State of Wisconsin
2009 - 2010 LEGISLATURE

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2009 ASSEMBLY BILL 605

December 8, 2009 – Introduced by Representatives SEIDEL, HILGENBERG, DEXTER, FIELDS, BERCEAU, JORGENSEN, PETROWSKI, SMITH, STASKUNAS, BENEDICT, HINTZ and HRAYCHUCK, cosponsored by Senators KREITLOW, PLALE, HOPPER, DARLING, TAYLOR, SCHULTZ, HANSEN and OLSEN. Referred to Committee on Urban and Local Affairs. Referred to Joint Survey Committee on Tax Exemptions.

AN ACT ***to amend*** 32.02 (1), 66.0303 (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

This bill authorizes two or more political subdivisions to enter into an agreement to create a commission to issue a type of municipal bonds referred to as conduit bonds. A commission is created using the current law procedures for intergovernmental or interstate cooperation agreements. Generally, conduit bonds (bonds) are bonds issued by a unit of government under which the proceeds of the bond sale are transferred to a private entity (the borrower), who must be "qualified" under federal law. The borrower uses the proceeds to finance a project that has a public benefit as authorized under state or federal law. In effect, the unit of government serves as a conduit between the borrower and the bond purchaser. Generally, the borrower pays a lower interest rate on the bond proceeds than it would have paid if it had borrowed the money on the open market because the bonds issued by a unit of government may be exempt from federal or state taxation.

Under this arrangement, the borrower is solely responsible to repay the bonds and interest on the bonds from revenue generated by the project financed by the bond sale. Security for the bonds is supported by collateral or revenues of the borrower who receives the proceeds from the bond sale. Collateral for the bonds may be a building, equipment, or a revenue stream generated by the borrower's construction or remodeling of a project. The borrower, not the unit of government that issues the bonds, is responsible for all debt service payments to the bondholders. And the borrower, not the unit of government that issues the bonds, is liable to the bondholders if the bonds are not paid off.

A commission created as authorized under the bill is a unit of government and a body corporate and politic that is completely separate from the creating political subdivisions and from the state. The bill defines political subdivision to mean any city, village, town, or county in this state or any city, village, town, county, district, authority, agency, commission, or similar governmental entity in another state. A political subdivision that is a party to an agreement is considered to be a member of a commission. Before an agreement may take effect, it must be approved by the attorney general.

A commission is governed, under the bill, by a board and the board members are appointed under the terms of the agreement creating the commission. The agreement may also provide for an additional political subdivision to become a member of a commission, or for a member to withdraw from a commission. At all times, however, at least one member of a commission must be a political subdivision that is located in this state.

Under the bill, a commission is granted all of the powers that are necessary or convenient to carry out the purposes described in the bill. Primarily, a commission is authorized to issue bonds or refunding bonds to finance or refinance a project, including funding a reserve fund or capitalized interest, payment of costs of issuance and other costs related to the financing or refinancing, and to enter into agreements related to the issuance of bonds, including liquidity and credit facilities, remarketing agreements, currency exchange agreements, commodity swap agreements, and other hedge agreements. The bill defines a project as 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.

Other powers of a commission include the authority to employ or appoint agents, employees, finance professionals, and special advisors; the authority to establish and collect fees, plus administrative expenses, from a participant who benefits from the commission's services, or services provided by an outside entity; and, at the request of a participant, the authority to combine and pledge revenues of multiple projects for repayment of one or more series of bonds. The bill defines a participant as any public or private entity, including federally recognized Indian tribe or band, that contracts with a commission for the purpose of financing or refinancing a project that is owned, sponsored, or controlled by the entity.

Unless the bond resolution states otherwise, bonds issued by a commission are the obligation of the commission, to be paid solely out of amounts received by the commission from revenues derived from the project that is financed or refinanced, or by another agreement entered into or investment made that relates to, and is pledged to, the bonds. The state, and the political subdivisions who are parties to the agreement creating the commission, are not liable on the bonds or other contracts entered into by a commission, nor are any of the commission's board members personally liable on the bonds unless the personal liability or accountability is the result of willful misconduct.

The commission is required to annually prepare a budget, and maintain an accounting system in accordance with generally accepted accounting principals. The bill also requires the commission to have its financial statements and debt covenants audited annually by an independent certified public accountant, except that the commission may decide, by unanimous vote of its board, to have an audit performed every two years. The commission must send a copy of its budget and audit to the governing body of each political subdivision which is a party to the agreement which created the commission.

The bill authorizes a commission to be dissolved, according to the terms of the agreement under which it was created, if the commission provides for the payment of its bonds, including interest, and the performance of its other contractual obligations. The attorney general must approve the dissolution of a commission. The bill also contains a state pledge under which the state agrees and pledges that it will not limit, impair, or alter the rights and powers of a commission before the commission has met and discharged the bonds, including interest, and has fulfilled its contractual obligations.

Any interest that is generated by the bonds is exempt from taxation. The method of issuing bonds and entering into of contracts related to those bonds that is created in the bill is a complete alternative method to all other methods under current law which authorize the issuance of bonds by a unit of government.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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. 66.0303 (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 agreements described in s. 66.0304, "municipality" includes a political subdivision, as defined in s. 66.0304 (1) (f).

SECTION 3. 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 66.0303 (2), for the purpose of issuing bonds under this section.

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

(e) "Participant" means any public or private entity, including a federally recognized Indian tribe or band, 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.

(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.

(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.

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

(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.

(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). 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) An additional political subdivision may become a member of a commission, and a member may withdraw from a 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, subject to sub. (5), to finance or refinance a project, 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 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.

(f) Employ or appoint agents, employees, finance professionals, 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, and distribute the fees and expenses as provided in the agreement.

(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, 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.

(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.

(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.

(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) (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.

(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.

(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 unless a political subdivision within whose boundaries the project is to be located has approved the financing of the project.

(b) This section provides a complete alternative method, to all other methods provided by law, to exercise the powers authorized in this section, including the issuance of bonds, the entering into of contracts related to those bonds, and the financing or refinancing of projects.

(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 4. 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 5. 71.26 (1m) (k) of the statutes is created to read:

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

SECTION 6. 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 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, <u>obligations issued under s. 66.0304 by a commission,</u> 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 7. 71.45 (1t) (k) of the statutes is created to read:

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

SECTION 8. 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)