout the state before submitting the question to the electorate. Those who were completely opposed warned the legislature to leave the internal improvements section of the constitution alone, claiming it has enough exemptions already.

E. Legislative Action

First Consideration — 1989 Assembly Joint Resolution 101 was introduced on November 20, 1989. Its primary author was Representative Stan Gruszynski and its primary cosponsor was Senator Russell Feingold. The Assembly Committee on Housing, Securities and Corporate Policy recommended adoption by a vote of 9 to 4 on February 5, 1990. Although 3 amendments were offered to AJR-101 when it was considered by the assembly on February 27, 1990, they were all rejected, and the assembly adopted AJR-101, as introduced by a vote of 58 to 39 (*Assembly Journal*, p. 745).

The Senate Committee on Housing, Government Operations and Cultural Affairs recommended concurrence by a vote of 6 to 0 on March 1, 1990, and the senate concurred in AJR-101 by a vote of 27 to 6 on March 22, 1990 (*Senate Journal*, p. 915).

Second Consideration — 1991 AJR-7 was introduced on January 24, 1991. Its primary author was Representative Stan Gruszynski and its primary cosponsor was Senator

Russell Feingold. The Assembly Committee on Housing recommended adoption by a vote of 7 to 3 on January 31, 1991. Although 2 substitute and 5 simple amendments were offered to AJR-7 when it was considered by the assembly on February 5, 1991, only one simple amendment was adopted. Assembly Amendment 1, offered by Representative Joseph Wimmer on February 5, deleted the words "so as to assure affordable housing" from the original wording of the ballot question. The assembly adopted Assembly Amendment 1 on a voice vote and adopted the resolution as amended by a vote of 62 to 38 on February 5, 1991 (*Assembly Journal*, p. 45).

The Senate Committee on Housing, Government Operations and Cultural Affairs recommended concurrence by a vote of 4 to 1 on February 7, 1991, and the senate concurred in AJR-7 by a vote of 21 to 12 on February 8, 1991 (*Senate Journal*, p. 84).