DRAFTER'S NOTE LRB–4065/?dn
FROM THE MS/JK/RC/JK/G...:...:...
LEGISLATIVE REFERENCE BUREAU

We have not included the language contained in s. 229.89 (2) of the Quarles draft, which seems to be based on s. 66.412. We did not include the language for a number of reasons. First, the language is archaic, convoluted and contains phrases that are incompatible with proper drafting, such as "Notwithstanding any requirement of law to the contrary . . ." Second, the language appears to accomplish no purpose. If any of the entities listed may transfer property to a cultural arts district under their "instruments", they don't need redundant authority to do so. Under created s. 229.844 (14), the district may already "Solicit and accept gifts, loans, grants of land or other property and other aid, and agree to conditions with respect to such gifts, loans, grants or other aid.", so no additional authority is needed. If there *is* some sort of intent in s. 229.89 (2) of the Quarles draft that you would like to accomplish, that is not already allowable or contained in the draft, please let us know what your intent is and we can draft something to ensure that it is achieved.

In various places, the Quarles draft states that the district may "issue debt" (see, for example, s. 229.87 (8) of the Quarles draft) and in other places it uses the term "bonds" (see for example s. 229.90 (1) of the Quarles draft, which states that the district may be dissolved if its "bonds" are paid off.) The phrase "issue debt" is not used in the statutes. We have decided that it would be best for the draft to state that the district may "issue bonds, notes and incur debt." Is this OK? Also see the "****NOTE" following s. 229.844 (8) of the bill.

Created s. 229.847 (1) (a) [from s. 229.90 (1) (a) of the Quarles draft] allows a district to be dissolved by a law enacted by this state. This seems to undermine the thrust of the draft as being the creation of a *local* unit of government. In addition, it could be argued that the home rule provisions of the constitution and the statutes are violated because the state, under s. 229.847 (1) (a), would be able to dissolve a local unit of government that is created by a local unit of government that has very little attachment to state government. See article XI, section 3, of the Wisconsin Constitution and s. 62.11 (5), stats. This constitutional provision "makes a direct grant of legislative power to municipalities" by authorizing them to determine their own local affairs, subject to the constitution and legislative enactments of statewide concern. See *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526 (1977), citing *State ex rel. Ekern v. City of Milwaukee*, 190 Wis. 633, 637 (1926).

Under s. 229.848 (1) a district's property, upon dissolution of the district, could be transferred to an entity that is "organized and operated exclusively for religious . . .

purposes. . . ” See section 501 (c) (3) of the Internal Revenue Code. This could be challenged as a violation of the Establishment Clause of the First Amendment to the U.S. Constitution and of the Preference clause of Article I, section 18 of the Wisconsin Constitution.