



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-19577 P1  
MES&EVM

PMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

js

P-NOTE

SOON!  
FN 3/27

SNV  
x-140

open

two or more cities, villages,  
towns, or counties

1 AN ACT ...; relating to: authorizing ~~a city, village, town, or county~~ or a  
2 combination of such political subdivisions, to create a commission to issue  
3 conduit revenue bonds.

and exercise eminent domain authority  
and exempting from taxation interest on such bonds

Analysis by the Legislative Reference Bureau

To be provided in a future draft.

FE-SL

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

X

4 SECTION 1. 32.02 (1) of the statutes is amended to read:

5 32.02 (1) Any county, town, village, city, including villages and cities  
6 incorporated under general or special acts, school district, the department of health  
7 services, the department of corrections, the board of regents of the University of  
8 Wisconsin System, the building commission, a commission created by contract under  
9 s. 66.0301, with the approval of the municipality in which condemnation is proposed,  
10 a commission created by contract under s. ~~66.0302~~ <sup>66.0303</sup> that is acting under s. 66.0304.

SECTION 1

1 with the approval of the municipality in this state in which the condemnation is  
 2 proposed, or any public board or commission, for any lawful purpose, but in the case  
 3 of city and village boards or commissions approval of that action is required to be  
 4 granted by the governing body. A mosquito control commission, created under s.  
 5 59.70 (12), and a local professional football stadium district board, created under  
 6 subch. IV of ch. 229, may not acquire property by condemnation.

**History:** 1971 c. 100 s. 23; 1973 c. 243, 305; 1975 c. 68, 311; 1977 c. 29, 203, 438, 440; 1979 c. 34 s. 2102 (52) (b); 1979 c. 122; 1979 c. 175 s. 53; 1981 c. 86, 346, 374; 1983 a. 27; 1985 a. 29 s. 3200 (51); 1985 a. 30 s. 42; 1985 a. 187; 1985 a. 297 s. 76; 1987 a. 27; 1989 a. 31; 1993 a. 246, 263; 1993 a. 491 s. 284; 1995 a. 27 s. 9126 (19); 1995 a. 201; 1997 a. 204; 1999 a. 65; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 30 s. 108; 2005 a. 335; 2007 a. 20, s. 9121 (6) (a).

\*\*\*\*NOTE: The instructions from your predrafted materials indicated that an out-  
 of-state municipality, which is one of the members of a commission created under s.  
 66.0302 and operating under s. 66.0304, may use the authority under s. 32.02 (1), as  
 amended by your draft, to exercise eminent domain within that municipality that is  
 located in another state. Was that your intent? If so, it would not be legal. There is no  
 authority under Wisconsin law to extend eminent domain authority to a municipality  
 that is located in another state even if that municipality is part of a commission created  
 under s. ~~66.0302~~. Consequently, the amendment of this subsection is limited to a  
 municipality (the term used in ch. 32) that is located in this state.

66.0303  
66.0303

In addition, please be aware that the authority to condemn property under this  
 subsection is limited to blighted property if the condemnor intends to convey or lease the  
 property to a private entity. See s. 32.03 (6) (b) of the statutes. ✓

7 SECTION 2. 66.0304 of the statutes is created to read:

8 **66.0304 Conduit revenue bonds. (1) DEFINITIONS.** In this section:

9 (a) "Agreement" means a contract entered into by the political subdivisions  
 10 which ~~completes~~ <sup>form</sup> a commission. The contract may be amended by the parties according  
 11 to the terms of the contract.

12 (b) "Bonds" means any bond, note or other obligation of a commission issued  
 13 under this section, including any refunding bond or certificate of participation or  
 14 lease-purchase agreement, to which all of the following apply:

15 1. The bond, note, or other obligation is <sup>a</sup> private activity bond as defined in  
 16 section 141 of the Internal Revenue Code.

17 2. The proceeds of the issue are used by a private entity for the acquisition,  
 18 construction, or rehabilitation of a project.

SECTION 2

*each other under S.*

\*\*\*\*NOTE: What is your intent in using the terms "certificate of participation" and "lease-purchase agreement?" The former does not appear in the statutes, and the latter does not appear in the statutes in the context of bonds, so I'm not sure what legal effect these terms have in par. *(b) (Intro.)*

1 (c) "Commission" means an entity created by two or more political subdivisions,  
2 *a group of political subdivisions who contract with,*  
under s. 66.0301 (2) or 66.0303 (2), for the purpose of issuing conduit bonds under  
3 this section.

~~scribble~~  
\*\*\*\*NOTE: Is this definition consistent with your intent? Some of the materials you submitted specified that a commission must be made up of 2 political subdivisions from this state and 2 from another state, but your "predrafted" instructions did not contain guidance on this issue. *(P) There may be a bigger problem here. Section 66.0303 doesn't really authorize the creation of a commission, it just authorize municipalities to act jointly. Does this definition meet your intent?*  
4 (d) "Participant" means any public or private entity, including federally

5 recognized Indian tribes and bands, that contracts with a commission for the purpose  
6 of financing or refinancing a project that is owned, sponsored, or controlled by the  
7 public or private entity.

8 (e) "Political subdivision" means any city, village, town, or county in this state  
9 or another state. *or another similar local unit of government in another state*

10 (f) "Project" means any capital improvement, investment or program of  
11 investment, purchase of receivables, property, assets, commodities, bonds or other  
12 revenue streams or related assets, or liability or other insurance program, located  
13 within or outside of this state, and may include any of the following:

\*\*\*\*NOTE: This definition is based on your instructions, but I don't understand how "bonds or other revenue streams or related assets" could be a "project." What is your intent for this part of the definition?

- 14 1. A project as defined in s. 66.1103 (2) (k). ✓ *described*
- 15 2. A project as defined in s. 231. *(0326) (P)* ✓
- 16 3. An economic development project as defined in s. 234.01 (4n).
- 17 4. A housing project as defined in s. 234.01 (7). ✓
- 18 5. A project as that term is used in s. 234.03

1 (g) "Revenue" means all moneys and fees received from any source by a  
2 commission.

\*\*\*\*NOTE: Does this definition meet your intent? <sup>such</sup> The pre-drafted material included a very long list of possible revenue sources, but the answer to our questions about the definition indicates that something a lot simpler, as I've drafted here, would be sufficient and less confusing. This definition is based on s. 66.0621 (1) (c).

3 (2) ATTORNEY GENERAL REVIEW. Before an agreement may take effect, the  
4 proposed agreement shall be submitted to the attorney general who shall determine  
5 whether the agreement is in proper form and compatible with the laws of this state.  
6 The attorney general shall approve any agreement submitted under this subsection  
7 unless the attorney general finds that it does not meet the conditions set forth in this  
8 section and details in writing addressed to the concerned political subdivisions'  
9 governing bodies the specific respects in which the proposed agreement fails to meet  
10 the requirements of law. Failure to disapprove an agreement submitted under this  
11 subsection within 90 days of its submission constitutes approval. The attorney  
12 general, upon submission of an agreement, shall transmit a copy of the agreement  
13 to the governor who shall consult with any state department or agency affected by  
14 the agreement. The governor shall forward to the attorney general any comments  
15 the governor may have concerning the agreement.

\*\*\*\*NOTE: This subsection is based on s. 66.0303 (3) (a). If an approved contract is later amended, must the amended contract also go through AG review?  
*for the purpose of issuing conduit bonds, by entering into an agreement to do so*

16 (3) CREATION AND ORGANIZATION. (a) *for the purpose of issuing conduit bonds, by entering into an agreement to do so* A commission that is created as provided  
17 in this section is a unit of government, and a body corporate and politic, that is  
18 separate and distinct from, and independent of, the state and the political  
19 subdivisions which are parties to the agreement. *under s. 66.0301 (2) or 66.0303(2). A commission*

20 (b) A commission shall be governed by a board, the members of which shall be  
21 appointed under the terms of the agreement.

Two or more political subdivisions may create

\*\*\*\*NOTE: Consistent with your instructions, the bill contains no details on the make-up of the board. Do you want to specify that the members of the board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties?

~~(c) A commission may add or remove political subdivisions from the commission, consistent with the terms of its bylaws, except that a commission shall always consist of at least one political subdivision that is located in this state.~~

FNS  
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5-3  
5

(4) POWERS OF A COMMISSION. A commission has all of the powers necessary or convenient to carry out the purposes and provisions of this section. In addition to all other powers granted by this section, a commission may do any of the following:

(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) <sup>Acquire</sup> Buy, sell, lease as lessor or leasee, encumber, mortgage, hypothecate, pledge, assign, or transfer any property or interest in property that is located within or outside of this state.

March 4, 2009

\*\*\*\*NOTE: Is this paragraph consistent with your intent? It's based on your predrafted instructions, but on page 3 of your response to our questions (question 8, in particular), you said that "The commission will not own any property." This paragraph seems to be inconsistent with that statement. Also, what does "hypothecate" mean in this paragraph?

(d) Enter into contracts related to the issuance of bonds.

(e) Issue bonds, or refunding bonds, under sub. (5) to finance or refinance a project, including funding a reserve fund or capitalized interest, payment of costs of issuance, or credit enhancement, and enter into agreements related to the issuance of bonds, including liquidity and credit facilities, remarketing agreements, insurance policies, guaranty agreements, letter of credit or reimbursement agreements, indexing agreements, interest exchange agreements and currency exchange agreements.

\*\*\*\*NOTE: This par. is based on your predrafted sub. (3) (d), but that paragraph doesn't work. Referring to the defined term, "project" allowed us to avoid a lot of

repetitiousness. The statutory references seem misplaced. Sections 66.1103 (3) and 234.03 seem to be mostly a repetition of powers you'd like the commission to have, many of which seem inappropriate because the commission doesn't seem to be doing anything except serving as a vehicle through which a private entity may borrow money. And s. 231.03 (6) describes a type of project, so that reference was added to created sub. (1) above.

We also added "refunding bonds" here, instead of as a separate paragraph as suggested in your sub. (3) (q), which seemed unnecessarily detailed and repetitive of other authority.

LPS: replace with em-dash

\*\*\*\*NOTE: We also added the boilerplate language from s. 229.68 (8) of the statutes "enter into agreements related to . . . liquidity and credit facilities . . .", instead of using the language from your predrafted materials in your sub. (3) (s). Is this OK?

- 1 (f) Employ agents, employees, and special advisers as the commission finds
- 2 necessary and fix their compensation.

\*\*\*\*NOTE: This par. is based on your predrafted sub. (3) (e), but that paragraph seems too detailed, and may leave out some specific type of employee you'd like to include. Does this broad language, which is based on s. 234.03 (4) meet your intent?

- 3 (g) Accept gifts, loans, or other aid.

\*\*\*\*NOTE: This par. is based on your predrafted sub. (3) (f), but that paragraph seems too detailed Does this broad language, which is based on s. 234.03 (2) meet your intent?

and some of the others in your sub. (3)

\*\*\*\*NOTE: On a more substantive level, I don't understand the purpose of this paragraph. If the purpose of the bill is to allow a ~~public utility~~ <sup>commission</sup> to serve as a conduit to issue bonds to a private entity, and the ~~public utility~~ <sup>commission</sup> may not own property or do anything other than serve as a conduit, why would it need the authority specified in your sub. (3) (g)? Shouldn't there be some purpose specified for which a commission may accept gifts, loans, or other aid? See, for example s. 229.68 (16) of the statutes.

\*\*\*\*NOTE: It seems to me that ~~some of~~ <sup>the</sup> only powers the commission needs is the power to issue bonds and collect fees from the entity on whose behalf the bond is issued. See pars.(d), (e),(h),and (i) in this created subsection. Are we missing something here? We did not include some of your predrafted instructions (sub. (3) (g) to (j)) because they all seemed unnecessary as they are predicated on the commission owning property, which you've said it can't do. ~~Again, this ability to acquire and condemn property is inconsistent with other instructions which state a commission may not own property.~~

- 4 (h) Establish and collect fees related to the issuance of bonds ~~and apportion~~ <sup>from</sup>
- 5 ~~the fees received to~~ participants which benefit from the commission's services <sup>may not own property.</sup>

- 6 (i) Apportion to participants <sup>the</sup> administrative costs and any other expenses
- 7 incurred by the commission in the exercise of its authority <sup>and collect such costs and expenses from those participants to whom the costs and expenses were apportioned</sup>

\*\*\*\*NOTE: We have separated your sub. (3) (k) into pars. (h) and (i) for clarity. OK?

and apportion the fees collected to the participants who provide such services

1 (5) ISSUANCE OF BONDS. (a) A commission may not issue bonds unless the  
2 issuance is first authorized by a bond resolution. A bond issued under this section  
3 shall meet all of the following requirements:

\*\*\*\*NOTE: Do you want to add any specifics as to what information the resolution  
should contain? *520, for example 528, 229.41(3m), 229.48(4), 229.65(3),  
and 229.827(2)0*

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

6 2. The face of the bond shall include the statements required under sub. (9) (a)  
7 and (b). ✓

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

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

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

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

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

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

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

21 1. A provision providing a right to tender.

22 2. A provision allowing registration privileges.

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

SECTION 2

\*\*\*\*NOTE: Pars. (a) and (b) contain, so far as I can tell, all of the requested provisions in your predrafted sub. (14), save two. The two items in proposed sub. (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 predrafted subs. (13) and (10), respectively.~~ but are based on D. 229.831 and other similar provisions.

You may wish to review s. 67.06, stats., and consider whether additional material needs to be added.

1 (c) The commission may purchase any bond issued under this section. Subject  
2 to the terms of any agreement with the bondholders, the commission may hold,  
3 pledge, resell, or cancel any bond purchased under this ~~subsection.~~ paragraph

\*\*\*\*NOTE: This paragraph is based on your predrafted sub. (12). *Where would a commission get the money to purchase a bond, and why would it do so?*

4 (6) SALE OF BONDS. (a) The sale of bonds under this section shall be conducted  
5 as provided in the bond resolution. *e public*

6 (b) A sale may be public or private. Bonds may be sold at the price or prices, and  
7 upon the conditions, determined by the commission. The commission shall give due  
8 consideration to the recommendations of the participants in the project when  
9 determining the conditions of sale.

10 (c) Bonds that are sold under this section may be serial bonds or term bonds,  
11 or both.

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

\*\*\*\*NOTE: Similar provision in s. 67.08 (2). Are additional provisions necessary?  
Subsection (6) is based on your predrafted sub. (14) and (15).

14 (7) BOND SECURITY. The commission may secure bonds by a trust agreement or  
15 trust indenture by and between the commission and one or more corporate trustees.  
16 A bond resolution providing for the issuance of bonds so secured may mortgage,  
17 pledge, assign, or grant security interest in some or all of the revenues or property  
18 of the commission and may contain those provisions for protecting and enforcing the

*text: heat*  
*(d) The proceeds of a bond issued under this section may be used for a project in this state or any other state.*

1 rights and remedies of the bondholders that are reasonable and proper and not in  
2 violation of the law.

\*\*\*\*NOTE: This provision contains part of the material in your predrafted sub. (14) and is based on s. 229.49. Do you want to include the last sentence from s. 229.49?

Although this subsection is based on your instructions, it doesn't seem to make sense to include the language allowing a bond resolution to "mortgage, pledge, . . . the . . . property of the commission" because the commission is not allowed to own property.

3 (8) NO PERSONAL LIABILITY. <sup>(No B)</sup> No member of the commission is liable personally  
4 on the bonds or subject to any personal liability or accountability by reason of the  
5 issuance of the bonds, unless the personal liability or accountability is the result of  
6 willful misconduct.

\*\*\*\*NOTE: This subsection is based on s. 229.72 (6), stats. The final clause is not in your predrafted materials, but it is included in each similar provision in ch. 229. Is this OK?

7 (9) BONDS NOT PUBLIC DEBT. (a) The state and the political subdivisions who are  
8 parties to the agreement creating a commission under this section are not liable on  
9 bonds and the bonds are not a debt of the state or the political subdivisions  
10 contracting to create a commission under this section. All bonds shall contain a  
11 statement to this effect on the face of the bond. A bond issue does not, directly or  
12 indirectly or contingently, obligate the state or a political subdivision to levy any tax  
13 or make any appropriation for payment of the bonds.

14 (b) Nothing in this section authorizes a commission to create a debt of the state  
15 or the political subdivisions who are parties to the agreement creating a commission  
16 under this section, and all bonds issued by a commission are payable, and shall state  
17 on the face of the bond that they are payable, solely from the funds pledged for their  
18 payment in accordance with the bond resolution authorizing their issuance or in any  
19 trust indenture or mortgage or deed of trust executed as security for the bonds. The  
20 breach of any pledge, mortgage, obligation, or agreement undertaken by a

SECTION 2

1 commission does not impose pecuniary liability upon the state or any political  
2 subdivision or a charge upon its general credit or against its taxing power.

3 (c) Bonds issued by the commission may be secured only by the revenue of the  
4 commission, which may be derived from the project to be financed or refinanced by  
5 the bonds or otherwise from any contract entered into or investment made in  
6 connection with the bonds. *e 3*

\*\*\*\*NOTE: This paragraph relates to part of your predrafted sub. (13), and is based on s. 229.831 (b), but given our understanding that the commission is issuing bonds solely as a conduit and that the revenue stream is really coming from the revenues generated by the participant on whose behalf the commission is issuing the bonds, is this paragraph accurate?

Your March 4 <sup>52009A</sup> memo states that the obligations are "secured solely by commitments of private entities." If this is the case, par. (c) needs to be rewritten.

7 (10) AUDITS, FISCAL YEAR. (a) ~~A~~ <sup>the board of</sup> commission shall adopt a calendar year as its  
8 fiscal year for accounting purposes. The <sup>board</sup> ~~commission~~ shall annually prepare a budget  
9 for the ~~district~~ <sup>commission</sup>.

10 (b) A commission shall maintain an accounting system in accordance with  
11 generally accepted accounting principles and shall have its financial statements and  
12 debt covenants audited annually by an independent certified public accountant,  
13 except that the commission by a unanimous vote may decide to have an audit  
14 performed under this paragraph every 2 years.

15 (c) A copy of the budget and audit shall be sent to the governing body of each  
16 political subdivision which is a <sup>party to the agreement that created</sup> ~~participant in~~ the commission.

\*\*\*\*NOTE: Subsection (10) is based on ss. 229.57, 229.79, and 229.834 of the statutes. Does this meet your intent under the predrafted sub. (4)? Many items in your language don't seem to be necessary, or are already addressed in the bill. For example, the costs would be addressed under sub. (4) (i), above. I don't believe Wisconsin has a controller, so we did not include a provision based on your sub. (4) (f). ✓

1 (11) LIMITATIONS. (a) A commission may not issue bonds under this section if  
2 the proceeds are to be used for a capital improvement project unless the conditions  
3 specified in section 147 (f) of the Internal Revenue Code are met.

\*\*\*\*NOTE: This paragraph is based on your predrafted sub. (5), but it seems unnecessary. Because bonds issued under this section are private activity bonds, every provision of the IRC relating to PABs apply. What is your intent here? ✓

4

(b) If a commission issues bonds under this section for a project, as defined in  
5 s. 66.1103 (2) (k), the provisions of this section shall take precedence over the  
6 provisions of s. 66.1103 if there is any direct conflict between this section and s.  
7 66.1103.

\*\*\*\*NOTE: This paragraph is based on your predrafted sub. (6), as explained in your March 4, 2009, memo. Does it meet your intent? Are there any specific provisions in s. 66.1103 that you are concerned about? If so, please provide the cite and we can incorporate them into the next version of the bill.

8 (c) Any action brought to challenge the validity of the proposed issuance of a  
9 bond under this section, or the enforceability of a contract entered into under this  
10 section, must be commenced in circuit court within 30 days of the commission  
11 adopting a resolution authorizing the issuance of the bond or within 30 days of the  
12 commission signing the contract.

\*\*\*\*NOTE: This paragraph is based on the last few sentences of your predrafted sub. (6) and your response to a question about the provision in your 3/4/09 memo. The bulk of your sub. (6) language seemed somewhat contradictory, as we mentioned in our February 24, 2009, memo.

March 4, 2009

No B

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

4-star note →

\*\*\* NOTE: Should a provision similar to this one be drafted if the bill does end up allowing the parties to an agreement to change after bonds have been issued by a commission? Who would you want to make the pledge? The original signatories to the agreement?

SECTION 3

1 SECTION 3. 71.05 (1) (c) 9. of the statutes is created to read:

2 71.05 (1) (c) 9. A commission created under s. 66.0304.

3 SECTION 4. 71.26 (1m) (j) of the statutes is created to read:

4 71.26 (1m) (j) Those issued under s. 66.0304.

5 SECTION 5. 71.36 (1m) of the statutes is amended to read:

6 71.36 (1m) A tax-option corporation may deduct from its net income all  
7 amounts included in the Wisconsin adjusted gross income of its shareholders, the  
8 capital gain deduction under s. 71.05 (6) (b) 9. and all amounts not taxable to  
9 nonresident shareholders under ss. 71.04 (1) and (4) to (9) and 71.362. For purposes  
10 of this subsection, interest on federal obligations, obligations issued under s. 66.0304  
11 by a commission, obligations issued under s. 66.0621 by a local professional baseball park district, a local  
12 professional football stadium district, or a local cultural arts district, obligations  
13 issued under ss. 66.1201, 66.1333, and 66.1335, obligations issued under s. 234.65  
14 to fund an economic development loan to finance construction, renovation or  
15 development of property that would be exempt under s. 70.11 (36) and obligations  
16 issued under subch. II of ch. 229 is not included in shareholders' income. The  
17 proportionate share of the net loss of a tax-option corporation shall be attributed and  
18 made available to shareholders on a Wisconsin basis but subject to the limitation and  
19 carry-over rules as prescribed by section 1366 (d) of the Internal Revenue Code. Net  
20 operating losses of the corporation to the extent attributed or made available to a  
21 shareholder may not be used by the corporation for further tax benefit. For purposes  
22 of computing the Wisconsin adjusted gross income of shareholders, tax-option items  
23 shall be reported by the shareholders and those tax-option items, including capital  
24 gains and losses, shall retain the character they would have if attributed to the  
25 corporation, including their character as business income. In computing the tax

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← PLAIN score

1 liability of a shareholder, no credit against gross tax that would be available to the  
2 tax-option corporation if it were a nontax-option corporation may be claimed.

3 History: 1987 a. 312; 1995 a. 27, 56; 1999 a. 65; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 38.

3 SECTION 6. 71.45 (1t) (j) of the statutes is created to read: X

4 71.45 (1t) (j) Those issued under s. 66.0304. ✓

5 SECTION 7. Initial applicability.

6 (1) The treatment of sections 71.05 (1) (c) 9., 71.26 (1m) (j), 71.36 (1m), and ✓  
7 71.45 (1t) (j) of the statutes first applies to taxable years beginning on January 1 of ✓  
8 the year in which this subsection takes effect, except that if this subsection takes ✓  
9 effect after July 31, the treatment of sections 71.05 (1) (c) 9., 71.26 (1m) (j), 71.36 (1m),  
10 and 71.45 (1t) (j) of the statutes first applies to taxable years beginning on January  
11 1 of the year following the year in which this subsection takes effect.

12 (END)

A NOTE  
↓

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1957/P1insMES  
MES&EVM.....

INS 5-3

(c) If authorized by the original agreement and by the bylaws of the commission, the political subdivisions which created a commission may vote to allow another political subdivision to become a party to the agreement, or may vote to allow a political subdivision that is a party to the agreement to withdraw from coverage by the agreement. To be valid, at least one party to an agreement shall be a political subdivision that is located in this state. ✓

\*\*\*\*NOTE: Your instructions state that the commission membership may change, and different political subdivisions may join or remove themselves from the commission. Given that the commission is supposed to be completely separate from, and independent of, the political subdivisions that create it, I'm not sure how this is supposed to work exactly. Paragraph (c) allows a new political subdivision to become a party to the agreement, and an existing political subdivision may withdraw, but I don't know what effect this would have on commission. Would membership change? Would it increase? If the bylaws don't address this situation, I'm not sure what the result would be for changes to the agreement.

\*\*\*\*NOTE: What is your intent with regard to changing the parties to the agreement, and how do you want it to affect the commission which is, again, independent?

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1957/?dn  
MES&EVM:.....

Senator Kreitlow:

In this draft we have substantially rearranged the predrafted language into what we believe is a more useful structure. Generally, we have compared the predrafted language with similar provisions in chs. 67 and 229, stats., and attempted to follow the structure of the existing statutes. In making these comparisons, we noted that there are significant differences between the structure of this bonding authority and other similar statutory bonding authorities. In many instances, it appears that somewhat less detail is included in this draft than is included in the comparison provisions. You may wish to compare the more comprehensive provisions in chs. 67 and 229, stats., especially regarding bond resolution, ~~and~~ registration requirements, ~~both~~ format requirements, referendum requirements, and sales requirements, ss. 67.05 (1), 67.06, 67.08, and 67.09, ~~respectively~~ *and compare these statutes* with the drafted language.

\*

*See, for example*

In addition, several issues which may be of some importance are not addressed in the predrafted language. It is not clear to us whether all of the omissions were by choice.

~~In particular, several potentially important issues not addressed by the predrafted language, including the following:~~

- (1) Can a commission be dissolved? There is no provision similar to ss. 229.477, 229.71, 229.828, or 229.846. *847*
- (2) What is the effect of any defect in the bond issuance procedure?
- (3) Do you believe that there should be any limitation on the amount of total bond issuances? See, for example, ss. 229.50 (1) (c) and 229.74 (1) (c).
- (4) Do you believe a bond registration provision is needed? See, for example, ss. 67.09 and 229.48 (4).
- (5) Is a provision ~~relating to~~ providing standards for ~~variable~~ interest rates needed? See s. ~~229.48 (4)~~ *67.15*
- (6) There was no provision for liability for misconduct by an official. We have included such a provision in created s. 66.0304 (8), which is based on ss. 229.48 (6), 229.72 (6), and 229.829 (3). Is this OK?
- (7) Do you believe that a negotiability statement is needed? See, for example, ss. 229.72 (1m) and 229.829 (1).

*Please note*

(8) Do you believe that there needs to be any limits or specificity relating to the sort of out-of-state municipalities that may join?

As we've indicated, most of these issues are addressed in the general municipal bonding statute in ch. 67, and in the bonding authority granted to special purpose districts in ch. 229. You may wish to review these chapters to determine whether additional statutory treatment is necessary.

Please note that the draft contains several embedded notes. Some of these notes indicate which statutory provisions we consulted in drafting individual provisions, and others raise substantive questions, explain why the language is different from what was submitted, or explain why a particular provision in the predrafted materials was left out of this draft.

As you will see, a number of provisions, such as your s. 66.0318 (3) (g) to (j), (L), (m), and (o) were left out of this draft. This is because the provisions seemed to relate to an authority we believe you don't want the commission to possess, such as the right to own property, or the responsibility to pay interest or principal. We did not include your provision s. 66.0318 (16), requiring the liberal interpretation of the statute, because we don't believe it has any legal effect.

Let us know if you believe we have omitted material of substantive importance or inserted unwanted material. Please let us know if you would like any changes.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1957/P1dn  
MES&EVM:cjs:ph

April 6, 2009

Senator Kreitlow:

In this draft we have substantially rearranged the predrafted language into what we believe is a more useful structure. Generally, we have compared the predrafted language with similar provisions in chs. 67 and 229, stats., and attempted to follow the structure of the existing statutes. In making these comparisons, we noted that there are significant differences between the structure of this bonding authority and other similar statutory bonding authorities. In many instances, it appears that somewhat less detail is included in this draft than is included in the comparison provisions. You may wish to compare the more comprehensive provisions in chs. 67 and 229, stats., especially regarding bond resolutions, registration requirements, format requirements, referendum requirements, and sales requirements. See, for example, ss. 67.05 (1), 67.06, 67.08, and 67.09, and compare these statutes with the drafted language.

In addition, several issues which may be of some importance are not addressed in the predrafted language. It is not clear to us whether all of the omissions were by choice. In particular, please note the following:

- (1) Can a commission be dissolved? There is no provision similar to ss. 229.477, 229.71, 229.828, or 229.847.
- (2) What is the effect of any defect in the bond issuance procedure?
- (3) Do you believe that there should be any limitation on the amount of total bond issuances? See, for example, ss. 229.50 (1) (c) and 229.74 (1) (c).
- (4) Do you believe a bond registration provision is needed? See, for example, ss. 67.09 and 229.48 (4).
- (5) Is a provision providing standards for variable interest rates needed? See s. 67.15.
- (6) There was no provision for liability for misconduct by an official. We have included such a provision in created s. 66.0304 (8), which is based on ss. 229.48 (6), 229.72 (6), and 229.829 (3). Is this OK?
- (7) Do you believe that a negotiability statement is needed? See, for example, ss. 229.72 (1m) and 229.829 (1).

(8) Do you believe that there needs to be any limits or specificity relating to the sort of out-of-state municipalities that may join?

As we've indicated, most of these issues are addressed in the general municipal bonding statute in ch. 67, and in the bonding authority granted to special purpose districts in ch. 229. You may wish to review these chapters to determine whether additional statutory treatment is necessary.

Please note that the draft contains several embedded notes. Some of these notes indicate which statutory provisions we consulted in drafting individual provisions, and others raise substantive questions, explain why the language is different from what was submitted, or explain why a particular provision in the predrafted materials was left out of this draft.

As you will see, a number of provisions, such as your s. 66.0318 (3) (g) to (j), (L), (m), and (o) were left out of this draft. This is because the provisions seemed to relate to an authority we believe you don't want the commission to possess, such as the right to own property, or the responsibility to pay interest or principal. We did not include your provision s. 66.0318 (16), requiring the liberal interpretation of the statute, because we don't believe it has any legal effect.

Let us know if you believe we have omitted material of substantive importance or inserted unwanted material. Please let us know if you would like any changes.

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

requester's mark-up - - (for P2)  
notes and new instructions are  
from meeting in Sen Kreitlow's  
office w/ Andrew Phillips

1 AN ACT **to amend** 32.02 (1) and 71.36 (1m); and **to create** 66.0304, 71.05 (1) (c) 9.,  
2 71.26 (1m) (j) and 71.45 (it) (j) of the statutes; **relating to:** authorizing two or  
3 more cities, villages, towns, or counties, **district or other local agency** of a  
4 ~~combination of such political subdivisions~~, to create a commission to issue  
5 conduit revenue bonds and exercise eminent domain authority and exempting  
6 from taxation interest on such bonds.

[See comment below under definition of local agency, on intent to cover more than political subdivisions.]

**Analysis by the Legislative Reference Bureau**

To be provided in a future draft.

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

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

7 **SECTION I.** 32.02 (1) of the statutes is amended to read:  
8 32.02 (1) Any county, town, village, city, including villages and cities  
9 incorporated under general or special acts, school district, the department of health

*J.P.S. must have police, taxing or condemn/autl of local agency more ltd now - intent?*

1 services, the department of corrections, the board of regents of the University of  
2 Wisconsin System, the building commission, a commission created by contract under  
3 s. 66.0301, with the approval of the municipality in which condemnation is proposed,  
4 a commission created by contract under s. 66.0303 that is acting under s. 66.0304.  
5 **provided the condemnation occurs within the geographic boundaries of entities**  
6 **in this state that are members of the commission, with the approval of the**  
7 municipality in this state in which the condemnation is proposed, or any public board  
8 or commission, for any lawful purpose, but in the case of city and village boards or  
9 commissions approval of that action is required to be granted by the governing body.  
10 A mosquito control commission, created under s. 59.70 (12), and a local professional  
11 football stadium district board, created under subch. IV of ch. 229, may not acquire  
12 property by condemnation.

\*\*\*\*NOTE: The instructions from your predrafted materials indicated that an out-of-state municipality, which is one of the members of a commission created under s. 66.0303 and operating under s. 66.0304, may use the authority under s. 32.02 (1), as amended by your draft, to exercise eminent domain within that municipality that is located in another state. Was that your intent? If so, it would not be legal. There is no authority under Wisconsin law to extend eminent domain authority to a municipality that is located in another state even if that municipality is part of a commission created under s. 66.0303. Consequently, the amendment of this subsection is limited to a municipality (the term used in ch. 32) that is located in this state.

In addition, please be aware that the authority to condemn property under this subsection is limited to blighted property if the condemnor intends to convey or lease the property to a private entity. See s. 32.03 (6) (b) of the statutes.

*[Good point that Wisconsin law cannot grant power of condemnation over property in other states. The purpose of this provision is to grant the commission sufficient condemnation power to be characterized a particular way for federal tax purposes with respect to issuing tax exempt bonds. To achieve this goal that power cannot be subject to approval of a separate entity but can be limited to property located within entities that are members of the commission and are in Wisconsin. It is important for federal tax purposes that the commission has the power, but it is unlikely that it would use it as a practical matter.]*

*sep. from what?*

*Not what we said  
? cite?*

13 **SECTION 2.** 66.0304 of the statutes is created to read:  
14 **66.0304 Conduit revenue bonds. (1) DEFINITIONS.** In this section:

*under this section*

*Not needed - see def of "Comm", p. 3, l. 5 of Bill*

1 (a) "Agreement" means a contract entered into pursuant to ss. 66.0301 (2)  
2 or 66.0303 (2) by the political subdivisions which form a commission pursuant to s.  
3 66.0304 (3). The contract may be amended by the parties according to the terms of the  
4 contract, and parties may be added to the contract or permitted to withdraw (so long as  
5 there is no less than two and at least one from within this state) according to the terms of  
6 the contract.

*covered on p. 5, ll 7-12 of B:4*  
*is an agreement*

7 (b) "Bond" means any bond, note or other obligation of a commission issued under  
8 this section, including any refunding bond or certificate of participation or lease-purchase  
9 agreement, to which all of the following apply:

- 10 1. The bond, note, or other obligation is a private activity bond as defined in  
11 section 141 of the Internal Revenue Code.
- 12 2. The proceeds of the issue are used by a private entity for the acquisition,  
13 construction, or rehabilitation of a project.

\*\*\*\*NOTE: What is your intent in using the terms "certificate of participation" and "lease-purchase agreement?" The former does not appear in the statutes, and the latter does not appear in the statutes in the context of bonds, so I'm not sure what legal effect these terms have in par. (b) (intro.).

*(2)*

*[The program is not limited to private activity bonds but also contemplates financings for public entities. Certificate of participation is a receipt for interests in a lease obligation and lease obligations are sometimes used in lieu of bonds in vendor equipment leases and some other types of financings.]*

*Keep pol subd - or similar entities in "pol subd" - don't you mean "pol subd"?*

14 (c) "Commission" means an entity created by two or more local agencies  
15 pursuant to an agreement under this section political subdivisions, under s.  
16 66.0301 (2), or a group of political subdivisions who contract with each other under s.  
17 66.0303 (2), for the purpose of issuing conduit bonds under this section.

\*\*\*\*NOTE: Is this definition consistent with your intent? Some of the materials you submitted specified that a commission must be made up of 2 political subdivisions from this state and 2 from another state, but your "predrafted" instructions did not contain guidance on this issue.

*Concept of "membership" 2,*

There may be a bigger problem here. Section 66.0303 doesn't really authorize the creation of a commission. It just authorizes municipalities to act jointly. Does this

definition meet your intent?

[Note that some of the references formerly in the definition of "Commission" have been moved to the definition of "Agreement," to which has been also added reference to 66.0304 (3), which does authorize creation of a commission as a separate entity]

1 (d) "Local agency" "Political subdivision" means any city, village, town, or  
2 county, district, authority, agency, commission or other public entity in this state  
3 or another state, or another similar public entity local unit of government in another  
4 state.

[Note that "local agency" is used instead of "political subdivision" because the intent is to cover a broader range of public entities than just political subdivisions]

[Note: These public entities will be the entities accessing the conduit issuer and not forming the joint powers agreement]

5 (e) "Participant" means any public or private entity, including federally  
6 recognized Indian tribes and bands, that contracts with a commission for the purpose  
7 of financing or refinancing a project that is owned, sponsored, or controlled by the  
8 public or private entity.

9 "Project" means any capital improvement, investment or program of  
10 investment, purchase of receivables, property, assets, commodities, bonds or other  
11 revenue streams or related assets, **working capital program** or liability or other  
12 insurance program, located within or outside of this state, and a project may  
13 include, ~~but is not limited to~~, any of the following:

\*\*\*\*NOTE: This definition is based on your instructions, but I don't understand how "bonds or other revenue streams or related assets" could be a "project." What is your intent for this part of the definition?

[It is intended that programs, like the pension programs or workers compensation insurance programs be covered in "project." It is not necessary to refer to the types of projects listed in 1, 2, 3 and 4 below, but if referred to, should be with clarification that "project" is not limited to those specific types; they are just some examples]

- 14 1. A project as defined in s. 66.1103 (2) (k).
- 15 2. A project described in s. 231.03 (6).

LGA are def in 66.0131 (1)(b) but don't you want "pd. subd." to remain as def term of the term on 1.3.15

Your def of "comm" = local A? Don't "participants" access the conduit issuer?

add: 9 with participants

? PABs, public agencies may use for working capital = PABs or ant. notes geared toward other states

In what regard would a pension program or workers comp be involved in a Conduit Bond? financing of pension obligations at lower int rates workers comp for other states

3. An economic development project as defined in s. 234.01 (4n).

4. A housing project as defined in s. 234.01 (7).

(g) "Revenue" means ~~income and receipts of the commission from a bond purchase agreement or other assets acquired by the commission, loans, sale agreements, and other 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.~~ all moneys and fees received from any source by a commission.

\*\*\*\*NOTE: Does this definition meet your intent? The pre-drafted material included a very long list of possible revenue sources, but the answer to our questions about the definition indicates that something a lot simpler, such as I've drafted here, would be sufficient and less confusing. This definition is based on s. 66.0621 (1) (c).

[This is probably correct. The shorter version could probably work. However, the market seems to prefer more specificity when it comes to the security for bonds, so we recommend the longer version.]

stet

But see -  
A. 66.0621(1)(c)  
Also - dd leave something  
art of longer specific def.  
short & general > long  
&  
specific

(2) ATTORNEY GENERAL REVIEW. Before an agreement may take effect, the proposed agreement shall be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted under this subsection 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 political subdivisions' governing bodies the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted under this subsection within 90 days of its submission constitutes approval. The attorney general, upon submission of an agreement, shall transmit a copy of the agreement to the governor who shall consult with any state department or agency affected by the

1 agreement. The governor shall forward to the attorney general any comments the  
 2 governor may have concerning the agreement. **No approval is required for**  
 3 **amendments to the agreement or for additions of parties to or withdrawals of**  
 4 **parties from the agreement unless required by terms of the agreement. A**  
 5 **commission cannot be dissolved without approval of the attorney general, or**  
 6 **failure to disapprove within 90 days of submission of the proposed dissolution,**  
 7 **or while any bonds or other obligations remain outstanding and unpaid or**  
 8 **payment not duly provided for.**

\*\*\*\*NOTE: This subsection is based on s. 66.0303 (3) (a). If an approved contract is later amended, must the amended contract also go through AG review?

*2, Pol. subd.*

9 **(3) CREATION AND ORGANIZATION.** (a) Two or more **local agencies** political  
 10 subdivisions may create a commission for the purpose of issuing conduit bonds and  
 11 ~~exercising the other powers set forth in this s. 66.0304~~, by entering into an  
 12 agreement to do so under s. 66.0301 (2) or 66.0303 (2). A commission that is created  
 13 as provided in this section is a unit of government, and a body corporate and politic,  
 14 that is separate and distinct from, and independent of, the state and the **local**  
 15 **agencies** political subdivisions which are parties to the agreement.

*See Attached 2  
Art. (4) (intro.)*

*under this code, or 2, under D.66.0301 / 0303 2,*

16 (b) A commission shall be governed by a board, the members of which shall  
 17 be appointed under the terms of the agreement. **Members of the board may be**  
 18 **reimbursed for actual and necessary expenses incurred in the performance of**  
 19 **their duties to the extent provided in the agreement or by-laws of the**  
 20 **commission.**

\*\*\*NOTE: Consistent with your instructions, the bill contains no details on the make-up of the board. Do you want to specify that the members of the board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties?

1 ~~(e) If authorized by the original agreement and by the bylaws of the~~  
 2 ~~commission, the political subdivisions which created a commission may vote to allow~~  
 3 ~~another political subdivision to become a party to the agreement, or may vote to allow~~  
 4 ~~a political subdivision that is a party to the agreement to withdraw from coverage by~~  
 5 ~~the agreement. To be valid, at least one party to an agreement shall be a political~~  
 6 ~~subdivision that is located in this state.~~

*stat*

\*\*\*\*NOTE: Your instructions state that the commission membership may change, and different political subdivisions may join or remove themselves from the commission. Given that the commission is supposed to be completely separate from, and independent of, the political subdivisions that create it, I'm not sure how this is supposed to work exactly. Paragraph (c) allows a new political subdivision to become a party to the agreement, and an existing political subdivision may withdraw, but I don't know what effect this would have on commission. Would membership change? Would it increase? If the bylaws don't address this situation, I'm not sure what the result would be for changes to the agreement.

\*\*\*\*NOTE: What is your intent with regard to changing the parties to the agreement, and how do you want it to affect the commission which is, again, independent?

*[See definition of "Agreement." It is intended that the terms of the agreement govern additions and withdrawals. If the number of parties grows significantly, as has occurred in some similar entities, votes by all parties become impractical.]*

*∴ how do you guard against this?*

*It better to keep this here & not add subst. prov. to do*

7 **(4) POWERS OF A COMMISSION.** A commission has all of the powers necessary or  
 8 convenient to carry out the purposes and provisions of this section. In addition to all  
 9 other powers granted by this section, a commission may do any of the following:

- 10 (a) Adopt bylaws for the regulation of its affairs and the conduct of its business.
- 11 (b) Sue and be sued in its own name, plead and be impleaded.
- 12 (c) Acquire, buy, sell, lease as lessor or leasee, encumber, mortgage, hypothecate,  
 13 pledge, assign, or transfer any property or interest in property, ~~real or personal~~, that is located  
 14 within or outside of this state.

*[Handwritten signature and question mark]*

\*\*\*\*NOTE: Is this paragraph consistent with your intent? It's based on your predrafted instructions, but on page 3 of your March 4, 2009, response to our questions (question 8, in particular), you said that "The commission will not own any property." This paragraph seems to be inconsistent with that statement. Also, what does

"hypothecate" mean in this paragraph?

[The commission may own property, even if just bear legal title, but in some cases more, and may buy, sell, lease or mortgage that property. "Hypothecate" is roughly the same as "pledge".]

*2. This will check*  
*singular = plural*

- 1 (d) Enter into contracts related to the issuance of bonds.
- 2 (e) Issue bonds, or refunding bonds, ~~under sub. (5)~~ to finance or refinance
- 3 ~~one or more~~ a projects, including funding a reserve fund or capitalized interest,
- 4 payment of costs of issuance **and other costs related to the financing or**
- 5 **refinancing**, or credit enhancement, and enter into agreements related to the issuance of
- 6 bonds, including liquidity and credit facilities, remarketing agreements, **tender agent**
- 7 **agreements, dealer agreements**, insurance policies, guaranty agreements, letter of credit or
- 8 reimbursement agreements, indexing agreements, interest rate swap agreements, and currency
- 9 swap agreements, commodity swap agreements and other similar hedge or futures
- 10 contracts, in each case with whatever payment, interest rate, currency, security, default,
- 11 remedy and other terms and conditions as the commission determines to be necessary or
- 12 appropriate.

\*\*\*\*NOTE: This par. is based on your predrafted sub. (3) (d), but that paragraph doesn't work. Referring to the defined term, "project" allowed us to avoid a lot of repetitiousness. The statutory references seem misplaced. Sections 66.1103 (3) and 234.03 seem to be mostly a repetition of powers you'd like the commission to have, many of which seem inappropriate because the commission doesn't seem to be doing anything except serving as a vehicle through which a private entity may borrow money. And s. 231.03 (6) describes a type of project, so that reference was added to created sub. (1) (f) above.

We also added "refunding bonds" here, instead of as a separate paragraph as suggested in your sub. (3) (q), which seemed unnecessarily detailed and repetitive of other authority.

\*\*\*\*NOTE: We also added the boilerplate language from s. 229.68 (8) of the statutes — "enter into agreements related to ... liquidity and credit facilities ...", instead of using the language from your predrafted materials in your sub. (3) (s). Is this OK?

- 13 (f) Employ or ~~appoint~~ ~~underwriters, bond counsel, financial or program~~
- 14 ~~consultants, and such other~~ agents, employees, ~~attorneys, experts~~ and special

*- See Note - be general & avoid details*

OHS West:260648487.2

*Keep general*  
*2*  
*What is the legal status?*  
*1*  
*3rd party*  
*K person*

1 advisers as the commission finds necessary or desirable and ~~fix~~ provide for their  
2 compensation.

\*\*\*\*NOTE: This par. is based on your predrafted sub. (3) (e), but that paragraph seems too detailed, and may leave out some specific type of employee you'd like to include. Does this broad language, which is based on s. 234.03 (4) meet your intent?

[We recommend specificity in addition to the general language in order to avoid any uncertainty.]

3 (g) Accept gifts, loans, or other aid.

\*\*\*\*NOTE: This par. is based on your predrafted sub. (3) (f), but that paragraph seems too detailed. Does this broad language, which is based on s. 234.03 (2) meet your intent?

\*\*\*\*NOTE: On a more substantive level, I don't understand the purpose of this paragraph and some of the others in your sub. (3). If the purpose of the bill is to allow a commission to serve as a conduit to issue bonds to a private entity, and the commission may not own property or do anything other than serve as a conduit, why would it need the authority specified in your sub. (3) (f)? Shouldn't there be some purpose specified for which a commission may accept gifts, loans, or other aid? See, for example s. 229.68 (16) of the statutes.

\*\*\*\*NOTE: It seems to me that the only power the commission needs is the power to issue bonds and collect fees from the entity on whose behalf the bond is issued. See pars. (d), (e), (h), and (i) in this created subsection. Are we missing something here? We did not include some of your predrafted instructions (sub. (3) (g) to (j)) because they all seemed unnecessary as they are predicated on the commission owning property, which you've said it can't do. Again, this ability to acquire and condemn property is inconsistent with other instructions which state a commission may not own property.

[The enumeration of powers is critical to the function of the commission as a conduit financing vehicle, in which capacity it may be lending, buying or selling or leasing or mortgaging property, investing, contracting, etc., etc. For this reason we have reinstated items (i) through (r) below.]

4 ~~(h) Establish and collect fees related to the issuance of bonds from~~  
5 ~~participants which benefit from the commission's services, and apportion the fees~~  
6 ~~collected to the participants who provide such services.~~

7 (h) ~~Establish, charge and apportion to participants fees for the benefit of~~  
8 ~~from the commission's services and for the administrative costs and any other expenses~~  
9 ~~incurred by the commission in the exercise of its authority, and collect such fees,~~  
10 ~~costs and expenses from those participants to whom the costs and expenses were~~  
11 ~~apportioned.~~

*being specific adds uncertainty - are those not specified ineligible?*

*Est. & collect fees from participants who*

*Does comm keep fees? Distribute to members of comm?*

*clarify that fees may not be collected from participants - i.e. app. fee fees are paid to member of comm that provides the service Also may need to pay outside admin costs*

*Keep, but  
clean up,  
remove  
archaic words*

1 [i] Make secured or unsecured loans to, or lease property from or to, or  
2 enter into a purchase or sale agreement or any other kind of financing  
3 agreement with, any one or more participants in connection with the financing  
4 or refinancing of projects.

5 [j] Mortgage all or any portion of its interest in projects and the  
6 property on or facilities in which any project is located, whether owned or  
7 thereafter acquired, including the granting of a security interest in any property,  
8 tangible or intangible.

9 [k] Assign or pledge all or any portion of its interests in mortgages,  
10 deeds of trust, indentures of mortgage or trust, leases, purchase or sale  
11 agreements or other financing agreements, or similar instruments, notes, and  
12 security interests in property, tangible or intangible, of a participant, or  
13 contracts entered into in connection with bonds, and the revenues therefrom,  
14 including payment or income from any interest owned or held by the  
15 commission.

16 [l] Issue, obtain, or aid in obtaining, from any department or agency of  
17 the United States or of any state, or any private company, any insurance or  
18 guarantee to, or for, the payment or repayment of interest or principal, or both,  
19 or any part thereof, on any loan, lease, bond or obligation or any instrument  
20 evidencing or securing the same or related contract, made or entered into  
21 pursuant to this section.

*it may  
- issue insurance?!*

22 [m] Apply on its own behalf or on behalf of a participant to any  
23 department or agency of the United State, or of any state or political subdivision  
24 thereof, for an allocation of volume cap, tax credit, subsidy, grant, loan, credit

1 enhancement or any other federal, state or local program in connection with the  
2 financing or refinancing of a project.

3 [n] Invest any bond proceeds or any moneys held for payment or  
4 security of the bonds or any contract entered into pursuant to this section in  
5 any securities or obligations permitted by the resolution, trust agreement,  
6 indenture or other agreement providing for issuance of the bonds or the  
7 contract.

8 [o] At the request of participants, combine and pledge revenues of  
9 multiple projects for repayment of one or more series of bonds issued pursuant  
10 to this section.

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

20 [q] Purchase, with the proceeds of its bonds or its revenue, bonds  
21 issued by or on behalf of or held by any participant at public or negotiated sale.  
22 Bonds purchased pursuant to this paragraph may be held by the authority or  
23 sold to public or private purchasers at public or negotiated sale, in whole or in  
24 part, separately or together with other bonds issued by the commission.

*check the  
Mayor  
able to  
commit*

*2. All  
par.(e) 2  
Also, too broad -  
No connection to a  
Project*

*2.) too broad -  
buying bonds issued  
by a participant of  
a project*

*Commission*

1 [r] Enter into any agreement or contract, execute any instrument, and  
2 perform any act or thing necessary, convenient, or desirable to carry out any  
3 power authorized by this section.  
4

*all  
sub. (4) (intro.)*

\*\*\*\*NOTE: We have separated your sub. (3) (k) into pars. (h) and (i) for clarity. OK?

5 (5) ISSUANCE OF BONDS. (a) A commission may not issue bonds unless the  
6 issuance is first authorized by a bond resolution. A bond issued under this section  
7 shall meet all of the following requirements:

*Keep  
"shall" &  
"may" sep.*

\*\*\*\*NOTE: Do you want to add any specifics as to what information the resolution should contain? See, for example, ss. 229.41 (3m), 229.48 (4), 229.65 (3), and 229.821 (2).

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

10 2. The face of the bond shall include the statements required under sub. (9)  
11 ~~(a) and (b)~~.

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

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

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

18 6. The bond shall ~~shall~~ **may** be subject to early mandatory or optional  
19 redemption or purchase in lieu of redemption **or tender**, as provided in the resolution.

*move subd. 6  
to another "may"  
paragraph*

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

*if it's in the  
resolution, it's  
"shall"*

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

3 9. Bonds shall be registered as provided in the resolution.

4 10. The bonds shall be in the form and executed in the manner provided  
5 in the resolution.

6 11. Any bond issued under this section shall constitute a negotiable  
7 instrument.

8 (b) A bond resolution may authorize a trust agreement or indenture containing the  
9 foregoing terms and any other terms, conditions and covenants that the commission  
10 determines to be necessary or appropriate.

*CR: new  
par. of (a), (b), &  
(b) -- a bond  
reso. shall  
contain  
} need?*

11 A bond issued under this section may include any of the following:

- 12 1. ~~A provision providing a right to tender.~~
- 13 2. ~~A provision allowing registration privileges.~~
- 14 3. ~~Any other statement of fact not in conflict with the resolution~~



*- we had par. (a) -> "shall"  
par. (b) -> "may"*

(\*\*\*\*NOTE: Pars. (a) and (b) contain, so far as I can tell, all of the requested provisions in your predrafted sub. (14), save two. The two items in proposed sub. (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) but are based on s. 229.831 and other similar provisions.

You may wish to review s. 67.06, stats., and consider whether additional material needs to be added.

[The "form provided" refers to the form of the bonds themselves and "executed in the manner" refers to who signs the bonds and whether by manual or facsimile signature.]

15 (c) The commission may purchase any bond issued under this section. Subject to the  
16 terms of any agreement with the bondholders, the commission may hold, pledge, resell, or cancel  
17 any bond purchased under this paragraph. Such purchases will not effect an extinguishment  
18 of the bonds unless the commission cancels the bonds or otherwise certifies its intention  
19 that they be extinguished.

\*\*\*\*NOTE: This paragraph is based on your predrafted sub. (12). Where would a commission get the money to purchase a bond, and why would it do so?

**[The commission may purchase bonds with refunding bond proceeds pursuant to a tender offer, moneys in a redemption fund in advance of the redemption, or moneys advanced by a participant.]**

1 (d) The proceeds of a bond issued under this section may be used for a project  
2 in this state or any other state.

3 **(6) SALE OF BONDS.** (a) The sale of bonds under this section shall be conducted  
4 as provided in the bond resolution.

5 (b) A sale may be public or private. Bonds may be sold at the price or  
6 prices, and upon the conditions, determined by the commission. The commission  
7 shall give due consideration to the recommendations of the participants in the project  
8 when determining the conditions of sale.

9 (c) Bonds that are sold under this section may be serial bonds or term  
10 bonds, or both.

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

\*\*\*\*NOTE: Similar provision in s. 67.08 (2). Are additional provisions necessary?  
Subsection (6) is based on your predrafted sub. (14) and (15).

13 **(7) BOND SECURITY. (a)** The commission may secure bonds by a trust agreement  
14 or ~~trust~~ indenture by and between the commission and one or more corporate trustees  
15 **within or without this state.** A bond resolution, **trust agreement or indenture**  
16 **may contain provisions for pledging properties, revenues and other collateral,**  
17 **holding and disbursing funds, protecting and enforcing the rights and remedies**  
18 **of bondholders, restricting individual right of action by bondholders,**  
19 **amendments, and any other provisions the commission determines to be**  
20 **reasonable and proper for the security of the bondholders or contracts entered**

*two specific,*

1 **into pursuant to this section in connection with the bonds.** ~~providing for the~~  
2 ~~issuance of bonds so secured may mortgage, pledge, assign, or grant security interest~~  
3 ~~in some or all of the revenues or property of the commission and may contain these~~  
4 ~~provisions for protecting and enforcing the rights and remedies of the bondholders~~  
5 ~~that are reasonable and proper and not in violation of the law.~~

\*\*\*\*NOTE: This provision contains part of the material in your predrafted sub. (14) and is based on s. 229.49. Do you want to include the last sentence from s. 229.49?

Although this subsection is based on your instructions, it doesn't seem to make sense to include the language allowing a bond resolution to "mortgage, pledge, . . . the . . . property of the commission" because the commission is not allowed to own property.

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

*"a K is binding?"*

20 **(8) NO PERSONAL LIABILITY. (a) No member of the commission is liable personally**  
21 **on the bonds or subject to any personal liability or accountability by reason of the**

1 issuance of the bonds, unless the personal liability or accountability is the result of willful  
2 misconduct.

\*\*\*\*NOTE: This subsection is based on s. 229.72 (6), stats. The final clause is not in your  
predrafted materials, but it is included in each similar provision in ch. 229. Is this Okay?

Remove par. (b) --  
they'll see if there  
are specific taxes  
for which an  
exemption  
be OK

Not needed

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

to  
broad  
Grace  
Ep 3/24/11

None of  
this shld  
be under  
sub (b),  
UNLESS: liability

12 (9) BONDS NOT PUBLIC DEBT. (a) Except as otherwise expressly provided  
13 by the commission, each issue of its bonds shall be limited obligations of the  
14 commission payable solely out of amounts received by the commission from  
15 revenues derived from the project to be financed or refinanced by the bonds or  
16 otherwise from any contract entered into or investment made in connection  
17 with the bonds and pledged to the payment of the bonds. The state and the  
18 political subdivisions local agencies who are parties to the agreement creating a  
19 commission under this section are not liable on bonds or other contract entered  
20 into under this section, nor are they liable in contract or tort for any actions or  
21 omissions of the commission.

like where?  
in the bond resolution  
in sub. \_\_\_\_\_

22 (b) The bonds are not a debt or a liability of the state or of any local  
23 agency other than the commission to the extent set forth in the bonds the

1 ~~political subdivisions contracting to create a commission under this section.~~ A bond  
2 issue does not, directly or indirectly or contingently, obligate the state or a political  
3 subdivision to levy any tax or make any appropriation for payment of the bonds. All  
4 bonds shall contain a statement to this effect on the face of the bond **and to the**  
5 **effect**

6 ~~(b) Nothing in this section authorizes a commission to create a debt of the~~  
7 ~~state or the political subdivisions who are parties to the agreement creating a~~  
8 ~~commission under this section, and all bonds issued by a commission are payable,~~  
9 ~~and shall state on the face of the bond that they are payable, solely from the funds~~  
10 ~~pledged for their payment in accordance with the bond resolution or other document~~  
11 **providing for** authorizing their issuance. ~~or in any trust indenture or mortgage or~~  
12 ~~deed of trust executed as security for the bonds. The breach of any pledge, mortgage,~~  
13 ~~obligation, or agreement undertaken by a commission does not impose pecuniary~~  
14 ~~liability upon the state or any political subdivision or a charge upon its general credit~~  
15 ~~or against its taxing power.~~

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

19  
20 ~~Bonds issued by the commission may be secured only by the revenue of the~~  
21 ~~commission, which may be derived from the project to be financed or refinanced by~~  
22 ~~the bonds or otherwise from any contract entered into or investment made in~~  
23 ~~connection with the bonds.~~

\*\*\*\*NOTE: This paragraph relates to part of your predrafted sub. (13),  
and is based on s. 229.831 (3), but given our understanding that the  
commission is issuing bonds solely as a conduit and that the revenue stream

*if they'll check should*  
*is way to categorize these types of document*  
*2 too broad & imprecise*  
*loan agreement indenture, private*

*don't belong here - see ch. 71 lang*

Comment [MSOffice1]: Need to check confirm cross-references with bond counsel.

*2 moved to sub. (a), p. 16*

is really coming from the revenues generated by the participant on whose behalf the commission is issuing the bonds, is this paragraph accurate?

Your March 4, 2009, memo states that the obligations are "secured solely by commitments of private entities." If this is the case, par. (c) needs to be rewritten.

1           **(10) AUDITS, FISCAL YEAR.** (a) The board of a commission shall adopt a calendar  
2 year as its fiscal year for accounting purposes. The board shall annually prepare a  
3 budget for the commission.

4           (b) A commission shall maintain an accounting system in accordance with generally  
5 accepted accounting principles and shall have its financial statements and debt covenants  
6 audited annually by an independent certified public accountant, except that the commission by a  
7 unanimous vote may decide to have an audit performed under this paragraph every 2 years.

8           (c) A copy of the budget and audit shall be sent to the governing body  
9 of each **local agency political subdivision** which is a party to the agreement that created the  
10 commission.

\*\*\*\*NOTE: Subsection (10) is based on ss. 229.57, 229.79, and 229.834 of the statutes.  
Does this meet your intent under the predrafted sub. (4)? Many items in your language don't  
seem to be necessary, or are already addressed in the bill. For example, the costs would be  
addressed under sub. (4) (i), above. I don't believe Wisconsin has a controller, so we did not  
include a provision based on your sub. (4) (f).

11           **(11) LIMITATIONS.** (a) **A commission may not authorize federally tax-exempt**  
12 **bonds to finance a capital improvement project outside of this state unless a**  
13 **local agency within whose boundaries the project is to be located has approved**  
14 **the financing of the project by the commission.**

15                               ~~A commission may not issue bonds under this section if the~~  
16 ~~proceeds are to be used for a capital improvement project unless the conditions~~  
17 ~~specified in section 147 (f) of the Internal Revenue Code are met.~~

\*\*\*\*NOTE: This paragraph is based on your predrafted sub. (5), but it seems  
unnecessary. Because bonds issued under this section are private activity bonds, every

provision of the IRC relating to PABs apply. What is your intent here?

[As noted above, not all bonds will be PABs. Some will be governmental bonds. Some may even be taxable. Section (a) is intended to address a possible IRS concern pertaining to tax-exempt bonds for some nexus between the Wisconsin commission and a project located outside of Wisconsin. The approval contemplated here would overlap section 147(f) TEFRA approval where that applies, but it (TEFRA) will not apply in all cases.]

1 (b) This section does not limit any other law authorizing, or providing for,  
2 the financing or refinancing of projects. This section shall be deemed to provide  
3 a complete and supplemental method for exercising the powers authorized by  
4 this section, and shall be deemed as being supplemental to the powers conferred  
5 by other applicable laws. Unless otherwise explicitly stated in this section, the  
6 issuance of bonds, the entering into of contracts related to those bonds and the  
7 financing or refinancing of projects under this section need not comply with the  
8 requirements of any other state laws applicable to the issuance of bonds,  
9 entering contracts or financing or refinancing of projects.

*Not needed*

*Not sufficient - must specify*

*they'll get back to us w/ what to exclude*

10 If a commission issues bonds under this section for a project, as defined  
11 in s. 66.1103 (2) (k), the provisions of this section shall take precedence over the  
12 provisions of s. 66.1103 if there is any direct conflict between this section and s.  
13 66.1103.

\*\*\*\*NOTE: This paragraph is based on your predrafted sub. (6), as explained in your March 4, 2009, memo. Does it meet your intent? Are there any specific provisions in

s. 66.1103 that you are concerned about? If so, please provide the cite and we can incorporate them into the next version of the bill.

[This provision is intended simply to make this section complete authority to do what is provided without regard to any other law that may cover the same subjects. If there is another law that authorizes bonds for the same type of project, it should be possible to use either law without one conflicting with the other. Making that clear is the intent of this provision.]

14 (c) Any action brought to challenge the validity of the proposed issuance of a  
15 bond under this section, or the enforceability of a contract entered into under this

1 section, must be commenced in circuit court within 30 days of the commission  
2 adopting a resolution authorizing the issuance of the bond or **the execution of** within  
3 ~~30 days of the commission signing the contract, whichever is applicable.~~

4 **(d) The bonds shall not be invalid for any irregularity or defect in the**  
5 **proceedings for the sale or issue thereof. The bonds shall contain a recital that**  
6 **they have been authorized and issued pursuant to the laws of this state, which**  
7 **recital shall be conclusive evidence of their validity.**

*of the bonds*  
*nee ?*

\*\*\*\*NOTE: This paragraph is based on the last few sentences of your predrafted sub. (6) and your response to a question about the provision in your March 4, 2009, memo. The bulk of your sub. (6) language seemed somewhat contradictory, as we mentioned in our February 24, 2009, memo.

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

*may remove but they'll ask*  
*need sub. on dissolution -*  
*add dis provn*

\*\*\*\*NOTE: Should a provision similar to this one be drafted if the bill does end up allowing the parties to an agreement to change after bonds have been issued by a commission? Who would you want to make the pledge? The original signatories to the agreement?

**[A change in parties to this agreement after bonds are issued should have no effect whatsoever on the obligation of the commission with respect to the bonds. This subsection is simply a pledge by the state not to so alter the powers of the commission by statute that it impairs the rights of bondholders.]**

16 **SECTION 3.** 71.05 (1) (c) 9. of the statutes is created to read:

17 71.05 (1) (c) 9. A commission created under s. 66.0304.

18 **SECTION 4.** 71.26 (1m) (j) of the statutes is created to read:

1           71.26 **(1m)** (j) Those issued under s. 66.0304.

2           SECTION 5. 71.36 (1m) of the statutes is amended to read:

3           71.36 **(1m)** A tax-option corporation may deduct from its net income all  
4 amounts included in the Wisconsin adjusted gross income of its shareholders, the  
5 capital gain deduction under s. 71.05 (6) (b) 9. and all amounts not taxable to  
6 nonresident shareholders under ss. 71.04 (1) and (4) to (9) and 71.362. For purposes  
7 of this subsection, interest on federal obligations, obligations issued under s. 66.0304  
8 by a commission, obligations issued under s. 66.0621 by a local professional baseball  
9 park district, a local professional football stadium district, or a local cultural arts  
10 district, obligations issued under ss. 66.1201, 66.1333, and 66.1335, obligations  
11 issued under s. 234.65 to fund an economic development loan to finance construction,  
12 renovation or development of property that would be exempt under s. 70.11 (36) and  
13 obligations issued under subch. II of ch. 229 is not included in shareholders' income.  
14 The proportionate share of the net loss of a tax-option corporation shall be attributed  
15 and made available to shareholders on a Wisconsin basis but subject to the limitation  
16 and carry-over rules as prescribed by section 1366 (d) of the Internal Revenue Code.  
17 Net operating losses of the corporation to the extent attributed or made available to a  
18 shareholder may not be used by the corporation for further tax benefit. For purposes  
19 of computing the Wisconsin adjusted gross income of shareholders, tax-option items  
20 shall be reported by the shareholders and those tax-option items, including capital  
21 gains and losses, shall retain the character they would have if attributed to the  
22 corporation, including their character as business income. In computing the tax  
23 liability of a shareholder, no credit against gross tax that would be available to the  
24 tax-option corporation if it were a nontax-option corporation may be claimed.

1       **SECTION 6.** 71.45 (1t) (j) of the statutes is created to read:

2       71.45 (1t) (j) Those issued under s. 66.0304.

3       **SECTION 7. Initial applicability.**



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1957/P1dn  
MES&EVM:cjs:ph

April 6, 2009

*Notes  
from  
may meeting  
on 4/1*

Senator Kreitlow:

In this draft we have substantially rearranged the predrafted language into what we believe is a more useful structure. Generally, we have compared the predrafted language with similar provisions in chs. 67 and 229, stats., and attempted to follow the structure of the existing statutes. In making these comparisons, we noted that there are significant differences between the structure of this bonding authority and other similar statutory bonding authorities. In many instances, it appears that somewhat less detail is included in this draft than is included in the comparison provisions. You may wish to compare the more comprehensive provisions in chs. 67 and 229, stats., especially regarding bond resolutions, registration requirements, format requirements, referendum requirements, and sales requirements. See, for example, ss. 67.05 (1), 67.06, 67.08, and 67.09, and compare these statutes with the drafted language.

In addition, several issues which may be of some importance are not addressed in the predrafted language. It is not clear to us whether all of the omissions were by choice. In particular, please note the following:

- (1) Can a commission be dissolved? There is no provision similar to ss. 229.477, 229.71, 229.828, or 229.847.
- (2) What is the effect of any defect in the bond issuance procedure?
- (3) Do you believe that there should be any limitation on the amount of total bond issuances? See, for example, ss. 229.50 (1) (c) and 229.74 (1) (c). *NO*
- (4) Do you believe a bond registration provision is needed? See, for example, ss. 67.09 and 229.48 (4). *Compare to inv: § sub. (5) (a) 9.*
- (5) Is a provision providing standards for variable interest rates needed? See s. 67.15.
- (6) There was no provision for liability for misconduct by an official. We have included such a provision in created s. 66.0304 (8), which is based on ss. 229.48 (6), 229.72 (6), and 229.829 (3). Is this OK?
- (7) Do you believe that a negotiability statement is needed? See, for example, ss. 229.72 (1m) and 229.829 (1).

(8) Do you believe that there needs to be any limits or specificity relating to the sort of out-of-state municipalities that may join?

As we've indicated, most of these issues are addressed in the general municipal bonding statute in ch. 67, and in the bonding authority granted to special purpose districts in ch. 229. You may wish to review these chapters to determine whether additional statutory treatment is necessary.

Please note that the draft contains several embedded notes. Some of these notes indicate which statutory provisions we consulted in drafting individual provisions, and others raise substantive questions, explain why the language is different from what was submitted, or explain why a particular provision in the predrafted materials was left out of this draft.

As you will see, a number of provisions, such as your s. 66.0318 (3) (g) to (j), (L), (m), and (o) were left out of this draft. This is because the provisions seemed to relate to an authority we believe you don't want the commission to possess, such as the right to own property, or the responsibility to pay interest or principal. We did not include your provision s. 66.0318 (16), requiring the liberal interpretation of the statute, because we don't believe it has any legal effect.

Let us know if you believe we have omitted material of substantive importance or inserted unwanted material. Please let us know if you would like any changes.

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## MEMORANDUM

TO: Monica Groves Batiza, Legislative Associate  
Wisconsin Counties Association

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

RE: LRB Attorney Drafting Questions

DATE: May 6, 2009

---

You have asked us to prepare a response to a series of questions arising from our meeting with the Legislative Reference Bureau drafting attorneys on May 1, 2009. After consulting with bond counsel, our answers to those questions are below.

(1) *On Page 4, Line 1, can the definition of "local agency" revert back to "political subdivision" as contained in LRB's initial draft?*

Response: We probably can limit actual membership in the commission to "political subdivisions" although it may make it more difficult to attract members. What is important is that we have the broadest possible definition of "participant," which we do. A compromise might be "any city, village, town, or county in this state or similar entity or district, authority, agency, commission or other public entity in another state."

(2) *Can the proposed legislation contain a mechanism providing for dissolution of the commission similar to that found in sec. 229.828?*

Response: So long as the commission cannot be dissolved while bonds are issued and outstanding, that is not a problem. However, it would be beneficial to have the language found on Page 6, Lines 4-8, relating to Attorney General approval of the dissolution, remain.

(3) *At Page 8, Line 2, why was the reference to "under sub. (5)" deleted?*

Response: The suggested deletion was a mistake. The reference should remain.

(4) *At Page 11, Lines 11-19, can the entire sub. [p] be deleted as repetitive of sub. (e) on Page 8, Line 2?*

Response: Yes, sub. [p] can be deleted.

Sect 11.10 of P2 + ins 10-15

(5) *At Page 17, Line 10, can the term "or other document providing for" be defined more specifically?*

Response: Yes. "Or other document" refers to, and can be replaced by, "trust agreement or indenture providing for."

(6) *Is the reference at Page 17, Lines 16-17 relating to taxation necessary given Sections 3, 4, 5 and 6 of the proposed legislation?*

Response: If there are or may in the future be other corporate or personal income taxes in Wisconsin then the proposed (c) would be much better. Various counsel are going to be expected to render unqualified opinions about exemption from Wisconsin income tax.

(7) *Can the broad terms of the exemption found on Page 19, Lines 5-9, be deleted such that the exemptions are inserted individually in each of the statutory chapters related to the various categories of bonding?*

Response: The purpose of this provision is to make s. 66.0304 a complete authority for what it authorizes, regardless of any other specific state law. Moreover, the purpose of this provision is to comfort the lawyers using and opining on it and the rating agencies and investors depending on it that they can be sure that some other law somewhere else does not vitiate the authority this statute purports to provide. It is not practical to identify what all potentially conflicting laws might be and, even if it were, others may be enacted in the future. As a result, we would be most comfortable with a simple blanket exemption such as that found on Page 19, Lines 5-9.

(8) *What is the legal import of the pledge found on Page 20, Lines 14-15?*

Response: The purpose of this sentence is to enable the commission to bind the state by contract with the bondholders, which contract then should not, under the contracts clause of the constitution, be obligated by a future legislative action (such as repealing sub (12)). Therefore, we would prefer to keep that language in the statute.

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