2009 DRAFTING REQUEST

Bill

Received: **01/15/2009**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Pat Kreitlow (608) 266-7511**

By/Representing: **Jeff**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters: **emueller**

Subject: **Local Gov't - bonding**
Local Gov't - munis generally
Local Gov't - counties

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kreitlow@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Municipalities may act as conduit bond issuers

Instructions:

See attached

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/?	mshovers 02/04/2009 emueller 02/17/2009			_______ _______ _______ _______			S&L
/P1	mshovers 03/27/2009	csicilia 04/06/2009	phenry 04/06/2009	_______ _______	sbasford 04/06/2009		S&L
/P2	mshovers	csicilia	phenry	_______	lparisi		S&L

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/1	mshovers 10/07/2009	csicilia 10/08/2009	phenry 10/08/2009	_______ _______	cduerst 10/08/2009		S&L Tax
/2	mshovers 10/20/2009	csicilia 10/21/2009	rschluet 10/21/2009	_______ _______	lparisi 10/21/2009	lparisi 11/12/2009	

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At Intro.

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Extra Copies: Rep. Seidel

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/1 MES 10/7/09

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/P2	mshovers	csicilia	phenry		lparisi		

mol plx

/P3 cjs 9/9/09 [illegible] 9/9

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/P3 MES 9/4/09

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Addl. Drafters: EVM

Subject: **Local Gov't - bonding**
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Extra Copies: ~~EVM~~ CJS

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/?	mshovers	/P1 cjs 4/6/09					

/P1 MES & EVM 3/27/09

FE Sent For:

<END>

Shovers, Marc

From: Buhrandt, Jeff
Sent: Tuesday, January 13, 2009 9:55 AM
To: Shovers, Marc
Subject: Drafting request from Senator Kreitlow

Attachments: JPA Draft Legislation.doc

Mark-

Senator Kreitlow would like a bill drafted using the attached language as a guide. The bill would allow municipalities in Wisconsin to act as conduit bond issuers for projects both inside and outside Wisconsin.

JPA Draft
.egislation.doc (68 ..

Please contact me if you have any questions.

Jeff

Jeff Buhrandt
Office of Senator Pat Kreitlow
Wisconsin State Senate - 23rd District
Room 10 South - State Capitol
PO Box 7882
Madison, WI 53703-7882
Phone: 1-888-437-9436
jeff.buhrandt@legis.wisconsin.gov

Proposed Legislation Providing for Intergovernmental Financing Commissions

Section 1. Section 32.02(1) is hereby amended as follows:

Any county, town, village, city, including villages and cities incorporated under general or special acts, school district, the department of health services, the department of corrections, the board of regents of the University of Wisconsin System, the building commission, a commission created by contract under s. 66.0301, provided that any act of condemnation occurs with the approval of the municipality in which the act of condemnation is proposed, *a commission created by contract under s. 66.0303(2) that exercises the powers authorized to be exercised under s. 66.0318 provided that any act of condemnation occurs within the geographic borders of the entities that are members of the commission created thereunder and is approved by the member within those geographic border the act of condemnation occurs,* or any public board or commission, for any lawful purpose, but in the case of city and village boards or commissions approval of that action is required to be granted by the governing body.

Section 2. Section 66.0303(2) is hereby amended to include the following:

A contract authorized under this section may create a commission for purposes of exercising the powers authorized to be exercised under this section or s. 66.0318.

Section 3. Section 66.0318 is hereby added to Subchapter III of Chapter 66 to read as follows:

(1) The following definitions shall apply to this section.

(a) "Bonds" means any bond, note or other obligation of the commission issued under this section, including any refunding bond and certificate of participation or lease-purchase agreement.
(b) "Commission" means a commission created by contract under ss. 66.0301(2) or 66.0303(2) and organized consistent with sub. (2) herein.
(c) "Commission contract" means the contract entered into under ss. 66.0301(2) or 66.0303(2), as such contract may be amended or supplemented from time to time.
(d) "Local Agency" means a city, county, town, village, parish, borough, district, authority, political subdivision or comparable municipal or quasi-municipal corporation within or outside the state.
(e) "Participant" means any public or private entity that contracts with a commission for purposes of financing or refinancing a project owned, sponsored or controlled by such public or private entity, including federally recognized Indian Tribes.
(f) "Project" means any capital improvement, investment or program of investment, purchase of receivables, property, assets, commodities, bonds or other revenue streams or related assets, or liability or other insurance program, located within or outside the state, and may include one or more than one of any of the foregoing. "Project" shall include,

like what other assets could be acq. by comm?

but is not limited to, projects authorized under ss. 66.1103(2)(k), 231.01(7), 234.01(4n) and 234.01(7).

(g) "Revenue" means all income and receipts of the commission from a bond purchase agreement, bonds or other assets acquired by the commission, loans, sale agreements, and other revenue-producing agreements or arrangements entered into by the commission, projects financed or refinanced by the commission, including receivables purchased by the commission, grants and other sources of income, and all interest or other income from investment of any money in any fund or account established for the payment or security of principal or interest or premium on bonds.

from p. 66.0303(3)(a)

(2) A commission contract made under this section shall, prior to and as a condition precedent to taking effect, be submitted to the attorney general who shall determine whether the commission contract is in proper form and compatible with the laws of this state. The attorney general shall approve any commission contract submitted under this paragraph unless the attorney general finds that it does not meet the conditions set forth in this section and details in writing addressed to the concerned municipal governing bodies the specific respects in which the proposed commission contract fails to meet the requirements of law. Failure to disapprove a commission contract submitted under this paragraph within 90 days of its submission constitutes approval. The attorney general, upon submission of a commission contract, shall transmit a copy of the commission contract to the governor who shall consult with any state department or agency affected by the commission contract. The governor shall forward to the attorney general any comments the governor may have concerning the commission contract.

for what purposes?

No details

(3) A commission created under ss. 66.0301(2) or 66.0303(2) and organized under this section shall be a body politic and corporate that is separate and distinct from and independent of the state and the parties to the commission contract provided, however, that such body shall be considered a governmental body. The commission's affairs shall be governed by a board, who shall be appointed in accordance with the commission contract. The commission has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this section. In addition to other powers specified in the commission contract, and notwithstanding any other law, a commission as a separate public entity may do any or all of the following in or outside the state: ★

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.
(b) Sue and be sued in its own name, plead and be impleaded.
(c) Buy, sell, lease (as lessor or lessee), encumber, mortgage, hypothecate, pledge, assign, transfer any property, real or personal or mixed, tangible or intangible, or interest therein, located within or outside the state.
(d) Issue bonds to finance or refinance all or a portion of the cost of acquiring, developing, improving, implementing or assisting any project, including the funding of any reserves or capitalized interest, payment of costs of issuance or credit enhancement, or costs relating to the financing or refinancing, or for any purpose enumerated in ss. 66.1103(3), 231.03(6) or 234.03.
(e) Engage and compensate management staff, underwriters, bond counsel, financial consultants, accountants, and other attorneys, advisers, experts and administrators determined necessary by the commission in connection with the issuance of any bonds,

this is listed as a "project" under sub. (1)(f)

this should be under "powers"

the financing or refinancing of any project, or the post-issuance administration of any bonds or project or otherwise to carry out the purposes or powers of this section.

Auth. (4)(g)

(f) Receive and accept from any source, loans, contributions, or grants, in either money, property, labor, or other things of value, for, or in aid of, the financing or refinancing of projects or any portion thereof, or for the payment of the principal of and interest on bonds or related expenses.

NN

(g) Make secured or unsecured loans to, or lease property from or to, or enter into a purchase or sale agreement or any other kind of financing agreement with, any one or more participants in connection with the financing or refinancing of projects.

NN

(h) Mortgage all or any portion of its interest in projects and the property on which any project is located, whether owned or thereafter acquired, including the granting of a security interest in any property, tangible or intangible.

NN

(i) Assign or pledge all or any portion of its interests in mortgages, deeds of trust, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible, of a participant to which the commission has made loans, and the revenues therefrom, including payment or income from any interest owned or held by the commission, for the benefit of the holders of bonds issued to finance projects.

NN

(j) Lease property, upon terms and conditions that the commission deems proper; charge and collect rents therefor; terminate any lease upon the failure of the lessee to comply with any of the obligations of the lease; include in any lease provisions that the lessee shall have options to renew the lease for a period or periods, and at rents as determined by the commission; purchase or sell property by an installment agreement or otherwise; upon payment of all the indebtedness incurred by the commission for the financing or refinancing of a project, the commission may convey any or all of the leased property to the lessee or lessees.

Comm may charge for services

(k) Charge and apportion to participants that benefit from its services fees plus administrative costs and expenses incurred in the exercise of the powers authorized by this section.

NN

(l) Issue, obtain, or aid in obtaining, from any department or agency of the United States or of any state, or any private company, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, bond or obligation or any instrument evidencing or securing the same, made or entered into pursuant to this section.

NN

(m) Apply on its own behalf or on behalf of a participant to any department or agency of the United States, or of any state or political subdivision thereof, for an allocation of volume cap, tax credits, grant, loan, credit enhancement or any other federal, state or local program in connection with the financing or refinancing of a project.

per (4)(d) covered by ?

(n) Enter into any agreement, contract, or any other instrument with respect to any insurance or guarantee; accept payment in the manner and form as provided therein in the event of default by a participant; and assign any insurance or guarantee as security for the commission's bonds.

NN

(o) Invest any bond proceeds or any moneys held for payment or security of the bonds or any contract entered into pursuant to this section in any securities or obligations permitted by the resolution, trust agreement, indenture or other agreement providing for issuance of the bonds or the contract.

why needed? says comm may invest in things they are allowed to invest in

NN - this is for the private entity to do - not comm

does this mean comm may take revenue from one loan repayment to pay other bondholders on unrelated projects?

(p) At the request of participants, combine and pledge revenues of multiple projects for repayment of one or more series of bonds issued pursuant to this section.

"refunding" added to sub.(4)(e) the rest of this NN

(q) Issue bonds to refund bonds of the commission or bonds of any public entity within or outside the state issued by or on behalf of any participant. Bonds issued for this purpose may be issued to pay all costs of refunding of any such obligations, including the payment of any redemption premium thereon or termination payment due in connection with such bonds or related contracts or financing agreements, and any interest accrued, or to accrue, on their earliest or any subsequent date of redemption, purchase, or maturity of such obligations and proceeds may, pending this application, be placed in escrow and invested at the direction of the commission.

NN: not approp for comm, but for priv. entity?, don't do this?

(r) Purchase, with the proceeds of its bonds or its revenue, bonds issued by or on behalf of or held by any participant at public or negotiated sale. Bonds purchased pursuant to this paragraph may be held by the authority or sold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other bonds issued by the commission.

lang from p. 229.68(6) added to sub.(4)(r)

(s) In connection with, or incidental to, the issuance or carrying of bonds or financing of any project, the commission may enter into credit enhancement or liquidity agreements, including reimbursement agreements or similar agreements, and may enter into any contracts that the commission determines to be necessary or appropriate to place the obligation of the commission, as represented by the bonds, in whole or in part, on the interest rate, currency, cashflow, or other basis desired by the commission, including, without limitation, contracts commonly known as interest rate swap agreements, currency swap agreements, futures, or contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, or contracts to exchange cashflows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread, or similar exposure. These contracts or arrangements may also be entered into by the commission in connection with, or incidental to, entering into or maintaining any agreement that secures bonds or other contracts entered into pursuant to this section. In each case, the agreement, contract or other instrument may have whatever payment, interest rate, currency, security, default, remedy, and other terms and conditions as the commission determines necessary or appropriate. 2

NN: see sub.(4)(d) - based on par.(n), p.3

(t) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or desirable to carry out any power authorized by this section.

(4) Accountability; reports; audits.

to whom? pol. subs that are comm?

meaning?

(a) The commission contract shall provide for strict accountability of all funds and report of all receipts and disbursements.

sub.(5)

(b) The commission shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the commission. In each case the minimum requirements of the audit shall conform to generally accepted auditing standards.

(c) When an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be made available as a public record with the where wld a comm. get unencumbered funds?

commission.

(d) Any costs of the audit, including contracts with, or employment of certified public accountants or public accountants, in making an audit pursuant to this section shall be borne by the commission and shall be a charge against any unencumbered ~~funds~~ of the commission available for the purpose.

(e) All commissions may, by unanimous request of the governing body thereof, replace the annual special audit with an audit covering a two-year period.

(f) Notwithstanding the foregoing provisions of this section to the contrary, commissions shall be exempt from the requirement of an annual audit if the financial statements are audited by the Controller to satisfy federal audit requirements.

? what Controller?

what fed. audit requirements?

(5) A commission may not authorize federally tax-exempt bonds to finance a capital improvement project unless a local agency within whose boundaries the project is to be located has approved the financing of the project by the commission to the extent required by section 147(f) of the Internal Revenue Code of 1986 as amended. The commission shall comply with the requirements of s. 66.1103 relating to industrial development revenue bonding for any project in Wisconsin that otherwise meets the definition of project and industrial project under s. 66.1103(2)(k).

see s. 66.1103(4)

(6) This section does not limit any other law authorizing, or providing for, the financing or refinancing of projects. Likewise, this section does not limit any other law regarding local indebtedness, or limit the exercise of any other power of a commission created pursuant to s. 66.0301(2) or 66.0303(2). This section shall be deemed to provide a complete and supplemental method for exercising the powers authorized by this section, and shall be deemed as being ~~supplemental to the powers conferred by other applicable laws~~. Unless otherwise explicitly stated in this section, the issuance of bonds and the financing or refinancing of projects under this section need not comply with the requirements of any other state laws applicable to the issuance of bonds or financing or refinancing of projects. Any suit or other action brought to challenge the validity or enforceability in accordance with their terms of any bonds issued under this section or any contract entered into pursuant to this section must be brought in a court of competent jurisdiction within thirty days of adoption by the commission of the resolution authorizing the issuance of those bonds or the entering into of that contract, ~~whether or not the bonds are issued or contract executed within that period~~.

?

completely contradictory

RPN: is time limit a

signing of K; whichever is later

(7) A pledge of property, revenues or other collateral by a commission to secure, directly or indirectly, the payment of the principal or redemption price of, or interest on, any bonds, or any reimbursement or similar agreement with any provider of credit enhancement for bonds, or any swap or other agreement entered into in connection with bonds, shall be valid and binding in accordance with the terms of the document making the pledge from the time the pledge is made for the benefit of pledgees and successors ~~thereto~~. The collateral shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the collateral and be effective, binding, and enforceable against the pledgor, its successors, purchasers of the collateral, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, the pledge document irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act.

what's the point of this? It seems to say if you make a K you have to follow it

what is a provider of credit enhancement not needed

(8) Except to the extent required by the laws of another state, the commission is not required to pay any property, income or other taxes, assessments, fees or charges of any kind on any real or personal property, transfer or recording of property or any interests therein, fees, revenues or other income received by the commission from any source. This section does not exempt any participant whose property is otherwise taxable from taxation, including, but not limited to, taxation upon a possessory interest, with respect to any project, or the property or facilities contained in any project which may otherwise be applicable to the participant.

too broad - even tax exempt religious bldgs must pay special assessments. what kind of prop do you envision comm. owning that could lead to tax liab. or assessment?

wrong place

(9) Interest paid or earned on any bonds issued by the commission shall at all times be free from all state or local personal income tax and corporate income tax.

See p. 229, 76

(10) The State of Wisconsin does hereby pledge to, and agrees with, the holders of any bonds issued under this section, and with those parties who may enter into contracts with the commission pursuant to this section, that the state will not limit or alter the rights hereby vested in the commission to finance or refinance any project and to fulfill the terms of any bonds, loan agreement, lease, purchase or sale agreement or other contract with the commission pursuant to this section, or in any way impair the rights or remedies under the bonds or contracts until those bonds, together with the interest thereon, are fully provided for and discharged and those contracts are fully performed on the part of the commission. The commission may include this pledge in its contracts with bondholders.

is this the right place? Ask RPN

(11) No member of the governing body of the commission shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance of bonds.

? where wld comm. get funds to do this?

(12) The commission may, out of any funds available therefor, purchase its bonds. The commission may hold, pledge, cancel, or resell the bonds, subject to, and in accordance with, agreements with bondholders. Such purchase will not effect an extinguishment of the bonds unless the commission cancels the bonds or otherwise certifies its intention that they be extinguished.

what does this mean? what other auth to pay off bonds does comm. have? can't impose a tax

See p. 66, 110 (4)

(13) Except as otherwise expressly provided by the commission, each issue of its bonds shall be limited obligations of the commission payable solely out of amounts received by the commission from revenues derived from the project to be financed or refinanced by the bonds or otherwise from any contract entered into or investment made in connection with the bonds. Bonds issued under this section will not be deemed to constitute a debt or liability of, or pledge of the full faith and credit of, the state or any political subdivision of the state, other than a limited obligation of the commission. Bonds issued under this article shall contain on the face of the bonds a statement to this effect No bonds or other obligations of the commission shall be obligations of any party to the contract creating the commission (as originally executed or thereafter) and no party to the commission shall be liable in contract or tort for any actions or omissions of the commission.

(14) Bonds may be issued as serial bonds or as term bonds, or the commission may issue bonds of both types. The bonds shall be authorized by resolution of the authority and shall, as provided by the resolution or a trust agreement, indenture or other agreement pursuant to which

the bonds are issued, bear the date of issuance; the date of maturity, not exceeding 50 years from their date of issuance; be subject to such rights of tender provided; bear the rate of interest, either fixed or variable, subject only to the maximum rate of interest specified therein; be payable as to principal and interest at the time or times provided; be subject to early mandatory or optional redemption or purchase in lieu of redemption provided; be in the denominations provided; be in the form provided; carry the registration privileges provided; be executed in the manner provided; be payable in lawful money of the United States or such other currency as may be determined by the commission at the place or places provided within or outside of the state. Any bonds issued under this section may be secured by a trust agreement or indenture between the commission and a corporate trustee or trustees, which may include a trust company or bank having powers of a trust company within or outside of the state, and may contain provisions for pledging collateral, holding and disbursing funds, protecting and enforcing the rights and remedies of bondholders, restricting individual right of action by bondholders, amendments, and any other provisions the commission determines to be reasonable and proper for the security of the bondholders or contracts entered into pursuant to this section in connection with the bonds. 2

(15) The bonds shall be sold by the commission at the time and in the manner set out in the commission's resolution. The sale may be a public or private sale, and for price or prices, and on terms and conditions as the commission determines proper, after giving due consideration to the recommendations of any participant to be assisted from the proceeds of the bonds. Pending preparation of the definitive bonds, the commission may issue interim receipts, certificates, or temporary bonds which shall be exchanged for definitive bonds.

(16) This section shall be interpreted liberally in favor of promoting financing activity and economic development. legal effect ?

ORRICK

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December 1, 2008

Roger L. Davis
(415) 773-5758
rogerdavis@orrick.com

Mark O'Connell
Executive Director
Wisconsin Counties Association
22 East Mifflin Street, Suite 900
Madison, Wisconsin 53703
(email: O'Connell@wicounties.org)

Re: Proposed Legislation Providing for Intergovernmental Financing Commissions

Dear Mr. O'Connell:

You have asked for an explanation of why our firm has advised that it is necessary to amend Chapter 66 of Wisconsin Statutes relating to intergovernmental commissions, instead of relying on existing law, to create a governmental authority authorized to issue conduit revenue bonds for projects within and without the state, which bonds could qualify for exemption of interest from federal income taxation.

Existing law (Sections 66.0301 and 66.0303) authorizes Wisconsin municipalities (as defined) to contract among themselves or with municipalities of other states (or Indian Tribes) for "the joint exercise of any power or duty required or authorized by law." Such a contract among Wisconsin municipalities (Section 66.0301(3)) may provide for administration, including creation of a commission. Existing law does not make clear provision for administrative commissions in the case of interstate agreements, as distinguished from agreements entirely among Wisconsin municipalities.

Moreover, existing law does not establish that the commission is or can be a separate public entity distinct from the parties to the contract. Without that it is unclear how it finances anything, whether in its own name or in the name of municipalities that are parties to the contract, or how to insulate those municipalities from the debts and liabilities of the commission, or how to characterize the commission for purposes of evaluating its eligibility under the U. S. Tax Code to issue tax exempt bonds. Clarifying these matters is the main purpose for the proposed legislation.

Other purposes or benefits include a clear delineation of the powers of a commission, of the scope of projects and programs that can financed by it, and of the scope of its authority to issue and secure bonds, which not only provides a more certain legal foundation but also gives the investor market confidence that it was all contemplated and authorized by the Legislature, making the commission and its bonds more acceptable to the market.

Please let me know if you have any questions about the foregoing or if there is any other way we can be of assistance.

Sincerely,

Roger L. Davis

Roger L. Davis

cc: Dan Thompson
Steve Swendiman
Don Borut

U.S. COMMUNITIES
GOVERNMENT FINANCING COMMISSION

Proposed Establishment in Wisconsin of a Nationwide Public Benefit Conduit Tax-Exempt Bond Issuer

U.S.
COMMUNITIES™

A Unique Asset for Local Government

The Wisconsin Counties Association, the League of Wisconsin Municipalities, the National Association of Counties ("NACo") and the National League of Cities ("NLC") are working together to establish a joint powers authority ("Authority") with the ability to issue tax-exempt bonds in Wisconsin under Wisconsin law, and also make the financing vehicle available to cities, counties, schools, and other governmental entities across the country.

The Authority would focus on providing financing for eligible borrowers and projects that create economic and valuable public benefit, such as multifamily affordable housing, nonprofit institutions operating medical, educational and cultural facilities, and pooled local government finance programs for infrastructure and other capital projects. The proposed Authority would be created by local government, for local government, distinguishing itself from other issuers that state authorities have established having extraterritorial powers to issue tax-exempt bonds.

It is contemplated that the Authority's services would be marketed nationally under the U.S. Communities brand sponsored by NACo, NLC, the Wisconsin Counties Association and the League of Wisconsin Municipalities.

Local Review, Oversight and Approval

Cities, counties and special districts will determine when it is appropriate to participate in U.S. Communities. All proposed projects to be funded through U.S. Communities will go through exhaustive legal and financial review to ensure the viability of the borrower and the project, and equally important, to ensure the project serves a legitimate local public benefit.

In addition to the legal and financial review, the U.S. Communities Joint Powers Agreement will require each project to be heard before the local government entity where the project is located (city council or county board of supervisors) so the project can be thoroughly vetted and approved by a public vote of publicly elected officials. The extra layer of local review required by U.S. Communities will provide important insight into the local landscape and provide the opportunity for local elected officials, stakeholders and residents to weigh in on these local public benefit projects.

The National Proposition

In 1996, NACo established a nationwide purchasing cooperative for local government known as U.S. Communities, organized as a nonprofit instrumentality of the governments it serves. Although U.S. Communities is a purchasing program rather than a finance conduit, it is similar in the sense that it aggregates government activity into a program that streamlines and reduces the cost of acquiring products and services needed by government to fulfill community needs.

U.S. Communities is a national program used by more than 35,000 public agencies across the country in all 50 states. U.S. Communities is sponsored by many organizations representing local governments across the country, including the Wisconsin Counties Association, the League of Wisconsin Municipalities, NACo and NLC. To provide it national reach and character, it is anticipated that the Authority will carry the U.S. Communities brand.

The Right Time

With the U.S. economy facing one of its greatest challenges in decades, the need for innovation in creating access to capital for public benefit projects and other local government purposes is critical. Local governments across the country are looking for financial resources and solutions to keep their communities operating. A national conduit issuer based in Wisconsin would forever change municipal finance, and provide necessary economic development solutions to the financial challenges facing local governments in Wisconsin and across the country. The tangible benefit to Wisconsin would include:

- **An economic development tool to attract businesses to Wisconsin**
- **Greater awareness of and access to additional financial resources for local governments and eligible businesses in Wisconsin**
- **Creation and innovation of new alternative energy resources**
- **Expansion and rehabilitation of public benefit facilities including care centers, student housing projects, job training and placement facilities, and community and youth centers**
- **The ability to finance the improvement of community infrastructure projects**

Wisconsin would be leading the way to create tangible public benefits to its own state, as well as providing economic development solutions nationwide.

Shovers, Marc

From: Buhrandt, Jeff
Sent: Tuesday, January 13, 2009 11:25 AM
To: Shovers, Marc
Subject: FW: Electronic Copy of Draft Language

Mark-

Here is the contact information for the person at the WCA who worked on the sample language. He should be able to answer any questions you have.

Jeff

Jeff Buhrandt
Office of Senator Pat Kreitlow
(608) 266-7511

-----Original Message-----
From: GrovesBatiza [mailto:GrovesBatiza@wicounties.org]
Sent: Tuesday, January 13, 2009 11:13 AM
To: Buhrandt, Jeff
Cc: Andrew T. Phillips; McKinny, Chris
Subject: RE: Electronic Copy of Draft Language

Hi Jeff,

Please put him in touch with Andy as he will be the best contact on the actual draft language. Andy can be reached directly at his firm, Centofanti Phillips, at (262) 241-1900, ext. 2. His cell phone number is (414) 491-7780.

Thanks much for getting this into drafting. Please let me know if there is anything further you need from me at the moment.

Thanks!

Monica

Monica Groves Batiza
Legislative Associate
Wisconsin Counties Association
22 East Mifflin Street
Suite 900
Madison, WI 53703

(608) 663-7188
(608) 663-7189 fax

>>> "Buhrandt, Jeff" <Jeff.Buhrandt@legis.wisconsin.gov> 1/13/2009 10:54
>>> am >>>
Monica-

The drafting attorney at LRB wanted to speak with who ever drafted the sample language you sent over to clarify a few points.

Can I put him in direct contact with you or Andy?

Thanks-

Jeff

Jeff Buhrandt

Office of Senator Pat Kreitlow
(608) 266-7511

-----Original Message-----
From: GrovesBatiza [mailto:GrovesBatiza@wicounties.org]
Sent: Wednesday, January 07, 2009 2:28 PM
To: McKinny, Chris; Buhrandt, Jeff; Pagel, Matt
Subject: Electronic Copy of Draft Language

Good Afternoon Chris, Matt and Jeff,

Please extend my appreciation to your respective bosses for their time today, as well as yours. Andy and I appreciated the opportunity to come and speak with you about our municipal bonding proposal, and look forward to working with you on this issue. Attached, please find the draft language that Andy and I have taken a stab at. We thought it would be a useful tool in getting things moving with LRB, should your bosses agree to author this for us. I'll follow up after our meeting with Dan Schooff on Monday.

Thanks!

Monica

Monica Groves Batiza
Legislative Associate
Wisconsin Counties Association
22 East Mifflin Street
Suite 900
Madison, WI 53703

(608) 663-7188
(608) 663-7189 fax

Shovers, Marc

From: GrovesBatiza [GrovesBatiza@wicounties.org]
Sent: Wednesday, January 14, 2009 11:21 AM
To: Shovers, Marc
Cc: Andrew T. Phillips; McKinny, Chris; Buhrandt, Jeff
Subject: Sen. Kreitlow's drafting request re: conduit bond issuers

HI Marc,

Andy and I are in the process of putting together a plain language narrative for you. We hope to have something to you by tomorrow.

I look forward to working with you on this draft.

Thanks,

Monica

Monica Groves Batiza
Legislative Associate
Wisconsin Counties Association
22 East Mifflin Street
Suite 900
Madison, WI 53703

(608) 663-7188
(608) 663-7189 fax

\>>> "Shovers, Marc" <Marc.Shovers@legis.wisconsin.gov> 1/13/2009 11:34
\>>> am >>>
Hello Monica and Andy:

Jeff from Sen. Kreitlow's office told me that I may contact you directly with questions about the drafting request. It would be really helpful to me if you could provide me with a plain language narrative description of what you wish the draft to accomplish and what your intent is. This will be a lot more helpful than the pre-drafted language, which may or may not be an accurate representation of your goals. A narrative description of your goals will help ensure that the draft conforms to your intent. Thanks.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608) 266-0129
Fax: (608) 264-6948
e-mail: marc.shovers@legis.wisconsin.gov

The purpose of the legislation is for the establishment in Wisconsin of a governmental entity authorized to issue tax-exempt conduit revenue bonds for eligible private activity/public benefit projects and local governments within and outside of the state. In addition, such legislation would incorporate existing statutory authority relating to private activity bonds including, but not limited to, industrial development, low-income housing, healthcare and educational tax-exempt financing. The establishment of such an entity is an expansion of existing Wisconsin law, not the creation of a new law.

Existing law (Sections 66.0301 and 66.0303) authorizes Wisconsin municipalities to contract among themselves or with municipalities of other states for "the joint exercise of any power or duty required or authorized by law." Such a contract among Wisconsin municipalities includes the creation of a commission, but does not make clear a provision for commissions in the case of interstate agreements.

Under the existing legislation it is unclear that a commission is or can be a separate public entity distinct from the parties to the contract. Without such clarification it is uncertain how the commission finances anything, whether in its own name or the name of municipalities that are parties to the contract, and how to insulate those municipalities from the debts and obligations of the commission.

Other purposes or benefits of the legislation would be as follows:

- Clear delineation of the powers of the commission;
- Scope of the projects and programs that can be financed by the commission;
- Scope of the authority to issue and secure bonds providing a legal foundation to give the investor market confidence that it was contemplated and authorized by the Wisconsin Legislature;
- Reporting and audit requirements of the commission in the interest of accountability and transparency;
- Expand Attorney General requirement to commissions established under the new legislation – whether such commissions are intrastate or interstate.

1. **Why is Wisconsin the ideal state for a national tax-exempt bond issuer, and why should Wisconsin statutes be modified to allow this to occur?**

   Wisconsin state statutes provide local governments with broad intergovernmental powers, and such powers will provide the opportunity to create more economic development opportunities within Wisconsin. The proposed legislation does not expand what a Wisconsin local government can do, but provides clarity to allow municipalities to act as a conduit bond issuer on a broader scope inside and outside of Wisconsin.

2. **What type of projects would be eligible for financing through the joint powers authority?**

   Tax-exempt financing would be available for eligible public and private entities engaging in projects that provide a public benefit. The guidelines for which private projects are eligible for tax-exempt financing are established by the Federal Government (Congress and the Internal Revenue Service) and state government, not the joint powers authority.

   Where does the capital come from

   The projects would provide cost-effective access to capital for local governments and create manufacturing jobs, units of affordable multifamily housing, improvements to and construction of nonprofit hospitals, health care facilities, school facilities and alternative energy projects among many other public benefit projects.

3. **Without the joint powers authority how do Wisconsin agencies access the tax-exempt markets?**

   Local government entities would go to the private bond market on a standalone basis and engage private finance professionals for each transaction at a much higher cost to achieve the same goal. The joint powers authority will save local entities and eligible borrowers millions in public dollars, and other valuable staff resources by providing a one-stop program that coordinates complicated issuance and post-issuance activities.

4. **Will the transparency and accountability standards that apply to Wisconsin public agencies apply to the joint powers authority?**

   The joint powers authority will be a public agency in the State of Wisconsin (the "State"). Therefore, all transparency and accountability requirements for public agencies in the State will be applicable to the joint powers authority. The joint powers authority will be subject to review through federal, state and local agencies by the following:

   - Federal – The Internal Revenue Service oversees the rules and regulations of bond issues and post-issuance compliance in order to establish and maintain the bonds' tax exempt status.

     like what?
   - State – Certain projects will be subject to a volume cap including but not limited to multifamily housing projects, industrial development projects, and solid waste projects. These projects will be subject to the volume cap rules and regulations established by the State Department of Administration for projects in Wisconsin, and by parallel state systems for projects in other states.
   - Local – Every project will require a public hearing in the jurisdiction where the project resides. This local hearing and approval requirement is more fully described under the Tax Equity and Fiscal Responsibility Act ("TEFRA") of 1982 This will allow public input and project approval by the local jurisdiction.

- For projects that are not subject to volume cap limitations, the joint powers authority will establish guidelines and criteria requiring an applicant to identify the public benefit associated with proceeding with a project.

5. **What legislative changes are necessary?**

Wisconsin Statutes Section 66.0303 already permits two or more government entities to join together and execute powers that are common among them. The legislation will clearly outline the ability to issue bonds within and outside of Wisconsin. The proposed JPA would have as its members two Wisconsin local governments and would be headquartered in Wisconsin. The proposed JPA would also include several non-Wisconsin local governments representing different geographic regions of the United States to provide the entity a national reach and ensure local involvement in all projects.

? how does this happen?

6. **Does a Wisconsin public agency or the State of Wisconsin incur any liability for participating in financings completed by the joint powers authority?**

No. The bonds issued by the joint powers authority are limited obligations of the authority, payable only out of the payments received on a loan to the ultimate borrower, and are not payable by the State of Wisconsin or a Wisconsin public agency. The State of Wisconsin and Wisconsin public agencies are not responsible for any repayment of debt of the joint powers authority or for payment of and loans to the ultimate borrowers, nor are they named in any of the bond documents.

7. **Will it cost the State of Wisconsin or Wisconsin public agencies anything to participate in the joint powers authority or any of its programs?**

No. There are no fees charged to public agencies to participate in the joint powers authority, and fees will remain at a minimum for programs offered to public agencies.

8. **What are the advantages to Wisconsin by creating the national issuer?**

where are they getting the resources to pool?

Because of the national issuer's ability to pool resources, local governments in Wisconsin will no longer face the administrative and financial burdens associated with handling a project individually. This will open up the financing markets to industries (i.e. manufacturers, environmental, nonprofits, etc.) and public agencies that have not previously had access to the tax-exempt capital markets. Over time, Wisconsin will see more economic development as businesses looking for viable expansion opportunities will view the financing package that a Wisconsin municipality can provide through the national issuer as extremely enticing. In addition, the rules governing tax exempt bond financing are designed to promote, among other things, alternative energy facilities – facilities that can be built in Wisconsin. Finally, there are many institutions that need to expand, but cannot afford expansion with limited access to the credit markets. A national issuer with pooled resources will be able to finance projects such as care centers, student housing, training and placements facilities and the like at a much more affordable rate than the private market or the current limited public market is able to offer.

where does initial capital come from?

Shovers, Marc

From: Shovers, Marc
Sent: Tuesday, February 24, 2009 3:43 PM
To: Buhrandt, Jeff; 'Groves Batiza, Monica'
Cc: Mueller, Eric
Subject: RE: Electronic Copy of Draft Language

Hi Jeff and Monica:

Eric Mueller and I have reviewed the proposed legislation and the supporting documents you've sent us. We understand that the basic goal is to create a new entity that is separate and distinct from, and independent of, the state and political subdivisions of the state. This entity would issue "conduit revenue bonds" to public or private entities to finance various projects. Neither the state nor any political subdivisions of the state would be liable for the bonds. It is our understanding that the entity would have no taxing authority and the only revenue it could generate is from principal and interest payments generated and paid by the entity which undertakes the project, and possibly from fees charged to the entity that borrows the money.

Although the proposed legislation is rather detailed in some respects, we have a number of questions.

1) What, exactly, is a "conduit revenue bond?" How is it different from an industrial revenue bond? In what instance would a "volume cap" apply? Is there a need for the entity to be endowed with capital to make the initial loan? If so, where does this capital come from? If not, is the entity to issue bonds on behalf of a public or private entity for some sort of project with no collateral to back up the bonds?

2) The proposal refers to "other assets acquired by the commission" in s. 66.0318 (1) (g), on page 2. How does the commission generate assets or revenue other than from interest and principal payments from the borrower or fees assessed against a borrower?

3) Section 66.0318 (3), page 2, merely says that the commission is governed by a board as created by the commission contract. There is no level of detail concerning the board. Is it your intent that, under a section 66.0301 or 66.0303 commission, the parties to the contract will determine the make up of the board? In the question and answer document, item 5 indicates that "a proposed JPA would consist of 2 Wisconsin local governments and several non-Wisconsin local governments." How exactly do you intend for this structure to be implemented? How are any of the local governments selected? Is it possible for the membership of the JPA to change over time?

4) With regard to s. 66.0318 (3) (p), is this provision limited to multiple bond issues and multiple projects that relate to a single borrower?

5) Who is the "Controller" that is referred to in s. 66.0318 (4) (f) and what are the "federal audit requirements" that are referred to in that paragraph?

6) The language in s. 66.0318 (6), stating that "this section need not comply with the requirements

of any other state law" related to bonding and financing, seems to contradict the earlier parts of sub. (6). In addition, a provision that basically says "notwithstanding any other provision of law" may not be drafted as such -- the specific statutes which you do not want s. 66.0318 to be subject to, must be specifically indentified by cross-reference.

7) We're not sure what legal effect you intend sub. (7) to have that does not exist under current contract law. This provision seems to say that if you enter into a contract, the terms of the contract are binding and they apply to the parties to the contract.

8) The provision in proposed s. 66.0318 (8) seems to be too broad, exempting the commission from any taxes or charges. What kind of property do you anticipate a commission owning which could potentially lead to a tax liability? Also, under cases such as *Grace Episcopal Church v. City of Madison*, 129 Wis. 2d 331, 385 (Ct. Apps. 1986), even religious institutions exempt from property taxes are subject to special charges for current services under s. 66.0627. Also see s. 66.0705.

9) With regard to s. 66.0318 (12), where would the commission get the funds to purchase its bonds?

10) With regard to s. 66.0318 (13), what does the first sentence mean? What other authority to pay off bonds does the commission have, besides payment out of amounts received from "revenues derived from the project to be financed?"

11) Section 66.0318 (3) refers to "a commission created under s. 66.0301(2) or 66.0303(2) and organized under this section." Is this intended to limit the purpose for which a 66.0318 commission may be created to "the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law?"

12) If s. 66.0318 (3) is not intended to limit the purposes of the commission, what, if anything, are the limits for which a 66.0318 commission may be created? Section 66.0318 (1) (f) provides a broad definition of "project." Section 66.0318 (5) limits bonding authority, but limits to other powers are not clear.

13) What is meant by "a contract entered into pursuant to this section" for the purpose of the 30 day lawsuit filing limitation in s. 66.0318 (6)?

We're sure other questions will arise as we continue to draft this bill, but any answers you could provide to these questions would be very helpful.

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608) 266-0129
Fax: (608) 264-6948
e-mail: marc.shovers@legis.wisconsin.gov

Eric Mueller

Legislative Attorney
Legislative Reference Bureau
Phone: (608) 261-7032
Fax: (608) 264-6948
e-mail: eric.mueller@legis.wisconsin.gov

-----Original Message-----
From: Buhrandt, Jeff
Sent: Tuesday, January 13, 2009 11:25 AM
To: Shovers, Marc
Subject: FW: Electronic Copy of Draft Language

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Jeff

Jeff Buhrandt
Office of Senator Pat Kreitlow
(608) 266-7511

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Thanks!

Monica

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Wisconsin Counties Association
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Madison, WI 53703

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Sent: Wednesday, January 07, 2009 2:28 PM
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Good Afternoon Chris, Matt and Jeff,

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Thanks!

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CENTOFANTI PHILLIPS, S.C.
ATTORNEYS AT LAW

MEMORANDUM

TO: Monica Groves Batiza, Legislative Associate
Wisconsin Counties Association

FROM: Andrew T. Phillips
Centofanti Phillips, S.C.

RE: LRB Attorney Drafting Questions

DATE: March 4, 2009

You have asked us to prepare a response to a series of questions you received from the Legislative Reference Bureau concerning the proposed legislation creating Wis. Stat. § 66.0318. Our answers to those questions are below.

(1) What, exactly, is a "conduit revenue bond?" How is it different from an industrial revenue bond? In what instance would a "volume cap" apply? Is there a need for the entity to be endowed with capital to make the initial loan? If so, where does this capital come from? If not, is the entity to issue bonds on behalf of a public or private entity for some sort of project with no collateral to back up the bonds?

Response: Conduit revenue bonds are "pass through" obligations of private entities that are secured solely by commitments of private entities. Also referred to as private activity bonds (PABs) under Section 141 of the Internal Revenue Code, interest on PABs is excluded from gross income for federal income tax purposes (tax-exempt) if the bonds are issued by a governmental entity on behalf of the private entity. In essence, the governmental entity is serving as the "conduit" for the issuance of a revenue bond for a private entity to allow for the acquisition, construction, or rehabilitation of a public benefit project in exchange for a lower cost of capital. Many municipalities across the country already avail themselves of this conduit financing mechanism on their own. This proposed entity, however, would be the first multi-jurisdictional entity with broad-based local government support formed by local government and for local government.

An industrial revenue bond is a form of conduit revenue bond or PAB as defined by the Qualified Small Issue Bond requirements of the Internal Revenue Code. Other examples of categories include:

Exempt facility bonds –issued to finance various types of facilities owned or used by private entities, including airports, docks and certain other transportation-related facilities; water, sewer and certain other local utility facilities; solid and hazardous waste disposal facilities; certain residential rental projects, including multi-family housing revenue bonds

Qualified 501(c)(3) bonds –issued to finance a facility owned and utilized by a 501(c)(3) organization, such as hospitals, private schools, museums, and cultural centers.

Qualified small issue bonds –issued to finance manufacturing facilities.

Qualified student loan bonds –issued to finance student loans for attendance at higher education institutions.

Volume cap would apply in the instance of certain Exempt Facility Bonds, Qualified Student Loan Bonds, and Qualified Small Issue Bonds as defined above.

There is no need for the entity to be endowed with capital to make the initial loan. Serving as a conduit issuer, the entity would issue bonds on behalf of the private entity to the marketplace for purchase by private lenders / investors. The entity would then "pass through" the bond sale proceeds to the private entity at a tax-exempt rate of interest for the acquisition, construction, or rehabilitation of a public benefit project.

The collateral to support such "conduit" financings are typically the real property itself being financed by the private entity (or other pledged assets of the private entity) and in some cases revenue pledges from the private entity.

(2) The proposal refers to "other assets acquired by the commission" in s. 66.0318 (1) (g), on page 2. How does the commission generate assets or revenue other than from interest and principal payments from the borrower or fees assessed against a borrower?

Response: Revenue is generated from issuance and annual administrative fees assessed against the borrower. Principal and interest are paid to the private lender/investor that purchased the bonds typically through a trustee.

(3) Section 66.0318 (3), page 2, merely says that the commission is governed by a board as created by the commission contract. There is no level of detail concerning the board. Is it your intent that, under a section 66.0301 or 66.0303 commission, the parties to the contract will determine the make-up of the board? In the question and answer document, item 5 indicates that "a proposed JPA would consist of 2 Wisconsin local governments and several non-Wisconsin local governments." How exactly do you intend for this structure to be implemented? How are any of the local governments selected? Is it possible for the membership of the JPA to change over time?

Response: Yes, the intention is that the parties to the contract will determine the make-up of the board. A city and county within Wisconsin would be the founding members and other public agencies would be able to join at a later point in time. Any local government can voluntarily become members to the joint powers authority. Yes, membership can change over time as more members join, or if members decide to relinquish their membership.

(4) With regard to s. 66.0318 (3) (p), is this provision limited to multiple bond issues and multiple projects that relate to a single borrower?

Response: Yes. It would relate to a single borrower.

(5) Who is the "Controller" that is referred to in s. 66.0318(4)(f) and what are the "federal audit requirements" that are referred to in that paragraph?

Response: The "Controller" is the State Controller for Wisconsin. This should have stated "state audit requirements" instead of "federal audit requirements."

(6) The language in s. 66.0318(6), stating that "this section need not comply with the requirements of any other state law" related to bonding and financing, seems to contradict the earlier parts of sub. (6). In addition, a provision that basically says "notwithstanding any other provision of law" may not be drafted as such – the specific statutes which you do not want s. 66.0318 to be subject to, must be specifically identified by cross-reference.

Response: The primary purpose for including this provision is to clarify that the commission need not comply with s. 66.1103 because of state and federal requirements relating to a local hearing and application for volume cap allocation to the Department of Commerce on bond issues occurring in Wisconsin.

(7) We're not sure what legal effect you intend sub. (7) to have that does not exist under current contract law. This provision seems to say that if you enter into a contract, the terms of the contract are binding and they apply to the parties to the contract.

Response: The legal effect would be that any pledged collateral for a bond issuance would be enforceable immediately without having to file the typical UCC forms with the Secretary of State and/or local register of deeds or other state/local forms. This is for the borrower and lender's protection.

(8) The provision in proposed s. 66.0318(8) seems to be too broad, exempting the commission from any taxes or charges. What kind of property do you anticipate a commission owning which could potentially lead to a tax liability? Also, under cases such as Grace Episcopal Church v. City of Madison, 129 Wis. 2d 331, 385 (Ct. App. 1986), even religious institutions exempt from property taxes are subject to special charges for current services under s. 66.0627. Also see s. 66.0705.

Response: The commission will not own any property.

(9) With regard to s. 66.0318(12), where would the commission get the funds to purchase its bonds?

<u>Response:</u> All funds to purchase its bonds would come from private lenders / investors. This provision would only be used if the commission had to buy back bonds based upon fluctuating interest rates or other market conditions.

(10) With regard to s. 66.0318(13), what does the first sentence mean? What other authority to pay off bonds does the commission have, besides payment out of amounts received from "revenues derived from the project to be financed?"

<u>Response:</u> The source of payment for principal and interest on the bonds that are to be issued is from the borrower, not the commission. The commission does not have any other authority to pay off the bonds without revenue from such borrower.

(11) Section 66.0318 (3) refers to "a commission created under s. 66.0301(2) or 66.0303(2) and organized under this section." Is this intended to limit the purpose for which a 66.0318 commission may be created to "the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law?"

<u>Response:</u> Yes. It is to limit such purpose to act as a conduit issuer.

(12) If s. 66.0318(3) is not intended to limit the purposes of the commission, what, if anything, are the limits for which a 66.0318 commission may be created? Section 66.0318 (1) (f) provides a broad definition of "project." Section 66.0318(5) limits bonding authority, but limits to other powers are not clear.

<u>Response:</u> The intent is to limit this to be a conduit issuer.

(13) What is meant by "a contract entered into pursuant to this section" for the purpose of the 30 day lawsuit filing limitation in s. 66.0318(6)?

<u>Response:</u> The "contract" is the legal agreement between the borrower and the entity issuing the bonds to provide the borrower with financing. This provision is designed to provide assurance of the validity of the bonds to the investor and the borrower. There is no need for a potential plaintiff to wait to challenge the legal sufficiency of a bond issue as all of the facts necessary to a determination of validity are made public by the commission.

If you or the Legislative Reference Bureau has any questions concerning our response please let us know.

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1957/?ins
...:...:...

EUM's original insert, that was integrated into the /P1

This shows where Eric's parts were moved to in the /P1

(7)

(8)

****NOTE: Not sure what to do with this one. Revenue?

(9)

****NOTE: Treatment to be placed in revenue chapter.

(10) STATE PLEDGE. The state pledges to and agrees with the bondholders, and persons that enter into contracts with a commission under this section, that the state will not limit or alter the rights and powers vested in a commission by this section, including the rights and powers under **sub.** (4) **[...INSERT SUBSECTION NUMBERS]**, before the commission has met and discharged the bonds, and any interest due on the bonds, and has fully performed its contracts, unless adequate provision is made by law for the protection of the bondholders or those entering into contracts with a commission.

moved to sub. (8)

****NOTE: Based on s. 229.76, stats. Provision requested limits state pledge to (1) commission right to finance/refinance project and (2) fulfill agreements, s. 229.76 appears significantly broader covering all rights and powers vested in the district.

(11) NO PERSONAL LIABILITY. No member of the commission is liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance of the bonds, unless the personal liability or accountability is the result of willful misconduct.

moved to sub. (8)

****NOTE: Based on s. 229.72 (6), stats. Final clause not in requested text, but included in each similar provision in ch. 229.

(12) **(a)** Subject to terms of the bond agreement, the commission may repurchase any bond issued under this section. The purchase of any bond under this subsection does not have the effect of cancelling the bond.

moved to sub. (5)(c)

PB sub. (12) was rewritten & moved to par. (5)(c) — EUM's (12) & predrafted sub. (12)

moved to sub. (5)(d)

(b) Subject to the terms of the bond agreement, the commission may hold, pledge, resell, or cancel and bond repurchased under this section.

****NOTE: These provisions would most advantageously be moved to a section regarding bond payment procedure or commission powers. A general introductory statement making these provisions subject to any contrary provision in the bond agreement may be helpful.

moved to sub. (a)

(13) BONDS NOT PUBLIC DEBT. (a) The state and the ~~municipalities~~ pol sub contracting to create a commission under this section are not liable on bonds and the bonds are not a debt of the state or the ~~municipalities~~ PS contracting to create a commission under this section. All bonds shall contain a statement to this effect on the face of the bond. A bond issue does not, directly or indirectly or contingently, obligate the state or a municipality to levy any tax or make any appropriation for payment of the bonds.

(b) Nothing in this section authorizes a commission to create a debt of the state or the ~~municipalities~~ PS's contracting to create a commission under this section, and all bonds issued by a commission are payable, and shall state on the face of the bond that they are payable, solely from the funds pledged for their payment in accordance with the bond resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security for the bonds. Neither the state nor any municipality is liable for the payment of the principal of or interest on a bond or for the performance of any pledge, mortgage, obligation, or agreement that may be undertaken by a commission. The breach of any pledge, mortgage, obligation, or agreement undertaken by a commission does not impose pecuniary liability upon the state or any ~~municipality~~ pol sub or a charge upon its general credit or against its taxing power.

reduced and in par. (a)

(c) Bonds issued by the commission may be secured only by the ~~amounts~~ revenues ~~received by~~ of the commission ~~from revenues~~ derived from the project to be financed or

2 comments indicate coll. may be provided by priv. party.

Add in sub. (a)

refinanced by the bonds or otherwise from any contract entered into or investment made in connection with the bonds.

****NOTE: Based on s. 229.831. May need some revision depending upon any definitions that are used in the draft. Note especially the use of "municipality," "project," and "municipalities contracting to create a commission under this section." Par. (c) probably needs some clarification as it was simply copied from the provided language. Is the idea that only revenue traceable to the particular bond issue may be used to secure those bonds?

moved to sub. (5)

(14) (a) Form and contents of bonds. Every bond issued under this section shall meet all of the following requirements:

1. The face of the bond shall include the date of issuance and the date of maturity.

2. The face of the bond shall include the statements required under subs. **[TO BE INSERTED - see (13)(a) and (b) above].**

moved to sub. (9)

3. The date of maturity may not exceed 50 years from the date of issuance.

4. The bond shall bear a rate of interest, either fixed or variable, specified by the resolution. Any variable rate of interest shall be made subject to a maximum rate.

5. Interest and principal shall be paid at the time and place specified in the resolution.

6. The bond shall be subject to early mandatory or optional redemption or purchase in lieu of redemption, as provided in the resolution.

7. Bonds in a single issue may be composed of a single denomination or 2 or more denominations, as provided in the resolution.

8. The bond shall be payable in lawful money of the United States or, if provided in the resolution, another currency.

(b) A bond issued under this section may include any of the following:

1. A provision providing a right to tender.

2. A provision allowing registration privileges.

3. Any other statement of fact not in conflict with the resolution.

****NOTE: Pars. (a) and (b) contain, so far as I can tell, all of the requested provisions in proposed (14), save two. The two items in proposed (14) which I have not included read: "be in the form provided" and "be executed in the manner provided." I'm not entirely sure what these two mean. I also added (a) 2. and (b) 3, which do not appear in proposed ~~(14). These provisions effectuate requested (13)~~ and (10), respectively. It may be worth considering whether additional material needs to be added. See e.g. s. 67.06, stats.

2

move to sub (7)

(c) Bond security. The commission may secure bonds by a trust agreement or trust indenture by and between the commission and one or more corporate trustees. A bond resolution providing for the issuance of bonds so secured may mortgage, pledge, assign, or grant security interest in some or all of the revenues or property of the commission and may contain those provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of the law.

****NOTE: This is an adapted version of s. 229.49. It probably belongs in a separate section or a section on commission powers.

2

~~(d) The commission may provide by resolution for the issuance and sale of bonds. Bonds issued under this section may be serial bonds or term bonds. The resolution may/shall contain...~~

****NOTE: This provision should be added to the powers of the commission section, if a similar provision does not exist. Since many of the bond requirements refer to the resolution, there may be need for additional provisions under the resolution power describing the contents of a resolution.

moved (6) sub.

(15) SALE OF BONDS. (a) The sale of bonds under this section shall be conducted as provided in the resolution.

(b) A sale may be pubic or private. Bonds may be sold at the price or prices and upon the conditions determined by the commission. The commission shall give due consideration to the recommendations of the participant in the project when determining the conditions of sale.

(c) If at the time of sale definitive bonds are not available, the commission may issue interim certificates exchangeable for definitive bonds.

****NOTE: Similar provision in s. 67.08 (2). Are additional provisions necessary? Par. (b) probably needs to be cleaned up and integrated into the rest of the draft.

(16) This section shall be liberally construed to promote financing activity and economic development.

****NOTE: Is this necessary?

Not needed put in a NOTE

research into conduit rev. bond programs

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Conduit Revenue Bond Program

Print Brochure

Projects which are eligible under the Internal Revenue Code of 1986 can qualify for tax-exempt financing under AIDEA's Conduit Revenue Bond Program. Under this program, AIDEA acts only as a conduit for the issuance of either taxable or tax-exempt bonds. Neither the assets nor credit of AIDEA is at risk in this program; the creditworthiness of the project and credit enhancements offered by the applicant are essential to the underwriting and placement of bonds.


Fairbanks Memorial Hospital

A business enterprise may request financing assistance under the Conduit Revenue Bond Program by submitting a completed conduit revenue bond application (available below) and non-refundable $500 application fee to AIDEA. If AIDEA determines that the proposed project and applicant are eligible to participate in the Conduit Revenue Bond Program, AIDEA will continue to process the application, and if it is determined that the project will qualify for tax-exempt financing, an eligibility resolution must be adopted by AIDEA's board of directors. In addition to third-party costs, the applicant will pay a financing fee to AIDEA. If the bonds are subject to the volume cap provisions of 26 U.S.C. sec. 147, the issuance fee is equal to the following:

- one percent (1%) of the first $1 million of the principal amount of the bonds issued:
- one-half percent (.5%) of the next $4 million of the principal amount of the bonds issued:
- one-quarter percent (.25%) of the next $10 million of the principal amount of the bonds issued; and
- one-tenth percent (.10%) of the principal amount of the bonds issued in excess of $15

million.

If the bonds are not subject to the volume cap provision of 26 U.S.C. sec. 147, the issuance fee is equal to three-quarters of the amount described above.

Conduit Revenue Bond Application Conduit Revenue Bond Regulations

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Update: 2/11/08

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