

STATE OF WISCONSIN

CIRCUIT COURT

KENOSHA COUNTY

STATE OF WISCONSIN

Plaintiff,

vs.

Case No. 20 CF 983

KYLE H. RITTENHOUSE,

Defendant.

MOTION FOR RECONSIDERATION ON MOTION TO DISMISS COUNT 6

On October 5, 2021 the court heard the defendant's Motion to Dismiss Count 6. The court denied the motion, but stated that it was willing to reconsider the motion at a later time. The defendant is asking the court to incorporate the previous arguments into the Motion for Reconsideration, along with the additional information provided below:

1. Wis. Stat. §948.60(3)(c) was created through Senate Bill 7 and 1991 Wisconsin Act 18 on or about June 7, 1991. (exhibit 1) Also included is the Analysis by the Legislative Reference Bureau (LRB) of Senate Bill 7 (exhibit 2).
2. That analysis indicates it is unlawful for a child to possess or go armed with a firearm of any length, loaded or unloaded, and an adult from intentionally selling, loaning or giving a firearm of any length, loaded or unloaded, to a child except as follows:
3. Possession of a firearm having a barrel that is 12 inches in length or longer by a child 16 or 17 years of age; or by a child 14 or 15 years of age who is accompanied by a parent or guardian or who is enrolled in or has completed the hunter education and firearm safety program established by the department of natural resources (DNR); or by a

child 12 or 13 years of age who is accompanied by a parent or guardian or is enrolled in the DNR firearm safety program; or by a child under 12 years of age who is enrolled in the DNR firearm safety course.

4. Although the state has continued to refer to this statute as a “hunting statute,” they are incorrect. This statute has absolutely nothing to do with hunting or hunting regulations or hunter safety courses. A plain reading of 1991 Act 18 and Senate Bill 7 does not in any way deal with hunting regulations for 17 years olds.

5. Further, counsel has enclosed LBR fiscal estimate for Senate Bill 7 as exhibit 3. A plain reading of that document indicates there are certain exemptions for minors possessing a firearm. It states, “Certain exemptions are provided for situations involving military service, instructional programs **or possession of a firearm with a barrel over 12 inches long by a 16 or 17 year old** or a 14 or 15 year old who is accompanied by an authorized person.” (emphasis added) There is no mention of hunting or hunting regulations in that portion of the bill.

6. There have been numerous amendments to Wis. Stat. §948.60. None of those amendments dealt in any way with the exception set forth in 1991 Act 18.

7. Wis. Stat. §29.304 is entitled “Restrictions on hunting and use of firearms by persons under 16 years of age.” The state continues to argue that based on the title of the statute, it only involves hunting. That is not correct. Subsection (a) involves hunting, however subsection (b) involves restrictions on possession of firearms. Hunting is not mentioned anywhere in subsection (b) of the statute.

8. Wis. Stat. §990.001(6) states, “The titles to subchapters, sections, subsections, paragraphs and subdivisions of the statute and history notes are not part of the statutes.

9. Statutory interpretation “begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2204 WI 58, 271 Wis.2d 633, 681 N.W.2d 110. Statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results. *Id.* at ¶46. Reading the statute as the state does leads to an absurd result for the following reasons: § 29.304(1)(b) allows anyone under 12 years old to have a firearm in their possession so long as the person is enrolled in the hunter education program. This means that the statute allows a 5 year old to possess a firearm under certain conditions. Under the state’s interpretation of the statute, a first grader enrolled in a hunter’s safety course could possess a firearm, but a 17 year could not. That interpretation is absurd. It is absurd because §29.304 does not apply to the defendant.

10. The defendant has completely aged out of Wis. Stat. §29.304.

(1)(b) only applies to persons under 12.

(2)(b) only applies to persons 12 to under 14.

(3)(b) only applies to persons 14 to under 16.

11. The state argues that the defendant is non-compliant with §29.304. The defendant does not need to be in compliance with §29.304 because as a 17 year old, §29.304 does not apply to him. Thus, the court should conduct its analysis of the defendant's motion without any consideration of §29.304 whatsoever.

12. Because §948.60(3)(c) applies only to persons under 18 years of age who possess a rifle; if the person is in violation of s.941.28 (there is no dispute that he is not in violation of that statute) OR is not in compliance with BOTH ss. 29.304 AND 29.593, (s.29.304 which does not apply to the defendant because of his age), it is impossible for the defendant to be in non-compliance of said statute and Count 6 must be dismissed.

13. The defendant requests a hearing on the matter.

Electronically Signed: 10/22/2021

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STATE OF WISCONSIN

1991 WISCONSIN ACT

18

Each drafting record for a proposal (bill, joint resolution, resolution, or an amendment or substitute amendment thereto) consists of: 1) a request sheet or form containing the requester's name and other identifying information relating to that proposal; 2) one or more versions of the drafted proposal; and 3) a copy of the introduced proposal.

These files are created by legislative drafting attorneys during the drafting process, and may contain any written instructions given to the attorney by the requester (including correspondence or model bills) and any notes or memos written by the drafting attorney.

The files will not contain voting records (which are found in the daily journal) or transcripts of floor debate or committee hearings (which are not recorded).

Contact LRS research analysts at (608) 266-0341 if you have questions about drafting records. The mailing address is PO Box 2037, Madison, WI 53201-2037.

EXHIBIT

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STATE OF WISCONSIN

January 1991 Special Session
Senate Bill 7

Date of enactment: May 23, 1991
Date of publication*: June 07, 1991

1991 Wisconsin Act 18

AN ACT to renumber 948.60 (3); to amend 948.60 (1); and to create 948.60 (3) (b) and 948.60 (3) (c) of the statutes, relating to possession of firearms by a person under 18 years of age.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 948.60 (1) of the statutes is amended to read:

948.60 (1) In this section, "dangerous weapon" means any firearm having a barrel less than 12 inches long, loaded or unloaded; any electric weapon, as defined in s. 941.295 (4); metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather; a cestus or similar material weighted with metal or other substance and worn on the hand; a shuriken or any similar pointed star-like object intended to injure a person when thrown; or a manrikigusari or similar length of chain having weighted ends.

SECTION 2. 948.60 (3) of the statutes is renumbered 948.60 (3) (a).

SECTION 3. 948.60 (3) (b) of the statutes is created to read:

948.60 (3) (b) This section does not apply to a child who is a member of the armed forces or national guard and who possesses or is armed with a dangerous weapon in the line of duty. This section does not apply to an adult who is a member of the armed forces or national guard and who transfers a dangerous weapon to a child in the line of duty.

SECTION 4. 948.60 (3) (c) of the statutes is created to read:

948.60 (3) (c) This section does not apply to a child who possesses or is armed with a firearm having a barrel 12 inches in length or longer and who is in compliance with ss. 29.226 and 29.227. This section does not apply to an adult who transfers a firearm having a barrel 12 inches in length or longer to a child who is in compliance with ss. 29.226 and 29.227.

SECTION 5. Initial applicability. This act first applies to violations of section 948.60 (2) of the statutes that occur on the effective date of this SECTION.

* Section 991.11, WISCONSIN STATUTES 1989-90: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment]

1991-92 Legislature
Jan. 1991 Spec.Sess.

STATE OF WISCONSIN

LRB-2783/1
GMH:kmg:ch

January 1991 Special Session

SENATE BILL 7

January 29, 1991 - Introduced by committee on SENATE ORGANIZATION, by request of Governor Tommy G. Thompson. Referred to Committee on Judiciary and Consumer Affairs.

- 1 AN ACT to renumber 948.60 (3); to amend 948.60 (1); and to create 948.60
2 (3) (b) and 948.60 (3) (c) of the statutes, relating to possession of
3 firearms by a person under 18 years of age.

Analysis by the Legislative Reference Bureau

Under current law, a child who possesses or goes armed with a dangerous weapon and an adult who intentionally sells, loans or gives a dangerous weapon to a child are guilty of a misdemeanor and subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months or both. Under current law, a "dangerous weapon" includes a firearm having a barrel less than 12 inches long.

This bill prohibits a child from possessing or going armed with a firearm of any length, loaded or unloaded, and an adult from intentionally selling, loaning or giving a firearm of any length, loaded or unloaded, to a child except as follows:

1. Use of a dangerous weapon for target practice under adult supervision or in a course of instruction in the proper use of the dangerous weapon.
2. Possession of a dangerous weapon by a child while in the line of duty as a member of the armed forces or national guard.
3. Possession of a firearm having a barrel that is 12 inches in length or longer by a child 16 or 17 years of age; or by a child 14 or 15 years of age who is accompanied by a parent or guardian or who is enrolled in or has completed the hunter education and firearm safety program (firearm safety program) established by the department of natural resources (DNR); or by a child 12 or 13 years of age who is accompanied by a parent or guardian or is enrolled in the DNR firearm safety program; or by a child under 12 years of age who is enrolled in the DNR firearm safety course.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

EXHIBIT

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1991-92 Legislature
Jan. 1991 Spec.Sess.

-2-

LRB-2783/1
GM:kmg:ch

The people of the state of Wisconsin, represented in senate and assembly,
do enact as follows:

1 SECTION 1. 948.60 (1) of the statutes is amended to read:

2 948.60 (1) In this section, "dangerous weapon" means any firearm
3 ~~having a barrel less than 12 inches long, loaded or unloaded;~~ any electric
4 weapon, as defined in s. 941.295 (4); metallic knuckles or knuckles of any
5 substance which could be put to the same use with the same or similar
6 effect as metallic knuckles; a nunchaku or any similar weapon consisting
7 of 2 sticks of wood, plastic or metal connected at one end by a length of
8 rope, chain, wire or leather; a cestus or similar material weighted with
9 metal or other substance and worn on the hand; a shuriken or any similar
10 pointed star-like object intended to injure a person when thrown; or a
11 manrikigusari or similar length of chain having weighted ends.

12 SECTION 2. 948.60 (3) of the statutes is renumbered 948.60 (3) (a).

13 SECTION 3. 948.60 (3) (b) of the statutes is created to read:

14 948.60 (3) (b) This section does not apply to a child who is a member
15 of the armed forces or national guard and who possesses or is armed with a
16 dangerous weapon in the line of duty. This section does not apply to an
17 adult who is a member of the armed forces or national guard and who
18 transfers a dangerous weapon to a child in the line of duty.

19 SECTION 4. 948.60 (3) (c) of the statutes is created to read:

20 948.60 (3) (c) This section does not apply to a child who possesses
21 or is armed with a firearm having a barrel 12 inches in length or longer
22 and who is in compliance with ss. 29.226 and 29.227. This section does
23 not apply to an adult who transfers a firearm having a barrel 12 inches in
24 length or longer to a child who is in compliance with ss. 29.226 and
25 29.227.

1991-92 Legislature
Jan. 1991 Spec. Sess.

-3-

LHB-2783/1
GFM:kmg:ch

1 SECTION 5. INITIAL APPLICABILITY. This act first applies to viola-
2 tions of section 948.60 (2) of the statutes that occur on the effective
3 date of this SECTION.

(End)

LRB

1991 Session LRB or Bill No./Mm. Rule No. SS SB 7 Amendment No. If Applicable	
FISCAL ESTIMATE DON-8948 (R11/83)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> CORRECTED <input type="checkbox"/> UPDATED <input type="checkbox"/> SUPPLEMENTAL
Subject Possession of Firearms by a Minor	
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.	
<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	
Local: <input type="checkbox"/> No local government costs	
1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> VTA/E Districts	
Fund Sources Affected <input type="checkbox"/> GFR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PPS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-6	Affected Ch. 28 Appropriations
Assumptions Used in Arriving at Fiscal Estimate <p>Present law prohibits a minor from possessing a firearm with a barrel less than 12 inches long and an adult from intentionally selling or giving such a weapon to a minor. These crimes are misdemeanors. This bill prohibits a minor from possessing a firearm of any length and adults from intentionally selling or giving a firearm of any length to a minor. Certain exemptions are provided for situations involving military service, instructional programs or possession of a firearm with a barrel over 12 inches long by a 16 or 17 year old or a 14 or 15 year old who is accompanied by an authorized person.</p> <p>No data is available on the frequency of violations under present law. It is impossible to predict the additional number of violations that would occur under this bill. Any increase in caseload increases both state and county costs for operating the circuit courts. Additional litigation requires additional judge, court reporter and court staff time. An accurate prediction of increase in costs is impossible with existing data.</p>	
Long-Range Fiscal Implications	
EXHIBIT 3	
Agency/Prepared by: (Name & Phone No.) Director of State Courts	Authorized Signature/Telephone No. 6-6584 <i>Sheryl Dumas</i>
Date 2/20/91	

FISCAL ESTIMATE WORKSHEETDetailed Estimate of Annual Fiscal Effect
DOA-2017(R11/97)☒ ORIGINAL☐ UPDATED☐ CORRECTED☐ SUPPLEMENTAL

1991 Session

LRB or Bill No./Adm. Code No.

Amendment No.

SS SB 7

Subject

Possession of Firearms by Minors

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**II. Annualized Costs:**

Annualized Fiscal Impact on State Funds from:

A. State Costs by Category

State Operations - Salaries and Fringes

\$

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(FTE Position Changes)

(

FTE)

(-

FTE)

State Operations - Other Costs

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Local Assistance

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Aids to Individuals or Organizations

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TOTAL State Costs by Category

\$

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B. State Costs by Source of Funds

GPR

\$

Increased Costs

Decreased Costs

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FED

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PRO/PRS

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SBQ/SBG-S

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III. State Revenues-Complete this only when proposal will increase or decrease
state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

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GPR Earned

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FED

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PRO/PRS

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SBQ/SBG-S

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TOTAL State Revenues

\$

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NET ANNUALIZED FISCAL IMPACT**STATE****LOCAL**

NET CHANGE IN COSTS

+\$ indeter.

+\$ indeter.

NET CHANGE IN REVENUES

\$

\$

Aggravated Prepared by: (Name & Phone No.)
Director of State Courts

Authorized Signature/Telephone No.

Sheryl Berwan

Date

2/20/91

LRB

1991 Session

LRB or SB No./Adm. Rule No.

SB-1500 Sec. 12.1

Amendment No. if Applicable

FISCAL ESTIMATE

DOA-3048 (11/88)

☒ ORIGINAL
☐ CORRECTED☐ UPDATED
☐ SUPPLEMENTAL

Subject

Possession of Firearms by Minors

Fiscal Effect

State: ☒ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation
or affects a currently sufficient appropriation.☐ Increase Costs - May be possible to Absorb
Within Agency's Budget ☐ Yes ☐ No☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation☐ Decrease CostsLocal: ☒ No local government costs1. ☐ Increase Costs
☐ Permissive ☐ Mandatory3. ☐ Increase Revenues
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

2. ☐ Decrease Costs
☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues
☐ Permissive ☐ Mandatory☐ Towns ☐ Villages ☐ Cities
☒ Counties ☐ Others
☐ School Districts ☐ VTAE Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

20.475(1)(r)

Assumptions Used in Arriving at Fiscal Estimate

There are no data available with which to estimate the effect upon the number of cases prosecuted or the work effort required in the prosecution of cases under this bill.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

Stuart Morse, DOA, (608) 267-2700

Authorized Signature/Telephone No.

John Steeney (608) 266-3508

Date

02/04/91

LRB

1991 Session

FISCAL ESTIMATE

DDA-5048 (R11/90)

☒ ORIGINAL
☐ CORRECTED☐ UPDATED
☐ SUPPLEMENTALLRS or BE No./Adm. Rule No.
Sp. S. 587
Amendment No. 11 Applicable

Subject

Possession of firearms by minors

Fiscal Effect

State: ☐ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation
or effects a sum sufficient appropriation.☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation☒ Increase Costs - May be possible to Absorb
Within Agency's Budget ☐ Yes ☒ No☐ Decrease CostsLocal: ☐ No local government costs1. ☐ Increase Costs☐ Permissive ☐ Mandatory2. ☐ Decrease Costs☐ Permissive ☐ Mandatory3. ☐ Increase Revenues☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities☐ Counties ☐ Others _____☐ School Districts ☐ VTAE Districts

Fund Sources Affected

☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

20.550(1)(d)

Assumptions Used in Arriving at Fiscal Estimate

This bill expands current law by prohibiting a child from possessing or going armed with a firearm of any length (loaded or unloaded) and by prohibiting an adult from intentionally selling, loaning or giving a firearm of any length (loaded or unloaded) to a child; except if certain circumstances apply. When a definition of a crime becomes broader, more cases are filed with the SPD. Last year 89 cases were filed with the SPD that involved the narrower definition of possession of a dangerous weapon by a child. If we assume that the SPD will receive approximately a 5% to 20% increase in these kinds of cases as a result of the broader definition (taking into account the expanded exceptions provided by the bill), then the SPD will have an additional 4 to 17 cases each year. All of those cases would be assigned to the private bar because SPD staff attorneys carry maximum caseloads. At an estimated cost of \$273 per misdemeanor, the cost of the 4 to 17 cases will be \$1092 to \$4641 annually.

Long-Range Fiscal Implications

Increase agency costs by \$1092 to \$4641

Agency Prepared by: (Name & Phone No.)
Evelyn Mazack 266-6782

Authorized Signature/Telephone No.

E. Mazack

Date

2/13/91

FISCAL ESTIMATE WORKSHEET

1991 Session

Detailed Estimate of Annual Fiscal Effect

☒ ORIGINAL☐ UPDATED

LRB or Bill No./Adm. Rule No.

Amendment No.

DOA-3047(R11/90)

☐ CORRECTED☐ SUPPLEMENTAL

Sp. S. SB7

Subject

Possession of firearms by minors

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**II. Annualized Costs:**

Annualized Fiscal Impact on State Funds from:

A. State Costs by Category

State Operations - Salaries and Fringes

Increased Costs

Decreased Costs

\$

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(FTE Position Changes)

(FTE)

(- FTE)

State Operations - Other Costs

private bar

\$1092 to \$4641

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Local Assistance

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Aids to Individuals or Organizations

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TOTAL State Costs by Category

\$1092 to \$4641

\$.

B. State Costs by Source of Funds

GPR

Increased Costs

Decreased Costs

\$1092 to \$4641

\$.

FED

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PRO/PRS

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SEG/SEG-S

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III. State Revenues-

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$.

GPR Eased

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FED

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PRO/PRS

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SEG/SEG-S

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TOTAL State Revenues

\$

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NET ANNUALIZED FISCAL IMPACTSTATELOCAL

NET CHANGE IN COSTS

\$ 1092 to \$4641

\$

NET CHANGE IN REVENUES

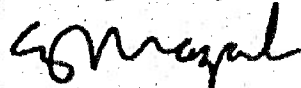
\$

\$

Agency/Prepared by: (Name & Phone No.)

Evelyn Mazack 266-6782

Authorized Signature/Telephone No.



Date

2/13/91