



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1957/P1

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*SOON
in 7/16*

*TODAY, if possible
otherwise MON*

CAW

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

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 1.** 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

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 ~~with the approval of the municipality in this state in which~~ the condemnation ~~is~~
 6 ~~proposed~~ *occurs within the boundaries of a member of the commission* or any public board or commission, for any lawful purpose, but in the case
 7 of city and village boards or commissions approval of that action is required to be
 8 granted by the governing body. A mosquito control commission, created under s.
 9 59.70 (12), and a local professional football stadium district board, created under
 10 subch. IV of ch. 229, may not acquire 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.

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

12 **66.0304 Conduit revenue bonds. (1) DEFINITIONS.** In this section:

13 (a) "Agreement" means a contract entered into *under this section* by the political subdivisions
 14 which form a commission. The contract may be amended by the parties, according
 15 to the terms of the contract. *and the amended contract remains an agreement*

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

1 1. The bond, note, or other obligation is a private activity bond as defined in
2 section 141 of the Internal Revenue Code.

3 2. The proceeds of the issue are used by a private entity for the acquisition,
4 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.).

5 (c) "Commission" means an entity created by two or more political subdivisions,
6 under s. 66.0301 (2), or a group of political subdivisions who contract with each other
7 under s. 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.

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?

→ (P) (CS) "Member" means a party to an agreement

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

or any city, village, town,
county,

12 (e) "Political subdivision" means any city, village, town, or county in this state
13 ~~on another state~~ ^{district, authority, agency, commission, or} other similar ~~local unit of government~~ ^{governmental entity} in another state.

14 (f) "Project" means any capital improvement, investment or program of
15 investment, purchase of receivables, property, assets, commodities, bonds or other
16 revenue streams or related assets, ^{with a participant} or liability or other insurance program, located
17 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?

Amends
the phrase
"with a
participant"

→ the relationship between the
investment and the participant
that "with" refers to

- 1 1. A project as defined in s. 66.1103 (2) (k).
- 2 2. A project described in s. 231.03 (6).
- 3 3. An economic development project as defined in s. 234.01 (4n).
- 4 4. A housing project as defined in s. 234.01 (7).
- 5 (g) "Revenue" means all moneys and fees received from any source by a
- 6 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).

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

INS # 4-19

****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?

20 (3) CREATION AND ORGANIZATION. (a) Two or more political subdivisions may
 21 create a commission for the purpose of issuing ~~and~~ bonds by entering into an

1 agreement to do so under s. 66.0301 (2) or 66.0303 (2). A commission that is created
2 as provided in this section is a unit of government, and a body corporate and politic,
3 that is separate and distinct from, and independent of, the state and the political
4 subdivisions which are parties to the agreement.

5 (b) A commission shall be governed by a board, the members of which shall be
6 appointed under the terms of the agreement. *(INS 5-6 NOT)*

****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?

7
8 *What is the agreement about?*
9 (c) If authorized by the original agreement and by the bylaws of the
10 commission, the ~~political subdivisions which created~~ *members of* a commission may vote to allow
11 another political subdivision to become a ~~party to the agreement~~ *member*, or may vote to allow
12 a ~~political subdivision that is a party to the agreement~~ *member* to withdraw from ~~coverage~~
Commission member
the agreement. To be valid, at least one ~~party to an agreement~~ *member* shall be a political
subdivision that is located in this state. *and a commission shall consist of at least two political subdivisions*

****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?

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

- 16 (a) Adopt bylaws for the regulation of its affairs and the conduct of its business.
- 17 (b) Sue and be sued in its own name, plead and be impleaded.

under
A commission may not take any action under this paragraph that would invalidate an agreement.

For an agreement

What is the agreement about?

lessee

1 (c) Acquire, buy, sell, lease as lessor or ~~leasee~~, encumber, mortgage,
2 hypothecate, pledge, assign, or transfer any property or interest in property that is
3 located within or outside of this state.

****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?

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

5 (e) Issue bonds, or refunding bonds, under sub. (5) to finance or refinance a
6 project, including funding a reserve fund or capitalized interest, payment of costs of
7 issuance, or credit enhancement, and enter into agreements related to the issuance
8 of bonds, including liquidity and credit facilities, remarketing agreements,
9 insurance policies, guaranty agreements, letter of credit or reimbursement
10 agreements, indexing agreements, interest exchange agreements and currency
11 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) (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?

12 (f) Employ ^{or appoint} agents, employees, and special advisers as the commission finds
13 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?

1 (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.

2 (h) Establish and collect fees ^{who g} related to the issuance of bonds from participants
3 ^{who} benefit from the commission's services, ^{or services provided by an outside entity,} and apportion the fees collected to the
4 ^{participants who provide such services.} members of the commission, or the outside entity.

5 (i) Apportion to participants the administrative costs and any other expenses, ^{incurred by an outside entity or for services}
6 incurred by the commission in the exercise of its authority, and collect such costs and
7 expenses from those participants to whom the costs and expenses were apportioned.

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

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

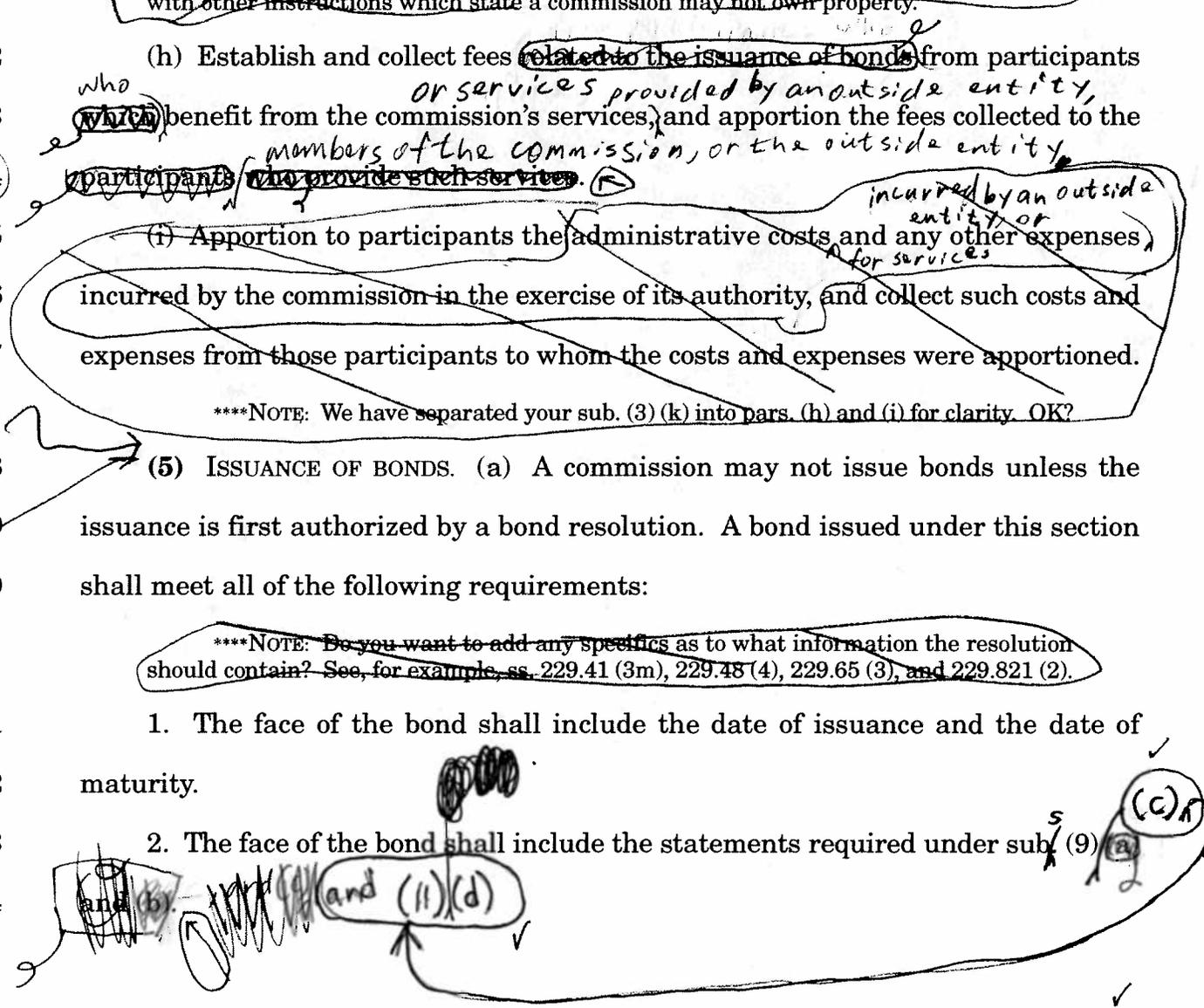
***NOTE: Do you want to add any specifics as to what information the resolution should contain? See, for example, ss. 229.41 (3m), 229.48 (4), 229.65 (3), and 229.821 (2).

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

13 2. The face of the bond shall include the statements required under sub. (9) ^(c) (a)

14 and (b) and (11)(d)

INS 7-7
has 7-8



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

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

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

7 ~~6. The bond shall be subject to~~ ^{no 9} early mandatory or optional redemption or
8 purchase in lieu of redemption, ^{or tender} as provided in the resolution.

9 6. ~~A~~ Bonds in a single issue may be composed of a single denomination or 2 or
10 more denominations, as provided in the resolution. INS 8-12, new B

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

13 (b) A bond issued under this section may include ^{or be subject to,} any of the following:

14 1. ^{2,} A provision providing a right to tender.

15 ~~2. A provision allowing registration privileges.~~

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

****NOTE: Pars. (a) and (b) contain, so far as I can tell, all of the requested provisions
in 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.

INS 8-16

17 (c) The commission may purchase any bond issued under this section. Subject
18 to the terms of any agreement with the bondholders, the commission may hold,
19 pledge, resell, or cancel any bond purchased under this 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?

INS OR
8-19

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 prices,
6 and upon the conditions, determined by the commission. The commission shall give
7 due consideration to the recommendations of the participants in the project when
8 determining the conditions of sale.

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

11 (d) If at the time of sale definitive bonds are not available, the commission may
12 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 or
14 ~~WMA~~ indenture by and between the commission and one or more corporate trustees.

15 A bond resolution ~~providing for the issuance of bonds so secured may mortgage,~~
16 ~~pledge, assign, or grant security interest in some or all of the revenues or property~~
17 ~~of the commission and may contain those provisions for protecting and enforcing the~~
18 ~~rights and remedies of the bondholders that are reasonable and proper and not in~~
19 ~~violation of the law.~~ ^(K) ^{FNS 9-19}

****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.

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

1 issuance of the bonds, unless the personal liability or accountability is the result of
2 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 okay?

MS 10-3

3 (9) BONDS NOT PUBLIC DEBT. (a) The state and the political subdivisions who are

4 parties to the agreement creating a commission under this section are not liable on
5 bonds, and the bonds are not a debt of the state or the political subdivisions

MS 10-5

6 contracting to create a commission under this section. All bonds shall contain a

7 statement to this effect on the face of the bond. A bond issue does not, directly or

8 indirectly or contingently obligate the state or a political subdivision to levy any tax

9 or make any appropriation for payment of the bonds.)

10 (b) Nothing in this section authorizes a commission to create a debt of the state
11 or the political subdivisions who are parties to the agreement creating a commission

12 under this section, and all bonds issued by a commission are payable, and shall state

13 on the face of the bond that they are payable, solely from the funds pledged for their

14 payment in accordance with the bond resolution authorizing their issuance or in any
15 of trust indenture or mortgage or deed of trust executed as security for the bonds. The

16 breach of any pledge, mortgage, obligation, or agreement undertaken by a

17 commission does not impose pecuniary liability upon the state or any political

18 subdivision or a charge upon its general credit or against its taxing power.

19 (c) Bonds issued by the commission may be secured only by the revenue of the
20 commission, which may be derived from the project to be financed or refinanced by

21 the bonds or otherwise from any contract entered into or investment made in

22 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

X
under the section

MS 10-15

X

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, 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
5 generally accepted accounting principles and shall have its financial statements and
6 debt covenants audited annually by an independent certified public accountant,
7 except that the commission by a unanimous vote may decide to have an audit
8 performed under this paragraph every 2 years.

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

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11-11

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

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11-14

****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?

14 (b) If a commission issues bonds under this section for a project, as defined in
15 s. 66.1103 (2) (k), the provisions of this section shall take precedence over the
16 provisions of s. 66.1103 if there is any direct conflict between this section and s.
17 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.

SECTION 2

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.

1 (c) Any action brought to challenge the validity of the proposed issuance of a
2 bond under this section, or the enforceability of a contract entered into under this
3 section, must be commenced in circuit court within 30 days of the commission
4 adopting a resolution authorizing the issuance of the bond or within 30 days of the
5 commission signing the contract. *the execution of*

INS
12-5

****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.

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

The commission may include this pledge in a contract with bondholder

****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?

13 SECTION 3. 71.05 (1) (c) ¹⁰ of the statutes is created to read:

14 71.05 (1) (c) ¹⁰. A commission created under s. 66.0304.

15 SECTION 4. 71.26 (1m) ^K of the statutes is created to read:

16 71.26 (1m) ^K Those issued under s. 66.0304.

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

18 71.36 (1m) A tax-option corporation may deduct from its net income all
19 amounts included in the Wisconsin adjusted gross income of its shareholders, the

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

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

23 71.45 (1t) ^(k) Those issued under s. 66.0304.

24 **SECTION 7. Initial applicability.**

SECTION 7

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

(END)

k

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k

Bald

No bald
(CS)



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INS 7-8

(4m) **Dissolution of a commission.** Subject to sub. (2) (b) and subject to providing for the payment of its bonds, including interest on the bonds, and the performance of its other contractual obligations, a commission may be dissolved as provided under the terms of the agreement. If the commission is dissolved, the property of the commission shall be transferred to the political subdivisions who are parties to the agreement creating the commission as provided by the terms of the agreement.

****NOTE: This is based on s. 229.71, stats, but is limited to as provided in the agreement. You may wish to consider whether a non-agreement-based dissolution procedure is warranted as a fail-safe for agreements that contain no dissolution provision and are for whatever reason not amendable.

9

INS 10-3

no ¶

(a) Unless otherwise expressly provided in the bond resolution, each issue of bonds by the commission shall be the limited obligation of the commission payable solely from amounts received by the commission from revenues derived from the project to be financed or refinanced or from any contract entered into or investment made in connection with the bonds and pledged to the payment of the bonds.

15

INS 10-5

no ¶

or any other contract entered into under this section, or for any other debt, obligation, or liability of the commission, whether in tort, contract, or otherwise.

****NOTE: I changed the language a bit to, I think, clarify the intent to be comprehensive. The final portion is based on s. 178.12(2), stats. (liability of a partner in an LLP). This provision may encompass the ^Δ commission creation agreement - is this okay?

18

INS 10-15

no ¶

providing for their issuance. All bonds shall contain, on their face, a statement regarding the obligations of the state, the political subdivisions who are parties to

20

1 the agreement creating the commission, and the commission as set forth in this
2 paragraph.

3 **INS 11-11**

4 *NOA* A commission may not authorize federally tax-exempt bonds to finance a
5 capital improvement project outside this state unless a ^{political subdivision} ~~participant~~ within whose
6 boundaries the project is to be located has approved the financing of the project.

~~****NOTE: Not sure who needs to approve this, a local governmental unit? "Participant" doesn't seem to be the right entity to grant approval. Shouldn't it be a "political subdivision?"~~

7 **INS 11-14**
8 *NOA* Unless otherwise explicitly stated in this section, the issuance of bonds, the
9 entering into of contracts related to those bonds, and the financing or refinancing of
10 projects under this section need not comply with the requirements of any other state
11 law applicable to the issuance of bonds, entering contracts, or financing or
12 refinancing of projects.

~~****NOTE: This remains a very broad exclusion. For example, do you intend to exempt bond contracts under this section from all state laws relating to entering removed from contracts? If so, what law governs the procedure?~~

13 **INS 12-5**

14 *Q(d)* **The** bonds shall not be invalid for any irregularity or defect in the proceedings
15 for their sale or issuance. The bonds shall contain a statement that they have been
16 authorized and issued pursuant to the laws of this state. The statement shall be
17 conclusive evidence of the validity of the bonds.

is the provision from your instructions but as we discussed in our meeting, a "notwithstanding any other statute" provision may not be drafted as
the draft. My notes indicate that you would get back to us with the exact statutes you want to

issued under this section

part of par (c) w/ # (d) ? ? ?

specify. For now, this par. (b) is merely a place holder. As drafted this provision would, for example,

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MES&EVM:cjs:ph

INS 4-19

(b) No approval is required under this subsection for an amendment to an agreement to take effect, or for an addition or withdrawal of a member, unless required by the terms of the agreement. A commission may not be dissolved under sub. ^{4m} without the approval of the attorney general, who shall certify to the commission and the participants that the dissolution resolution provides for the payment of any outstanding bonds or other obligations of the commission.

****NOTE: Your instructions contained the phrase "or failure to disapprove within 90 days of submission of the proposed dissolution," but I'm not sure what that referred to. Does par. (b) meet your intent?

INS 5-6

NO 9 Board members may be reimbursed for their actual and necessary expenses incurred in performing their duties to the extent provided in the agreement or the bylaws of the commission.

What's the AG's standard re: the dissolution provision - just the ability to certify that an agreement is in proper form and does not violate the statutes?

INS 7-7

(i) Make loans to, ^{or} lease property from or to, or enter into any other kind of an agreement with a participant, in connection ^{with} financing a project.

(j) Mortgage, pledge, or otherwise encumber the commission's property or its interest in projects.

(k) Assign or pledge any portion of its interests in mortgages, deeds of trust, indentures of mortgage or trust, leases, purchase or sale agreements or other financing agreements, or similar instruments, notes, and security interests in property, of a participant, or contracts entered into in connection with bonds.

(L) Issue, obtain, or aid in obtaining, from any person, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, on

any loan, lease, bond, or other obligation evidencing or securing such a loan, lease, bond, or obligation that is entered into under this section.

(m) Apply on its own behalf or on behalf of a participant to any unit of government for an allocation of volume cap, tax credit, subsidy, grant, loan, credit enhancement, or any other federal, state, or local program in connection with the financing or refinancing of a project.

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

****NOTE: I understand that bond counsel is interested in this provision, but is it really necessary? Essentially, it says that the commission may invest any money in anything that a contract to which they are a party authorizes them to invest in. If the resolution, trust agreement, indenture, or other agreement already specifies what the commission may invest in, what's the point of par. (n)?

(o) At the request of a participant, combine and pledge revenues of multiple projects for repayment of one or more series of bonds issued under this section.

(p) Purchase bonds issued by or on behalf of, or held by, any participant. Bonds purchased under this paragraph may be held by the commission or sold, in whole or in part, separately or together with other bonds issued by the commission.

****NOTE: Is this right? Do you want the commission to be able to purchase bonds issued by a participant?

INSERT 8-12

8. Bonds shall be registered as provided in the resolution.

9. Bonds shall be in the form, and executed in the manner, provided in the resolution.

INSERT 8-16

3.
2.

A trust agreement or indenture containing any terms, conditions, and covenants that the commission determines to be necessary or appropriate, but such terms, conditions, and covenants may not be in conflict with the resolution.

no 9

INSERT 8-19

, except that a purchase under this paragraph may not effect an extinguishment of ~~the bonds~~ unless the commission cancels the bonds or otherwise certifies its intention that ~~they~~ ^{the bond} be extinguished

INSERT 9-19

no 9

, trust agreement, or indenture may contain provisions for pledging properties, revenues, and other collateral; holding and disbursing funds; protecting and enforcing the rights and remedies of bondholders; restricting individual rights of action by bondholders; ~~amendments~~ ^{and e} and any other provisions the commission determines to be reasonable and proper for the security of the bondholders or contracts entered into under this section in connection with the bonds

→
→
→

9

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

NOTE: Please review this paragraph carefully to ensure it meets your intent.

is binding on the parties and on any successors. The collateral

11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT to amend 32.02 (1) and 71.36 (1m); and to create 66.0304, 71.05 (1) (c) 10., 71.26 (1m) (k) and 71.45 (1t) (k) of the statutes; relating to: authorizing two or more cities, villages, towns, or counties, or a combination of such political subdivisions, to create a commission to issue 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.

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:

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

32.02 (1) Any county, town, village, city, including villages and cities incorporated under general or special acts, school district, the department of health services, the department of corrections, the board of regents of the University of Wisconsin System, the building commission, a commission created by contract under s. 66.0301, with the approval of the municipality in which condemnation is proposed, a commission created by contract under s. 66.0303 that is acting under s. 66.0304, if the condemnation occurs within the boundaries of a member of the commission, or any public board or commission, for any lawful purpose, but in the case of city and village boards or commissions approval of that action is required to be granted by the governing body. A mosquito control commission, created under s. 59.70 (12), and a local professional football stadium district board, created under subch. IV of ch. 229, may not acquire property by condemnation.

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

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

- (a) "Agreement" means a contract entered into under this section by the political subdivisions which form a commission. The contract may be amended according to the terms of the contract, and the amended contract remains an agreement.
- (b) "Bond" means any bond, note or other obligation of a commission issued under this section, including any refunding bond or certificate of participation or lease-purchase agreement.
- (c) "Commission" means an entity created by two or more political subdivisions, who contract with each other under s. 66.0301 (2) or s. 66.0303 (2), for the purpose of issuing bonds under this section.
- (d) "Member" means a party to an agreement.

2. "according to the" should provide enough protection

Comment [MSOffice1]: The suggestion to remove is to avoid the inference that all parties must approve amendments if agreement provides for less than all.

Deleted: by the parties

Comment [MSOffice2]: 66.0301 and 66.0303 do not provide for creating an entity. However this can work with the changes noted here and under subsection (3) CREATION AND ORGANIZATION

Deleted: under s. 66.0301 (2), or a group of political subdivisions

Deleted: §

Deleted: cs

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

Deleted: d

(f) "Political subdivision" means any city, village, town, or county in this state or any city, village, town, county, district, authority, agency, commission, or other similar governmental entity in another state.

Deleted: e

(g) "Project" means any capital improvement, investment or program of investment, purchase of receivables, property, assets, commodities, bonds or other revenue streams or related assets, working capital program, or liability or other insurance program, located within or outside of this state, and may include, but is not limited to, any of the following:

Deleted: f

Deleted: with a participant

****NOTE: This definition is based on your instructions and adds the phrase "with a participant", but I don't understand the relationship between the investment and the participant that "with" refers to. What is your intent for this part of the definition?

1. A project as defined in s. 66.1103 (2) (k).
2. A project described in s. 231.03 (6).
3. An economic development project as defined in s. 234.01 (4n).
4. A housing project as defined in s. 234.01 (7).

examples are from orig. instructions
NO

Comment [MSOffice3]: Agreed. Do not see the need to add "with a participant". Also do not think examples 1-4 are needed, but if they are included need to be explicit that they are not exclusive by adding the language "but is not limited to" in section (g)

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

Deleted: g

(2) ATTORNEY GENERAL REVIEW. (a) 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 agreement. The governor shall forward to the attorney general any comments the governor may have concerning the agreement.

(b) No approval is required under this subsection for an amendment to an agreement to take effect, or for an addition or withdrawal of a member, unless required by the terms of the agreement. A commission may not be dissolved under sub. (4m) without the approval of the attorney general, who shall certify to the commission and the participants that the dissolution resolution provides for the payment of any outstanding bonds or other obligations of the commission.

****NOTE: Your instructions contained the phrase "or failure to disapprove within 90 days of submission of the proposed dissolution," but I'm not sure what that referred to. Does par. (b) meet your intent? What's the AG's standard re: the dissolution provision - just the ability to certify that an agreement is in "proper form" and does not violate the

statutes?

(3) CREATION AND ORGANIZATION. (a) Two or more political subdivisions may create a commission for the purpose of issuing bonds by entering into an agreement to do so under s. 66.0301 (2) or 66.0303 (2) in which case the term "municipality" as used in those sections shall include "political subdivision" as defined in s. 66.0304(1). A commission that is created as provided

in this section is a unit of government, and a body corporate and politic, that is separate and distinct from, and independent of, the state and the political subdivisions which are parties to the agreement.

(b) A commission shall be governed by a board, the members of which shall be appointed under the terms of the agreement. Board members may be reimbursed for their actual and necessary expenses incurred in performing their duties to the extent provided in the agreement or the bylaws of the commission.

(c) Additional political subdivisions may become members of the commission, and members may withdraw from the commission as provided in the agreement. For an agreement to be valid, at least one commission member shall be a political subdivision that is located in this state and a commission shall consist of at least 2 political subdivisions. A commission may not take any action under this paragraph that would invalidate an agreement.

(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) Acquire, buy, sell, lease as lessor or lessee, encumber, mortgage, hypothecate, pledge, assign, or transfer any property or interest in property that is located within or outside of this state.

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

(e) Issue bonds, or refunding bonds, in compliance with sub. (5) to finance or refinance, one or more projects, including funding a reserve fund or capitalized interest, payment of costs of issuance and other costs related to the financing or refinancing, 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 rate swap agreements, currency exchange agreements, commodity swap agreements and other hedge agreements, in each case with such payment, interest rate, currency security, remedy and other terms and conditions as the commission determines.

(f) Employ or appoint underwriters, attorneys, agents, employees, and special advisers as the commission finds necessary and fix their compensation.

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

(h) Establish and collect fees plus administrative expenses from participants who benefit from the commission's services, or services provided by an outside entity.

(i) Make loans to, lease property from or to, or enter into any other kind of an agreement with a participant or other entity, in connection with financing a project.

(j) Mortgage, pledge, or otherwise encumber the commission's property or its interest in projects.

(k) Assign or pledge any portion of its interests in mortgages, deeds of trust,

needed? maybe A 66.0303 for new def. in pol. sub using A 66.0304

Comment [MSOffice4]: This is necessary to make certain the definition of municipality is broad enough to cover political subdivisions.
Deleted: If authorized by the original agreement and by the bylaws of the commission, the members of a commission may vote to allow another
Deleted: 1
Deleted: to
Deleted: a
Deleted: or may vote to allow a
Deleted: to
Deleted: 1 the agreement
Deleted: 1
Deleted: 1
Comment [MSOffice5]: If the commission has more than a few members, then rounding up all of their votes becomes cumbersome. The agreement can provide how to add or subtract.
Deleted: 1
Comment [MSOffice6]: This section provides the power to issue bonds, while sub (5) merely provides procedural conditions. This suggestion makes the reference more accurate.
Deleted: under
Deleted: a
Comment [MSOffice7]: For example, redemption provisions or refunding or swap or investment agreement termination payments triggered by refunding s.
Deleted: 1
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Deleted: exchange
Deleted: and
Deleted: .
Comment [MSOffice8]: What happens to the fees should be governed by the agreement, not necessarily apportioned to the members.
Deleted: 1
Deleted: , and apportion the fees collected to the members of the commission, or the outside entity.

what's in?

20

inc. bylaws = not 1/1

no s. 990

subject to

incl

finance professionals

unnd. message

why? avoid specificity

check def of "participant" to see if sufficient (Kell)

and any other like agreements

I'll add this

Simplify, issue bonds, including costs related to the financing or refinance. bond counsel likes specificity

Kell

indentures of mortgage or trust, leases, purchase or sale agreements or other financing agreements, or similar instruments, notes, and security interests in property, of a participant, or contracts entered into in connection with bonds.

(l) Issue, obtain, or aid in obtaining, from any person, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, on any loan, lease, bond, or other obligation evidencing or securing such a loan, lease, bond, or obligation that is entered into under this section.

(m) Apply on its own behalf or on behalf of a participant to any unit of government for an allocation of volume cap, tax credit, subsidy, grant, loan, credit enhancement, or any other federal, state, or local program in connection with the financing or refinancing of a project.

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

***NOTE: I understand that bond counsel is interested in this provision, but is it really necessary? Essentially, it says that the commission may invest any money in anything that a contract to which they are a party authorizes them to invest in. If the resolution, trust agreement, indenture, or other agreement already specifies what the commission may invest in, what's the point of par. (n)?

(o) At the request of a participant, combine and pledge revenues of multiple projects for repayment of one or more series of bonds issued under this section.

(p) Purchase bonds issued by or on behalf of, or held by, any participant. Bonds purchased under this paragraph may be held by the commission or sold, in whole or in part, separately or together with other bonds issued by the commission.

***NOTE: Is this right? Do you want the commission to be able to purchase bonds issued by a participant?

(4m) DISSOLUTION OF A COMMISSION. Subject to sub. (2) (b) and subject to providing for the payment of its bonds, including interest on the bonds, and the performance of its other contractual obligations, a commission may be dissolved, by resolution, as provided in the agreement. If the commission is dissolved, the property of the commission shall be transferred to the political subdivisions who are parties to the agreement creating the commission as provided in the agreement.

***NOTE: This is based on s. 229.71, stats, but is limited to as provided in the agreement. You may wish to consider whether a non-agreement-based dissolution procedure is warranted as a fail-safe for agreements that contain no dissolution provision and are for whatever reason not amendable.

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

1. The face of the bond shall include the date of issuance and the date of maturity.
2. The face of the bond shall include the statements required under subs. (9)

Keep upper case

— bond counsel likes par. (n) — keep

(2)

Deleted: L

Comment [MSOffice9]: Par (m) provides the statutory authority for the resolution, trust agreement, etc. to specify what investments are permitted.

Comment [MSOffice10]: Yes, this is typical with tax and revenue anticipation note pool programs and other pooled programs.

Comment [MSOffice11]: Will make certain that the agreement contains this provision.

(2) All Auth. (4) (intro) (d) (2) sub. (5)? (2)? (n)

so no Δ?

(c) and (11) (d).

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

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

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

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

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

8. Bonds shall be registered as provided in the resolution.

9. Bonds shall be in the form, and executed in the manner, provided in the resolution.

(b) A bond issued under this section may include, or be subject to, any of the following:

1. Early mandatory or optional redemption or purchase in lieu of redemption or tender, as provided in the resolution.

2. A provision providing a right to tender.

3. A trust agreement or indenture containing any terms, conditions, and covenants that the commission determines to be necessary or appropriate, but such terms, conditions, and covenants may not be in conflict with the resolution.

(c) The commission may purchase any bond issued under this section. Subject to the terms of any agreement with the bondholders, the commission may hold, pledge, resell, or cancel any bond purchased under this paragraph, except that a purchase under this paragraph may not effect an extinguishment of a bond unless the commission cancels the bond or otherwise certifies its intention that the bond be extinguished.

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

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

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

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

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

(7) BOND SECURITY. (a) The commission may secure bonds by a trust agreement or indenture by and between the commission and one or more corporate trustees. A bond resolution, trust agreement, or indenture may contain provisions for pledging properties, revenues, and other collateral; holding and disbursing funds; protecting and enforcing the rights and remedies of bondholders; restricting individual rights of action by bondholders; and amendments, and any other provisions the commission

determines to be reasonable and proper for the security of the bondholders or contracts entered into under this section in connection with the bonds.

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

?

Deleted: asserting such rights

***NOTE: Please review this paragraph carefully to ensure it meets your intent.

Comment [MSOffice12]: Yes it does.

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

(9) BONDS NOT PUBLIC DEBT. (a) Unless otherwise expressly provided in the bond resolution, each issue of bonds by the commission shall be the limited obligation of the commission payable solely from amounts received by the commission from revenues derived from the project to be financed or refinanced or from any contract entered into or investment made in connection with the bonds and pledged to the payment of the bonds.

(b) The state and the political subdivisions who are parties to the agreement creating a commission under this section are not liable on bonds or any other contract entered into under this section, or for any other debt, obligation, or liability of the commission, whether in tort, contract, or otherwise.

***NOTE: I changed the language a bit to, I think, clarify the intent to be comprehensive. The final portion is based on s. 178.12 (2), stats. (liability of a partner in an LLP). This provision may encompass the commission creation agreement - is this okay?

Comment [MSOffice13]: Yes. Looks great.

(c) The bonds are not a debt of the state or the political subdivisions contracting to create a commission under this section. A bond issue under this section does not obligate the state or a political subdivision to levy any tax or make any appropriation for payment of the bonds. All bonds issued by a commission are payable solely from the funds pledged for their payment in accordance with the bond resolution or trust agreement or indenture providing for their issuance. All bonds shall contain, on their face, a statement regarding the obligations of the state, the political subdivisions who are parties to the agreement creating the commission, and the commission as set forth in this paragraph.

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

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

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

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

(b) Unless otherwise explicitly stated in this section, the issuance of bonds, the entering into of contracts related to those bonds, and the financing or refinancing of projects under this section need not comply with the requirements of any other state law applicable to the issuance of bonds, entering contracts, or financing or refinancing of projects.

*ASK Steve
66.0304 controls*

ejusdem generis

***NOTE: This is the provision from your instructions but, as we discussed in our meeting, a "notwithstanding any other statute" provision may not be drafted and must be removed from the draft. My notes indicate that you would get back to us with the exact statutes you want to specify. For now, this par. (b) is merely a placeholder. As drafted this provision would, for example, exempt bond contracts under this section from all state laws relating to entering contracts.

Comment [MSOffice14]: The point of this provision is to enable the statute to be complete authority for what it authorizes without regard to any other law. It is not possible to name every other law that may apply and trying to do so would create problems by negative implication as to any law not identified that might apply.

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

(d) Bonds issued under this section shall not be invalid for any irregularity or defect in the proceedings for their sale or issuance. The bonds shall contain a statement that they have been authorized and issued pursuant to the laws of this state. The statement shall be conclusive evidence of the validity of the bonds.

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

SECTION 3. 71.05 (1) (c) 10. of the statutes is created to read:

71.05 (1) (c) 10. A commission created under s. 66.0304.

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

71.26 (1m) (k) Those issued under s. 66.0304.

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

71.36 (1m) A tax-option corporation may deduct from its net income all amounts included in the Wisconsin adjusted gross income of its shareholders, the

what's
up
here?

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

SECTION 6. 71.45 (1t) (k) of the statutes is created to read:
71.45 (1t) (k) Those issued under s. 66.0304.

SECTION 7. Initial applicability.

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

Comment [MSOffice15]: Unless covered elsewhere in Wisconsin law, it is recommended to add the following language: "The commission is exempt from any property, income or other taxes, assessments, fees or charges of any kind on any real or personal property, transfer or recording of property or any interest therein, or on any fees, revenues or other income received by the commission from any source. This does not exempt any participant whose property or income is otherwise taxable. Interest paid on any bonds issued by the commission shall at all times be free from all state and local personal income or corporate income tax."

JK: sales tax

No
No

comm dsut earn income
the 3/4/09 mem. said the comm will not own any property. If it may own prop. CR: A 70.11

gross account
has big \$
for a million title transfer event?
call DOR
a series of 2 wire transfers
see bill § 3, 4, 5, & 6

Shovers, Marc

From: Andrew T. Phillips [atp@centofantiphillips.com]
Sent: Thursday, August 20, 2009 1:41 PM
To: Shovers, Marc
Cc: Buhrandt, Jeff; McKinny, Chris; 'Mark O'Connell'; 'James Hamill'
Subject: Proposed 66.0304
Attachments: 66-0304(11)(b) Proposed.DOC

Hi Marc –

Thanks again for meeting with us on Tuesday – it was a very productive session. Attached is some language that we've prepared as the new section (11)(b). Please let us know if it looks like this would work for you and LRB.

Thanks –

Andy

Andrew T. Phillips
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Phone 262-241-1900
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(11) (b) ~~Unless otherwise explicitly stated in this section~~ This section shall be deemed to provide a complete, additional and alternative method for exercising the powers authorized by this section, including the issuance of bonds, the entering into of contracts related to those bonds, and the financing or refinancing of projects. In the event of a conflict between this section and any other law, this section shall govern. ~~under this section need not comply with the requirements of any other state law applicable to the issuance of bonds, entering contracts, or financing or refinancing of projects.~~

based on
D. 59.22(4),
87.075(5), 196.027(9),
293.25(8)

Shovers, Marc

From: Andrew T. Phillips [atp@centofantiphillips.com]
Sent: Friday, September 04, 2009 4:06 PM
To: Shovers, Marc
Cc: Mueller, Eric
Subject: RE: Proposed 66.0304

Thanks Marc. I look forward to seeing the latest draft. Have a great weekend.

Andrew T. Phillips
Centofanti Phillips, S.C.
(262) 241-1900

From: Shovers, Marc [mailto:Marc.Shovers@legis.wisconsin.gov]
Sent: Friday, September 04, 2009 3:59 PM
To: Andrew T. Phillips
Cc: Mueller, Eric
Subject: RE: Proposed 66.0304

Hi Andy:

I turned the latest version of the draft into editing, but have still not heard back from DOR on the "flash transfer" issue. I just wanted to let you know that with regard to the language you suggested for s. 66.0304 (11) (b), I took out the last sentence ("In the event of a conflict between this section and any other statute, this section, to the extent of the conflict, shall prevail") because I don't think it's necessary and it may be counterproductive.

I realize that this language appears other places in the statutes, but if the first part of sub. (11) (b) is true, that s. 66.0304 creates a "complete alternative method" to issue bonds, there's no way that there could be conflict with another statute. Either the procedures in s. 66.0304 are complete or they're not. In fact, it seems to me that adding the "in the event of a conflict" language implies that the method created in s. 66.0304 isn't really complete, which undermines your intent.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608-266-0129)
E-Mail: marc.shovers@legis.wisconsin.gov

From: Andrew T. Phillips [mailto:atp@centofantiphillips.com]
Sent: Thursday, August 20, 2009 1:41 PM

9/4/2009

To: Shovers, Marc
Cc: Buhandt, Jeff; McKinny, Chris; 'Mark O'Connell'; 'James Hamill'
Subject: Proposed 66.0304

Hi Marc –

Thanks again for meeting with us on Tuesday – it was a very productive session. Attached is some language that we've prepared as the new section (11)(b). Please let us know if it looks like this would work for you and LRB.

Thanks –

Andy

Andrew T. Phillips
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Mueller, Eric

From: Andrew T. Phillips [atp@centofantiphillips.com]
Sent: Tuesday, September 01, 2009 9:30 PM
To: Shovers, Marc
Cc: Mueller, Eric; 'Mike LaPierre'; 'James Hamill'; 'Mark O'Connell'; McKinny, Chris; Buhrandt, Jeff
Subject: RE: Conduit Bond Legislation

Hi Marc –

I'll try to answer your questions from below. In the event any of this is not clear, please feel free to give me a call to discuss.

1. Yes – the language contained in s. 66.0304(2)(b) is fine by us so the Note can be removed.
2. In our latest draft, we expanded the definition in s. 66.0304(1)(c) to cross-reference the creation of a commission under ss. 66.0301 and 66.0303. We also modified s. 66.0304(3)(a) to reflect the more expansive definition of “political subdivision.” The concern about the separate status of a commission is resolved through the addition of the language in s. 66.0403(3)(a) about the commission being a separate body. As long as those concepts (use of term “political subdivision” and status as separate entity), we are open to suggestion on avoiding superfluous or repetitive language.

I look forward to your draft and thank you again for making this a priority.

Andy

Andrew T. Phillips
Centofanti Phillips, S.C.
(262) 241-1900

From: Shovers, Marc [mailto:Marc.Shovers@legis.wisconsin.gov]
Sent: Tuesday, September 01, 2009 5:03 PM
To: Andrew T. Phillips
Cc: Mueller, Eric
Subject: RE: Conduit Bond Legislation

Hi Andrew:

I'm just about done with this version of the draft. I have not yet heard back from DOR on the question I emailed them on August 21 regarding a "flash transfer" and whether these wire transfers are a taxable event. I did get your previous email with the proposed language for s. 66.0304 (11) (b). I've made a couple of minor modifications and incorporated your suggestions into the draft, and when I'm done with everything else I'll talk to my boss about it.

I have a couple more questions. First, there was no MSOffice comment about the ****Note on page 4, line 12, under s. 66.0304 (2) (b). Is that paragraph OK, in which case we can remove the note?

9/2/2009

I'm also a little confused about the changes you recommended for the definition of "commission" in s. 66.0304 (2) (c). You've requested that the specific reference to s. 66.0301 (2) be removed, though the reference to s. 66.0303 (2) remains. However the MSOffice comment indicates that there's a problem with both references because neither statute provides for the creation of an entity. You further recommend that the language in s. 66.0304 (3) (a) continue to state that "Two or more political subdivisions may create a commission for the purpose of issuing bonds by entering into an agreement to do so under s. 66.0301 (2) or 66.0303 (2)."

Would you like the definition of "commission" in s. 66.0304 (2) (c) to state that "'Commission' means an entity created by two or more political subdivisions under sub. (3) for the purpose of issuing bonds under this section."? If this is not what you want, please give me a call or explain again how you'd like this definition changed.

Thanks for your help, Andy.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
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E-Mail: marc.shovers@legis.wisconsin.gov

From: Andrew T. Phillips [mailto:atp@centofantiphillips.com]
Sent: Monday, August 31, 2009 5:09 PM
To: Shovers, Marc
Cc: McKinny, Chris; Buhrandt, Jeff; 'Mark O'Connell'; 'James Hamill'; 'Mike LaPierre'
Subject: Conduit Bond Legislation

Hi Marc –

I'm just checking to make sure you received my prior e-mail with the proposed language and otherwise see how things are coming along with the legislation. Thanks again for your efforts and please let us know if there is anything we can do to assist you.

Andy

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Phone 262-241-1900
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9/2/2009

Email: atp@centofantiphillips.com

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1957/H2
MES&EVM:cjs:md
Stays
P3
PMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAJ

SOON:
IN 9/4/09

repeal

1 AN ACT *to amend* 32.02 (1) and 71.36 (1m); and *to create* 66.0304, 71.05 (1) (c)
2 10., 71.26 (1m) (k) and 71.45 (1t) (k) of the statutes; **relating to:** authorizing
3 two or more cities, villages, towns, or counties, or a combination of such political
4 subdivisions, to create a commission to issue conduit revenue bonds and
5 exercise eminent domain authority and exempting from taxation interest on
6 such bonds.

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 1. 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

SECTION 1

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 if the condemnation occurs within the boundaries of a member of the commission, or
 6 any public board or commission, for any lawful purpose, but in the case of city and
 7 village boards or commissions approval of that action is required to be granted by the
 8 governing body. A mosquito control commission, created under s. 59.70 (12), and a
 9 local professional football stadium district board, created under subch. IV of ch. 229,
 10 may not acquire property by condemnation.

FWS
2-10

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

12 **66.0304 Conduit revenue bonds. (1) DEFINITIONS.** In this section:

13 (a) "Agreement" means a contract entered into under this section by the
 14 political subdivisions which form a commission. The contract may be amended ~~by~~
 15 ~~the parties~~ according to the terms of the contract, and the amended contract remains
 16 an agreement.

17 (b) "Bond" means any bond, note or other obligation of a commission issued
 18 under this section, including any refunding bond or certificate of participation or
 19 lease-purchase agreement.

20 (c) "Commission" means an entity created by two or more political subdivisions,
 21 ~~under s. 66.0301(2), or a group of political subdivisions~~ who contract with each other
 22 under s. 66.0303 (2), for the purpose of issuing bonds under this section.

23 (d) (cs) "Member" means a party to an agreement.

24 (e) (d) "Participant" means any public or private entity, including federally
 25 recognized Indian ~~tribes and bands~~, that contracts with a commission for the purpose

Handwritten notes in a box on the right side of the page, including references to s. 66.0301(2) and s. 66.0303(2).

66.0301(2) or

tribe or band

x
x

1 of financing or refinancing a project that is owned, sponsored, or controlled by the
2 public or private entity.

x 3 (f) (e) "Political subdivision" means any city, village, town, or county in this state
4 or any city, village, town, county, district, authority, agency, commission, or other
5 similar governmental entity in another state.

x 6 (g) (f) "Project" means any capital improvement, investment or program of
7 investment with a participant, purchase of receivables, property, assets,
8 commodities, bonds or other revenue streams or related assets, working capital
9 program, or liability or other insurance program, located within or outside of this
10 state and may include any of the following:

~~NOTE. This definition is based on your instructions and adds the phrase "with a participant", but I don't understand the relationship between the investment and the participant that "with" refers to. What is your intent for this part of the definition?~~

- ~~1. A project as defined in s. 66.1103 (2) (k).~~
- ~~2. A project described in s. 231.03 (6).~~
- ~~3. An economic development project as defined in s. 234.01 (4n).~~
- ~~4. A housing project as defined in s. 234.01 (7).~~

x 15 (h) (g) "Revenue" means all moneys and fees received from any source by a
16 commission.

17 (2) ATTORNEY GENERAL REVIEW. (a) Before an agreement may take effect, the
18 proposed agreement shall be submitted to the attorney general who shall determine
19 whether the agreement is in proper form and compatible with the laws of this state.
20 The attorney general shall approve any agreement submitted under this subsection
21 unless the attorney general finds that it does not meet the conditions set forth in this
22 section and details in writing addressed to the concerned political subdivisions'
23 governing bodies the specific respects in which the proposed agreement fails to meet

SECTION 2

1 the requirements of law. Failure to disapprove an agreement submitted under this
2 subsection within 90 days of its submission constitutes approval. The attorney
3 general, upon submission of an agreement, shall transmit a copy of the agreement
4 to the governor who shall consult with any state department or agency affected by
5 the agreement. The governor shall forward to the attorney general any comments
6 the governor may have concerning the agreement.

7 (b) No approval is required under this subsection for an amendment to an
8 agreement to take effect, or for an addition or withdrawal of a member, unless
9 required by the terms of the agreement. A commission may not be dissolved under
10 sub. (4m) without the approval of the attorney general, who shall certify to the
11 commission and the participants that the dissolution resolution provides for the
12 payment of any outstanding bonds or other obligations of the commission.

****NOTE: Your instructions contained the phrase "or failure to disapprove within
90 days of submission of the proposed dissolution," but I'm not sure what that referred
to. Does par. (b) meet your intent? What's the AG's standard re: the dissolution provision
- just the ability to certify that an agreement is in "proper form" and does not violate the
statutes?

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

19 (b) A commission shall be governed by a board, the members of which shall be
20 appointed under the terms of the agreement. Board members may be reimbursed
21 for their actual and necessary expenses incurred in performing their duties to the
22 extent provided in the agreement or the bylaws of the commission.

of a commission

An additional

1 (c) If authorized by the original agreement and by the bylaws of the
2 commission, the members of a commission may vote to allow another political
3 subdivision ~~to~~ ^{may} become a member, or ~~may vote to allow~~ ^{and} a member ~~to~~ ^{may} withdraw from
4 the agreement. For an agreement to be valid, at least one commission member shall
5 be a political subdivision that is located in this state and a commission shall consist
6 of at least 2 political subdivisions. A commission may not take any action under this
7 paragraph that would invalidate an agreement.

a commission as provided in

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

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

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

17 (e) Issue bonds ~~or~~ ^{subject to} refunding bonds, ~~with~~ ^{(sub. (5) to} finance or refinance a
18 project, including funding a reserve fund or capitalized interest, payment of costs of
19 issuance ^{and other costs related to the financing or refinancing} or credit enhancement, and enter into agreements related to the issuance
20 of bonds, including liquidity and credit facilities, remarketing agreements,
21 insurance policies, guaranty ^{rate swap} agreements, letter of credit or reimbursement
22 agreements, indexing agreements, interest ^{or} exchange agreements, ^{and} currency
23 exchange agreements. ^{INS 5-23}

24 (f) Employ or appoint agents, employees, ^{finance professionals,} and special advisers as the
25 commission finds necessary and fix their compensation.

*the fees and expenses
- 6 - as provided in
the agreement*

1 (g) Accept gifts, loans, or other aid. *, plus administrative expenses,*

2 (h) Establish and collect fees *from* participants who benefit from the
3 commission's services, or services provided by an outside entity, and apportion the
4 fees collected to the members of the commission, or the outside entity *and distribute,*

5 (i) Make loans to, lease property from or to, or enter into any other kind of an
6 agreement with a participant *or other entity* in connection with financing a project.

7 (j) Mortgage, pledge, or otherwise encumber the commission's property or its
8 interest in projects.

9 (k) Assign or pledge any portion of its interests in mortgages, deeds of trust,
10 indentures of mortgage or trust, leases, purchase or sale agreements or other
11 financing agreements, or similar instruments, notes, and security interests in
12 property, of a participant, or contracts entered into in connection with bonds.

13 (L) Issue, obtain, or aid in obtaining, from any person, any insurance or
14 guarantee to, or for, the payment or repayment of interest or principal, or both, on
15 any loan, lease, bond, or other obligation evidencing or securing such a loan, lease,
16 bond, or obligation that is entered into under this section.

17 (m) Apply on its own behalf or on behalf of a participant to any unit of
18 government for an allocation of volume cap, tax credit, subsidy, grant, loan, credit
19 enhancement, or any other federal, state, or local program in connection with the
20 financing or refinancing of a project.

21 (n) Invest any bond proceeds or any money held for payment or security of the
22 bonds, or any contract entered into under this section, in any securities or obligations
23 permitted by the resolution, trust agreement, indenture, or other agreement
24 providing for issuance of the bonds or the contract.

****NOTE: I understand that bond counsel is interested in this provision, but is it really necessary? Essentially, it says that the commission may invest any money in anything that a contract to which they are a party authorizes them to invest in. If the resolution, trust agreement, indenture, or other agreement already specifies what the commission may invest in, what's the point of par. (n)?

1 (o) At the request of a participant, combine and pledge revenues of multiple
2 projects for repayment of one or more series of bonds issued under this section.

3 (p) Purchase bonds issued by or on behalf of, or held by, any participant. Bonds
4 purchased under this paragraph may be held by the commission or sold, in whole or
5 in part, separately or together with other bonds issued by the commission.

****NOTE: Is this right? Do you want the commission to be able to purchase bonds issued by a participant?

6 **(4m)** DISSOLUTION OF A COMMISSION. Subject to sub. (2) (b) and subject to
7 providing for the payment of its bonds, including interest on the bonds, and the
8 performance of its other contractual obligations, a commission may be dissolved, by
9 resolution, as provided in the agreement. If the commission is dissolved, the property
10 of the commission shall be transferred to the political subdivisions who are parties
11 to the agreement creating the commission as provided in the agreement.

****NOTE: This is based on s. 229.71, stats, but is limited to as provided in the agreement. You may wish to consider whether a non-agreement-based dissolution procedure is warranted as a fail-safe for agreements that contain no dissolution provision and are for whatever reason not amendable.

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

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

17 2. The face of the bond shall include the statements required under subs. (9)
18 (c) and (11) (d).

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

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

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

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

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

10 8. Bonds shall be registered as provided in the resolution.

11 9. Bonds shall be in the form, and executed in the manner, provided in the
12 resolution.

13 (b) A bond issued under this section may include, or be subject to, any of the
14 following:

15 1. Early mandatory or optional redemption or purchase in lieu of redemption
16 or tender, as provided in the resolution.

17 2. A provision providing a right to tender.

18 3. A trust agreement or indenture containing any terms, conditions, and
19 covenants that the commission determines to be necessary or appropriate, but such
20 terms, conditions, and covenants may not be in conflict with the resolution.

21 (c) The commission may purchase any bond issued under this section. Subject
22 to the terms of any agreement with the bondholders, the commission may hold,
23 pledge, resell, or cancel any bond purchased under this paragraph, except that a
24 purchase under this paragraph may not effect an extinguishment of a bond unless

1 the commission cancels the bond or otherwise certifies its intention that the bond be
2 extinguished.

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

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

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

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

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

15 **(7) BOND SECURITY.** (a) The commission may secure bonds by a trust agreement
16 or indenture by and between the commission and one or more corporate trustees. A
17 bond resolution, trust agreement, or indenture may contain provisions for pledging
18 properties, revenues, and other collateral; holding and disbursing funds; protecting
19 and enforcing the rights and remedies of bondholders; restricting individual rights
20 of action by bondholders; and amendments, and any other provisions the commission
21 determines to be reasonable and proper for the security of the bondholders or
22 contracts entered into under this section in connection with the bonds.

23 (b) A pledge of property, revenues, or other collateral by a commission to secure
24 the payment of the principal or redemption price of, or interest on, any bonds, or any
25 reimbursement or similar agreement with any provider of credit enhancement for

SECTION 2

1 bonds, or any swap or other agreement entered into in connection with bonds, is
2 binding on the parties and on any successors. The collateral shall immediately be
3 subject to the pledge, and the pledge shall constitute a lien and security interest
4 which shall attach immediately to the collateral and be effective, binding, and
5 enforceable against the pledgor, its successors, purchasers of the collateral, creditors,
6 and all others asserting such rights, to the extent set forth, and in accordance with,
7 the pledge document irrespective of whether those parties have notice of the pledge
8 and without the need for any physical delivery, recordation, filing, or further act.

~~***NOTE: Please review this paragraph carefully to ensure it meets your intent.~~

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

13 **(9) BONDS NOT PUBLIC DEBT.** (a) Unless otherwise expressly provided in the bond
14 resolution, each issue of bonds by the commission shall be the limited obligation of
15 the commission payable solely from amounts received by the commission from
16 revenues derived from the project to be financed or refinanced or from any contract
17 entered into or investment made in connection with the bonds and pledged to the
18 payment of the bonds.

19 (b) The state and the political subdivisions who are parties to the agreement
20 creating a commission under this section are not liable on bonds or any other contract
21 entered into under this section, or for any other debt, obligation, or liability of the
22 commission, whether in tort, contract, or otherwise

****NOTE: I changed the language a bit to, I think, clarify the intent to be comprehensive. The final portion is based on s. 178.12 (2), stats. (liability of a partner in an LLP). This provision may encompass the commission creation agreement – is this okay?

1 (c) The bonds are not a debt of the state or the political subdivisions contracting
2 to create a commission under this section. A bond issue under this section does not
3 obligate the state or a political subdivision to levy any tax or make any appropriation
4 for payment of the bonds. All bonds issued by a commission are payable solely from
5 the funds pledged for their payment in accordance with the bond resolution or trust
6 agreement or indenture providing for their issuance. All bonds shall contain, on
7 their face, a statement regarding the obligations of the state, the political
8 subdivisions who are parties to the agreement creating the commission, and the
9 commission as set forth in this paragraph.

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

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

18 (c) A copy of the budget and audit shall be sent to the governing body of each
19 political subdivision which is a party to the agreement that created the commission.

20 (11) LIMITATIONS. (a) A commission may not authorize federally tax-exempt
21 bonds to finance a capital improvement project outside this state unless a political
22 subdivision within whose boundaries the project is to be located has approved the
23 financing of the project.

24 (b) ~~Unless otherwise explicitly stated in this section,~~ the issuance of bonds, the
25 entering into of contracts related to those bonds, and the financing or refinancing of

*, to all other methods
provided by law,*

*This section provides a complete alternative method
to exercise the powers authorized in this section, including*

1 projects under this section need not comply with the requirements of any other state
2 law applicable to the issuance of bonds, entering contracts, or financing or
3 refinancing of projects. ~~NOTWITHSTANDING ANY OTHER STATUTE~~

****NOTE: This is the provision from your instructions but, as we discussed in our meeting, a "notwithstanding any other statute" provision may not be drafted and must be removed from the draft. My notes indicate that you would get back to us with the exact statutes you want to specify. For now, this par. (b) is merely a placeholder. As drafted this provision would, for example, exempt bond contracts under this section from all state laws relating to entering contracts.

4 (c) Any action brought to challenge the validity of the proposed issuance of a
5 bond under this section, or the enforceability of a contract entered into under this
6 section, must be commenced in circuit court within 30 days of the commission
7 adopting a resolution authorizing the issuance of the bond or the execution of the
8 contract.

9 (d) Bonds issued under this section shall not be invalid for any irregularity or
10 defect in the proceedings for their sale or issuance. The bonds shall contain a
11 statement that they have been authorized and issued pursuant to the laws of this
12 state. The statement shall be conclusive evidence of the validity of the bonds.

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, impair, or alter the rights and powers vested in a commission by this
16 section, including the rights and powers under sub. (4), before the commission has
17 met and discharged the bonds, and any interest due on the bonds, and has fully
18 performed its contracts, unless adequate provision is made by law for the protection
19 of the bondholders or those entering into contracts with a commission. The
20 commission may include this pledge in a contract with bondholders.

21 SECTION 3. 71.05 (1) (c) 10. of the statutes is created to read:

22 71.05 (1) (c) 10. A commission created under s. 66.0304.

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

2 71.26 **(1m)** (k) Those issued under s. 66.0304.

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

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

1 be available to the tax-option corporation if it were a nontax-option corporation may
2 be claimed.

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

4 71.45 **(1t)** (k) Those issued under s. 66.0304.

5 **SECTION 7. Initial applicability.**

6 (1) The treatment of sections 71.05 (1) (c) 10., 71.26 (1m) (k), 71.36 (1m), and
7 71.45 (1t) (k) 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) 10., 71.26 (1m) (k), 71.36
10 (1m), and 71.45 (1t) (k) of the statutes first applies to taxable years beginning on
11 January 1 of the year following the year in which this subsection takes effect.

12 (END)

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INS 2-10

✓

agreements described in

SECTION 1. 66.0303 (1) of the statutes is amended to read:

66.0303 (1) In this section, "municipality" has the meaning given in s. 66.0301

(1) (a), except that with regard to a municipality that acts under s. 66.0304,

"municipality" includes ^apolitical subdivision^e, as defined in s. 66.0304 (1) (f). ✓

History: 1999 a. 150 ss. 77, 355; 2001 a. 109; 2005 a. 198.

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, commodity swap agreements, and other hedge agreements and any other like agreements, in each case with such payment, interest rate, currency security, remedy, and other terms and conditions as the commission determines.

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In the event of a conflict between this section and any other statute, this section, to the extent of the conflict, shall prevail.