

1999 DRAFTING REQUEST

Bill

Received: 12/10/1999

Received By: **shoveme**

Wanted: As time permits

Identical to LRB:

For: **Administration 6-5468**

By/Representing: **Paul Ziegler**

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

Drafter: **shoveme**

May Contact:

Alt. Drafters: **kahlepj
kuesejt
champra
grantpr
jkreye**

Subject: **Munis - miscellaneous
State Government - miscellaneous
Employ Pub - miscellaneous
Eminent Domain - miscellaneous
Tax - sales
Econ. Development - misc.**

Extra Copies: **RJM**

Pre Topic:

No specific pre topic given

Topic:

Authorize the creation of a cultural arts district

Instructions:

See Attached. Authorize certain cities to create a cultural arts district.

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		<i>13-3-6-2000 Krmj</i>	<i>ch 26</i>				

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for Senate
per MES

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E-mail
to paul
Ziegler at
DOA

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Please send an electronic copy of the draft to Paul Ziegler at DDA. Thanks
Amarc

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OVERTURE FOUNDATION

FIRSTAR PLAZA
1 SOUTH PINCKNEY STREET SUITE 816
MADISON, WISCONSIN 53703
608-294-9000 FAX 608-294-9076

GEORGE E. AUSTIN
President

- 3

December 2, 1999

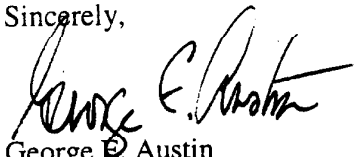
Mr. George Lightbourn, Secretary
Wisconsin Department of Administration
101 East Wilson Street 10th Floor
P.O. Box 7864
Madison, WI 53707-7864

Dear George:

As a follow-up to our telephone conversation this morning, I'm enclosing an annotated draft of the proposed cultural arts authority legislation. The draft was prepared by Quarles & Brady attorneys, Jeff Bartell and Ken Hansen. It provides the framework for the legislation that we would like the Legislative Reference Bureau to prepare for consideration in the spring floor period of the Legislature. We appreciate the Administration's willingness to move this issue forward. I have asked the City's legislative liaison, Jim O'Keefe, to speak with Rick Chandler about the drafting request and the timetable.

Please feel free to have Rick Chandler follow-up with me or the Quarles & Brady attorneys.

Sincerely,



George E. Austin
OVERTURE FOUNDATION

CULTURAL ARTS AUTHORITY LEGISLATION

An Act to amend ss. 16.70(1), 16.70(14), 19.42(13)(a), 19.82(1), 25.50(1)(d), 32.02(11), 32.05(intro.), 32.05(1)(a), 32.07(2), 40.02(28), 40.02(36), 66.066(1)(a), 66.30(1)(a), 71.26(1)(bm), 71.36(1m), 111.70(1)(j), 229.23(1), 230.03(3), 231.01(4m), 231.01(5w), 231.05(1), 231.08(5) and 231.23, and to create ss. 13.94(4)(a)7, 24.61(2)(a)8, 25.17(3)(b)11, 66.04(2)(a)3q, 70.11(39), 71.05(1)(c)5, 71.05(1)(c)6, 71.26(1m)(h), 71.26(1m)(j), 71.45(1t)(h), 71.45(1t)(j), 219.09(1)(d), 230.03(13m), and subchapter IV of chapter 229 of the statutes; relating to: authorizing the creation of cultural arts authorities by action of certain officials of populous cities; giving the Wisconsin Health and Educational Finance Authority the authority to issue bonds to finance cultural arts facilities and granting income tax exemptions for interest income on such bonds and debt of cultural arts authorities; giving cultural arts authorities the power to condemn property; providing tax exemptions for a cultural arts authority; exempting cultural arts authorities from laws relating state and municipal employment relations and the state retirement system; and creating an income and franchise tax exemption for cultural arts authorities.

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

SECTION 1. 13.94(4)(a)7 of the statutes is created to read:

13.94(4)(a)7. Any cultural arts authority under subch. IV of ch. 229.¹

SECTION 2. 16.70(1) of the statutes is amended to read:

16.70(1) "Agency" means an office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority or a cultural arts authority created under subch. IV of ch. 229.²

SECTION 3. 16.70(14) of the statutes is amended to read:

16.70(14) "State" does not include a district created under subch. II or III of ch. 229 or any authority created under subchapter IV of ch. 229.³

¹Makes the authority subject to the State Legislative Audit Bureau.

²Clarifies that the authority is not subject to same purchasing requirement (through DOA, etc.) as various state agencies.

³Excludes the authority from the application of certain state purchasing requirements.

SECTION 4. 19.42(13)(a) of the statutes is amended to read:

19.42(13)(a) All positions to which individuals are regularly appointed by the governor, except: the position of trustee of any private higher educational institution receiving state appropriations, ~~and~~ the position of member of the district board of a local professional baseball park district created under subch. III of ch. 229, and the position of member of the board of a cultural arts authority under subch. IV of ch. 229.⁴

SECTION 5. 19.82(1) of the statutes is amended to read:

19.82(1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order including specifically any cultural arts authority created under subch. IV of ch. 229;⁵ a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; any public purpose corporation, as defined in s. 181.79 (1); a nonprofit corporation operating the Olympic ice training center under s. 42.11 (3); or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV or V of ch. 111.

SECTION 6. 24.61(2)(a)8. of the statutes is created to read:

24.61(2)(a)8. Bonds issued under ch. 231 with respect to a cultural arts facility defined in s. 229.85.⁶

SECTION 7. 25.17(3)(b)11. of the statutes is created to read:

25.17(3)(b) 11. Bonds issued under ch. 231 with respect to a cultural arts facility defined in s. 229.85.⁷

⁴Clarifies that certain ethics provisions applicable to certain governmental bodies do not apply to the authority boards.

⁵Clarifies that cultural arts authorities are subject to various open meetings requirements.

⁶Permits the common school fund, normal school fund, the university fund and the agricultural college fund to be invested in bonds issued by WHEFA concerning cultural arts facilities.

⁷Permits the State of Wisconsin Investment Board to invest any funds under its control in bonds issued by WHEFA concerning a cultural arts facility.

SECTION 8. 25.50(1)(d) of the statutes Wisconsin Act 27 is amended to read:

25.50(1)(d) "Local government" means any county, town, village, city, power district, sewerage district, drainage district, town sanitary district, public inland lake protection and rehabilitation district, local professional baseball park district created under subch. III of ch. 229, cultural arts authority created under subch. IV of ch. 229, public library system, school district or technical college district in this state, any commission, committee, board or officer of any governmental subdivision of this state, any court of this state, other than the court of appeals or the supreme court, or any authority created under s. 231.02, 233.02 or 234.02.⁸

SECTION 9. 32.02(17) of the statutes is created to read:

32.02(17) Any cultural arts authority created under subch. IV of ch. 229 other than a class 1 city cultural arts authority as defined in s. 229.85, but only within the condemnation area defined in s. 229.85.⁹

SECTION 10. 32.05 (intro.) of the statutes is amended to read:

32.05 Condemnation for sewers and transportation facilities. (intro.) In this section, "mass transit facility" includes, without limitation because of enumeration, exclusive or preferential bus lanes if those lanes are limited to abandoned railroad rights-of-way or existing expressways constructed before May 17, 1978, highway control devices, bus passenger loading areas and terminal facilities, including shelters, and fringe and corridor parking facilities to serve bus and other public mass transportation passengers, together with the acquisition, construction, reconstruction and maintenance of lands and facilities for the development, improvement and use of public mass transportation systems for the transportation of passengers. This section does not apply to town highways created or altered under ch. 80 except as to jury trials on appeals under ss. 80.24 and 80.25, nor to proceedings in 1st class cities under subch. II. In any city, condemnation for housing under ss. 66.40 to 66.404, or for urban renewal under s. 66.431, may proceed under this section or under s. 32.06 at the option of the condemning authority. Condemnation by a local exposition district under subch. II of ch. 229 for any exposition center or exposition center facility may proceed under this section or under s. 32.06 at the option of the local exposition district. Condemnation within a condemnation area (as defined in s. 229.85) by a cultural arts authority under subch. IV of ch. 229 (other than a class 1 city cultural arts authority as defined in s. 229.85) for any cultural arts facility may proceed under this section or under s. 32.06 at the option of the cultural arts authority. All other condemnation of property for public alleys, streets, highways, airports, mass transit facilities, gas or leachate extraction

⁸Allows a cultural arts authority to participate in the local government pooled investment fund.

⁹Gives cultural arts authorities (other than those created by first class cities) eminent domain powers subject to definition by the sponsoring city.

systems to remedy environmental pollution from a solid waste disposal facility, or other transportation facilities, or storm sewers and sanitary sewers, watercourses or water transmission and distribution facilities shall proceed as follows:¹⁰

SECTION 11. 32.05(1)(a) of the statutes is amended to read:

32.05(1)(a) Except as provided under par. (b), the county board of supervisors (or the county highway committee when so authorized by the county board of supervisors), city council, village board, sewerage commission governing metropolitan sewerage district created by ss. 66.22 or 66.88 to 66.918, secretary of transportation, a commission created by contract under s. 66.30, a joint local water authority created by contract under s. 66.0375, housing authority under ss. 66.40 to 66.404, local exposition district created under subch. II of ch. 229, cultural arts authority created under subch. IV, ch. 229 other than a class 1 city cultural arts authority as defined in s. 229.85, redevelopment authority under s. 66.431 or community development authority under s. 66.4325 shall make an order providing for the laying out, relocation and improvement of the public highway, street, alley, storm and sanitary sewers, watercourses, water transmission and distribution facilities, mass transit facilities, airport, or other transportation facilities, housing project, redevelopment project, exposition center, exposition center facilities, or cultural arts facilities which shall be known as the relocation order. This order shall include a map or plat showing the old and new locations and the lands and interests required. A copy of the order shall, within 20 days after its issue, be filed with the county clerk of the county wherein the lands are located.¹¹

SECTION 12. 32.07(2) of the statutes, is amended to read:

32.07(2) The petitioner shall determine necessity if application is by the state or any commission, department, board or other branch of state government or by a city, village, town, county, school district, board, commission, public officer, commission created by contract under s. 66.30, joint local water authority under s. 66.0735, redevelopment authority created under s. 66.431, local exposition district created under subch. II of ch. 229, cultural arts authority created under subch. IV, ch. 229 other than a class 1 city cultural arts authority as defined in s. 229.85, housing authority created under ss. 66.40 to 66.404 or for the right-of-way of a railroad up to 100 feet in width, for a telegraph, telephone or other electric line, for the right-of-way for a gas pipeline, main or service or for easements for the construction of any elevated structure or subway for railroad purposes.¹²

¹⁰Provides cultural arts authorities (other than those created by first class cities) with the option of proceeding under either of two alternative eminent domain procedures under the statutes.

¹¹Relates to condemnation by a cultural arts authority under this section.

¹²Provides that the cultural arts authority will determine the necessity of a condemnation made by the authority.

SECTION 13. 40.02(28) of the states is amended to read:

40.02(28) "Employer" means the state, including each state agency, and any county, city, village, town, school district, other governmental unit or instrumentality of 2 or more units of government now existing or hereafter created within the state (except for any cultural arts authority created under subch. IV of ch. 229) and any federated public library system established under s. 43.19 whose territory lies within a single county with a population of 500,000 or more, except as provided under ss. 40.51(7) and 40.61(3), or a local exposition district created under subch. II of ch. 229. Each employer shall be a separate legal jurisdiction for OASDHI purposes.¹³

SECTION 14. 40.02(36) of the statutes is amended to read:

40.02(36) "Governing body" means the legislature or the head of each state agency with respect to employees of that agency for the state, the common council in cities, the village board in villages, the town board in towns, the county board in counties, the school board in school districts, or the board, commission or other governing body having the final authority for any other unit of government (except for any cultural arts authority created under subch. IV of Ch. 229), for any agency or instrumentality of 2 or more units of government, or for any federated public library system established under s. 43.19 whose territory lies within a single county with a population of 500,000 or more or for a local exposition district created under subch. II of ch. 229.¹⁴

SECTION 15. 66.04(2)(a)3q. of the statutes is created to read:

66.04(2)(a) 3q. Bonds issued under ch. 231 with respect to a cultural arts facility defined in s. 229.85.¹⁵

SECTION 16. 66.066(1)(a) of the statutes is amended to read:

66.066(1)(a) "Municipality" means any city, village, town, county, commission created by contract under s. 66.30, public inland lake protection and rehabilitation district established under s. 33.23, 33.235 or 33.24, metropolitan sewerage district created under ss. 66.20 to 66.26 or 66.88 to 66.918, town sanitary district under subch. IX of ch. 60, a local professional baseball park district created under subch. III of ch. 229, or a municipal water district or power district under ch. 198 and any other public or quasi-public corporation, officer, board or other public body empowered to borrow money and issue obligations to

¹³Excepts cultural arts authorities from state retirement system provisions.

¹⁴Relates to state retirement system. See above.

¹⁵Permits cities and other local government units to invest funds in bonds issued by WHEFA concerning cultural arts facilities.

repay the same out of revenues. "Municipality" does not include the state, ~~or~~ a local exposition district created under subch. II of ch. 229, or a cultural arts authority created under subch. IV of ch. 229.¹⁶

SECTION 17. 66.30(1)(a) of the statutes is amended to read:

66.30(1)(a) In this section "municipality" means the state or any department or agency thereof, or any city, village, town, county, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system created under s. 59.70 (2), local exposition district created under subch. II of ch. 229, local professional baseball park district created under subch. III of ch. 229, cultural arts authority created under subch. IV of ch. 229, water utility district, mosquito control district, municipal electric company, county or city transit commission, commission created by contract under this section, taxation district or regional planning commission.¹⁷

SECTION 18. 70.11(39) of the statutes is created to read:

70.11(39) CULTURAL ARTS AUTHORITY. Any property of a cultural arts authority under subch. IV of ch. 229, except real property satisfying both of the following:

(a) The property is not adjacent to, contiguous with or in any way connected to (including by skywalk) a cultural arts facility (as defined in s. 229.85) used principally for performances, programs, concerts, exhibits, shows, broadcasts or other activities with any artistic or cultural significance; and

(b) The property is used for the operation of a restaurant or other retail business by a person other than either the authority or an entity qualified as a 501(c)(3) organization under the Federal Internal Revenue Code.¹⁸

¹⁶Excludes cultural arts authorities from entities that may issue municipal bonds under these provisions. Instead bonds would be issued by WHEFA for cultural arts facilities. See §229.96 in this draft legislation.

¹⁷Permits cultural arts authorities to enter into intergovernmental cooperation arrangements.

¹⁸Exempts the property of a cultural arts authority from the general property tax, with an exception for certain non-contiguous property that is used by for-profit businesses for restaurants or other retail use.

SECTION 19. 71.05(1)(c)5 of the statutes is created to read:

71.05(1)(c) 5. A cultural arts authority created under subch. IV of ch. 229.¹⁹

SECTION 20. 71.05(1)(c)6 of the statutes is created to read:

71.05(1)(c) 6. The Wisconsin Health and Educational Finance Authority under ch. 231 with respect to a cultural arts facility defined in s. 229.85.²⁰

SECTION 21. 71.26(1)(bm) of the statutes is amended to read:

71.26(1)(bm)(title) Certain local districts and authorities. Income of a local exposition district created under subch. II of ch. 229, a local professional baseball park district created under subch. III of ch. 229, or a cultural arts authority created under subch. IV of ch. 229.²¹

SECTION 22. 71.26(1m)(h) of the statutes is created to read:

71.26(1m)(h) Those issued under subch. IV of ch. 229.²²

SECTION 23. 71.26(1m)(j) of the statutes is created to read:

71.26(1m)(j) Those issued under ch. 231 with respect to a cultural arts facility defined in s. 229.85.²³

SECTION 24. 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

¹⁹Exempts from state taxation any interest on notes issued by a cultural arts authority.

²⁰Exempts from state taxation any interest on bonds issued by WHEFA with respect to a cultural arts facility.

²¹Exempts income of cultural arts authorities from state income and franchise taxes.

²²Exempts interest and income from notes issued by a cultural arts authority from income taxes imposed on certain corporations.

²³Exempts interest and income on bonds issued by WHEFA with respect to a cultural arts facility from income taxes imposed on certain corporations.

federal obligations, obligations issued under s. 66.066 by a local professional baseball park district, obligations issued under ss. 66.40, 66.431 and 66.4325, obligations issued under ch. 231 with respect to a cultural arts facility defined under s. 229.85.²⁴ 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 or subch. IV²⁵ 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 25. 71.45(1t)(h) of the statutes is created to read:

71.45(1t)(h) Those issued under subch. IV of ch. 229.²⁶

SECTION 26. 71.45(1t)(j) of the statutes is created to read:

71.45(1t)(j) Those issued under ch. 231 with respect to a cultural arts facility defined in s. 229.85.²⁷

²⁴Excludes interest on bonds issued by WHEFA with respect to cultural arts facilities from shareholders' income with respect to certain corporations.

²⁵Excludes interest on cultural arts authority obligations from shareholders' income with respect to certain corporations.

²⁶Exempts interest and income on notes issued by a cultural arts authority from income taxes imposed on certain corporations.

²⁷Exempts interest and income on bonds issued by WHEFA with respect to a cultural arts facility from income taxes imposed on certain corporations.

SECTION 27. 77.54(9a)(h) of the statutes is created to read:

77.54(9a)(h) A cultural arts authority created under subch. IV of ch. 229.²⁸

SECTION 28. Section 111.02(7) of the statutes is amended to read:

111.02(7) The term "employer" means a person who engages the services of an employee, and includes any person acting on behalf of an employer within the scope of his or her authority, express or implied, but shall not include the state or any political subdivision thereof other than a cultural arts authority established under subch. IV of ch. 229, or any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact. For purposes of this subsection, a person who engages the services of an employee includes the University of Wisconsin Hospitals and Clinics Authority.²⁹

SECTION 29. Section 111.70(1)(j) of the statutes is amended to read:

111.70(1)(j) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district, or any other political subdivision of the state, but excluding any authority created under subch. IV of ch. 229, which engages the services of an employee and includes any person acting on behalf of a municipal employer within the scope of the person's authority, express or implied.³⁰

SECTION 30. 219.09(1)(d) of the statutes is created to read:

219.09(1)(d) The Wisconsin Health and Educational Finance Authority under ch. 231 with respect to a cultural arts facility defined in s. 229.85.³¹

²⁸Exempts from sales and use tax provisions any sales of personal property or services to a cultural arts authority.

²⁹Applies the employment peace provisions (collective bargaining and related provisions) of subch. I of ch. 111 to cultural arts authorities. Cultural arts authorities are also subject to the fair employment provisions of subch. II of ch. 111 due to the broad definition of "employer" in s. 111.32(6)(a).

³⁰Excepts cultural arts authority from collective bargaining and related provisions applicable to municipalities under subch. IV of ch. 111.

³¹Permits certain financial institutions, such as banks and savings and loan institutions, to invest money and funds in bonds issued by WHEFA with respect to a cultural arts facility.

SECTION 31. Subchapter IV of chapter 229 of the statutes is created to read:

**POPULOUS COUNTIES AND CITIES
CHAPTER 229. PUBLIC INSTITUTIONS
SUBCHAPTER IV.
CULTURAL ARTS AUTHORITY**

229.84 Legislative declaration.

(1) The legislature determines that this subchapter serves a statewide public purpose by assisting the development of cultural arts facilities in the state, which will provide educational and recreational opportunities for Wisconsin residents, enhance the appreciation of the arts among the states' citizens, encourage economic development and tourism, reduce unemployment and bring needed capital into the state for the benefit and welfare of people throughout the state.

(2) The legislature determines that a cultural arts authority in a populous city serves a public purpose in the city by providing educational and recreational opportunities for residents of those cities by enhancing the appreciation of the arts among the residents of the city, by encouraging economic development and tourism, by reducing unemployment and by bringing needed capital into the city in part for the benefit and welfare of people in the city.

229.85 Definitions.

In this subchapter:

- (1) "Authority" means a special authority created under this subchapter.
- (2) "Authority board" means the governing board of an authority.
- (3) "Class A director" means a director determined or designated as provided in s.229.86(3)(a).
- (4) "Class B director" means a director appointed as provided in s.229.86(3)(b).
- (5) "Class C director" means a director appointed as provided in s.229.86(3)(c).
- (6) "Class D director" means a director determined or designated as provided in s.229.86(4).
- (7) "Common council" means the common council or similar governing body of the sponsoring city.

(8) "Condemnation area" means the geographical area located within the sponsoring city that is designated by the common council as the area in which the authority shall have condemnation powers. The condemnation area shall be specified by the common council in its initial resolution creating the authority and thereafter may be expanded, but not reduced by resolution of the common council. Expanded areas may subsequently be removed from the condemnation area by resolution of the common council, but any area originally included in the condemnation area in the initial resolution of the common council shall not be reduced or removed from the condemnation area.

(9) "County executive" means the county executive of a county or, if the county does not have a county executive, the chairperson of the county board of supervisors, in either case of the county that includes the sponsoring city. If a sponsoring city is located in more than one county, for purposes of this definition, it shall be deemed to be included solely in the county in which its largest geographical area is located at the time the cultural arts authority is first created.

(10) "Cultural arts activities" means any performances, programs, concerts, exhibits, shows, broadcasts or other activities with any artistic or cultural significance, or any activity that is related or incidental thereto. ~~An authority board's determination that an activity has artistic or cultural significance shall be conclusive evidence that such activity has such significance.~~ *can't be in def*

(11) "Cultural arts facilities" means property, tangible or intangible, owned in whole or in part, operated or leased by an authority that is principally intended for any cultural arts activity or activities including without limitation auditoriums, music halls, exhibit halls, theaters, practice facilities, dressing rooms, parking lots, garages, restaurants, concession facilities, entertainment facilities and transportation facilities, and other functionally related or auxiliary facilities or structures.

(12) "Debt" means any note or other debt obligation issued by the authority. Any agreement entered into by the authority under which it borrows money shall be considered the issuance of debt for purposes of subch. IV, ch. 229.

(13) "Director" means any member of the authority board as determined in s. 229.86.

(14) "First class city cultural arts authority" means an authority created with respect to a city of the first class as determined by ss. 62.05 and 990.001(15).

(15) "Mayor" means the mayor of the sponsoring city.

(16) "Nominating entity" means an entity designated by the common council in its initial resolution creating the authority as provided in s. 229.86(3)(i).

(17) "Public entity" means this state or any city, village, town or county, any agency, any quasi-governmental entity within this state or any political subdivision of any such entity, including the board of regents of the University of Wisconsin system.

(18) "Populous city" means any city in the state with a population exceeding 125,000 as determined by the most recent federal census as of the applicable date.

(19) "Qualified private entity" means any entity, other than a public entity, that is described in Section 501(c)(3) of the Internal Revenue Code of the United States.

(20) "Sponsoring city" means, for any authority, the populous city with respect to which such authority was created under s. 229.86(1).

229.86 Creation and Organization.

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(1) Upon a resolution adopted by the common council of a populous city being delivered to the governor, there is created with respect to such city, a special authority that is a governmental unit, that is a body corporate and politic, that is separate and distinct from, and independent of, the state and such city, that has the powers under s. 229.87 and such other powers specified in the statutes and the name of which shall include "Cultural Arts Authority".

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(2) An authority is governed by its authority board. The authority board may adopt bylaws to govern the authorities activities, subject to this subchapter. Subs. (3)-(13) shall not apply to any authority board for a first class city cultural arts authority. With respect to a first class city cultural arts authority, the structure and constitution of the authority board, the selection, terms of office, and qualification of the authority board's directors, and the authority board's procedural rules shall be determined as provided in the initial resolutions creating the authority. With respect to an authority that is not a first class city cultural arts authority, the authority board shall consist of 13 directors selected as provided in sub. (3) and any directors added by resolution of the common council and selected as provided in sub. (4) and the provisions of subs (3)-(13) shall apply to such authority board.

(3) 13 directors of the authority board shall be qualified, nominated and appointed as follows:

(a) Three class A directors shall be determined as follows:

1. One director shall be the governor, serving ex officio, or the governor's designee. If the governor appoints a designee, such person shall serve at the pleasure of the governor.

2. One director shall be the mayor, serving ex officio, or the mayor's designee. If the mayor appoints a designee, such person shall serve at the pleasure of the mayor.

3. One director shall be the county executive, serving ex officio, or the county executive's designee. If the county executive appoints a designee, such person shall serve at the pleasure of the county executive.

(b) Five class B directors shall be appointed without nominations by nominating entities as follows:

1. One director shall be appointed by the governor and such director may, but is not required to be, an elected state official (including a state legislator).

2. Three directors shall be appointed by the mayor and each such director may, but is not required to, be an elected sponsoring city official (including a member of the common council).

3. One director shall be appointed by the county executive and such director may, but is not required to be, an elected sponsoring county official (including a member of the county's governing body).

(c) Five class C directors shall be appointed using the nomination process described in subs. (3)(d) and (3)(e) as follows:

1. Two directors, each of whom shall be either the current director for such directorship or a candidate nominated by the applicable nominating entity for such directorship and neither of whom shall be an elected state official (including a state legislator), shall be appointed by the governor.

2. Three directors, each of whom shall be either the current director for such directorship or a candidate nominated by the applicable nominating entity for such directorship and neither of whom shall be an elected sponsoring city official (including a member of the common council), shall be appointed by the mayor.

(d) Each nominating entity (determined as provided in sub. (3)(e)) shall submit at least three and not more than five names of persons as candidates for that directorship for which such nominating entity is designated. Such nomination shall be delivered in writing to the applicable appointing official no later than 20 days after the date such nominating entity agrees to serve as a nominating entity with respect to its first such nomination, within 30 days after being notified of a vacancy in the directorship by the authority board, and at least 60 days before the expiration of the then current term of the director. If a nominating entity does not deliver such nomination within the required period, the appointing official shall notify the authority board of such failure and the authority board may determine in its own discretion to either permit the nominating entity to have additional time to make its

nominations or submit to the common council a different qualified entity as the replacement nominating entity for that directorship using the procedures set forth in sub. (3)(e)4.

(e) There shall be five nominating entities responsible for nominating class C directors selected as provided in this sub. (3)(e).

1. The two nominating entities for nominating candidates for appointment by the governor shall be selected as follows. One shall be the board of regents of the University of Wisconsin system or its successor under law. The other nominating entity shall initially be designated by the common council in its initial resolutions creating the authority. Such nominating entity shall be a qualified private entity designated by any person or entity who has contributed or pledged to contribute more than 25% of the cost of the initial cultural arts facilities expected to be constructed or operated by the authority, all to the extent such an entity exists and is qualified under this section and, in the reasonable discretion of the common council, will act responsibly in nominating candidates under this section.

2. The three nominating entities for nominating candidates for appointment by the mayor initially shall be designated in the initial resolutions of the common council creating the authority. One nominating entity shall be designated by the common council from each of the following groups to the extent an entity within such group exists and is qualified under this section and, in the reasonable discretion of the common council, will act responsibly in nominating candidates under this section:

a. Qualified private entities primarily engaged in, or having as its primary purpose, the promotion or support of any cultural arts activities in the sponsoring city.

b. Qualified private entities whose members consist of businesses or business leaders generally in or near the sponsoring city, which entity may be part of a national organization of businesses or business leaders.

c. A community foundation which has as a primary purpose or activity the promotion or sponsorship of civic or cultural activities for the benefit of the sponsoring city or the county in which it is located.

3. The common council's initial resolution shall specify, for each of the five nominating entities, the applicable directorship (by appointing official and initial term of office) for which such nominating entity shall nominate candidates eligible for appointment. Such designation shall be in accordance with the rules set forth in this sub. (3)(e). No nominating entity shall be designated to nominate candidates for more than one directorship. In order to qualify as a nominating entity, an entity must be either a qualified private entity or a public entity other than the sponsoring city or the county in which the county executive is located or any political subdivision or committee of such sponsoring city or county. If no qualified entity within a particular group specified above exists at the time

of the initial resolution, then the common council may select the nominating entity for that group from otherwise qualified private entities and public entities.

4. Once designated, any nominating entity may be replaced by a new nominating entity selected by the authority board and not rejected by the common council, if such entity satisfies all of the requirements applicable to the selection of the nominating entity being replaced (including the group from which such entity is to be selected). Upon a majority vote of the authority board, the authority board may select a qualified replacement entity by submitting to the common council both the name of such replacement and the nominating entity being replaced. The common council may confirm or reject the proposed replacement by majority vote at any time within 30 days after the date of the submission by the authority board. If the submission is confirmed or the submission is not rejected within the thirty-day period, then the submitted entity shall be the nominating entity until later replaced. If there is any vacancy for a nominating entity, it shall be filled in the same manner.

5. In determining which nominating entities to designate, the common council and authority board shall also take into account the diverse interests of the community to be served by the cultural arts facilities. To the extent multiple entities within a particular category exist and are interested in serving as nominating entities, the authority board shall, in its reasonable discretion, submit replacements to the common council for the purpose of permitting additional qualified entities to serve as nominating entities over time and to take into account the diverse interests of the community to be served by the cultural arts facilities.

6. The common council shall notify the nominating entity in writing that it has been so designated within five days after the designation. The nominating entity shall notify the mayor within 10 days of such notice whether it agrees to serve as a nominating entity. If such entity does not agree to serve as a nominating entity within such 10 day period, then a different entity shall be selected to serve as the nominating entity in the manner specified above.

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(4) If another municipality located within 25 miles of the sponsoring city provides substantial support to the authority, then the common council of the sponsoring city may, but shall not be required to, increase the size of the authority board by one directorship with respect to such municipality by resolution delivered to the governor and such municipality. Such director shall be the mayor of the applicable municipality, serving ex officio, or such mayor's designee. If a designee is selected, such director shall serve at the pleasure of the mayor of the applicable municipality.

(5) All class B directors and class C directors must, at the time of such director's appointment, have lived within 25 miles of the sponsoring city for at least one year.

(6) The initial term of office for class B directors and class C directors shall be as follows: (i) each class B director to be appointed by the governor or the county executive and one class B director to be appointed by the mayor shall be appointed for an initial term

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ending on July 1 during the 3rd year after the authority is created; (ii) the two remaining class B directors to be appointed by the mayor shall be appointed for an initial term ending on July 1 during the 4th year after the authority is created; (iii) one of the class C directors to be appointed by the governor and one of the class C directors to be appointed by the mayor shall be appointed for an initial term ending on July 1 during the 5th year after the authority is created; and (iv) one of the class C directors to be appointed by the governor and one of the class C directors to be appointed by the mayor shall be appointed for an initial term ending on July 1 during the 6th year after the authority is created. Upon the expiration of the initial terms, the term of office for each person appointed as a director shall be four years, commencing at the end of the previous term for such office.

(7) Each person appointed as a designee class A director or a designee class D director may be removed with or without cause at any time by the official who has the power to designate such director in lieu of such official. Each class B director and class C director may be removed prior to the expiration of that director's term by the official responsible for appointing such director, but only for malfeasance or nonfeasance in office.

(8) There shall be no difference among the power, authority, responsibilities or tasks of any directors based on the class of such director, except that, if a class D directorship is added to the authority board and upon such addition there are an odd number of class D directorships, then, until at least one other class D directorship has been added to the authority board, such additional class D director's vote shall not be counted in any vote of the authority board in which all directors are present and voting and the result of such vote would be a tie if that director's vote were counted.

(9) Any person appointed as a director shall take his or her seat immediately upon appointment and qualification. Vacancies in class B directorships and class C directorships shall be filled by the appointing official who appointed the director whose office is vacant, but any vacancy in a class C directorship shall be filled only with a candidate nominated as required for that class C director. A person appointed to fill a vacancy shall serve for the remainder of the term for the directorship to which he or she is appointed.

(10) The authority board shall elect from its membership a chairperson, a vice chairperson, a secretary and a treasurer. A majority of the current membership of the authority board constitutes a quorum to do business. The authority may take action based on the affirmative vote of a majority of those directors who are present at a meeting of the authority board.

(11) The authority board may permit any or all directors to participate in a meeting of the authority board by, or to conduct the meeting through the use of, any means of communication by which any of the following occurs:

(a) All participating directors may simultaneously hear each other during the meeting; or

(b) All communication during the meeting is immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors.

If a meeting will be conducted through the use of any means described in this sub. (11), all participating directors shall be informed that a meeting is taking place at which official business may be transacted. A director participating in a meeting by any means described in this sub. (11) is deemed to be present in person at the meeting.

(12) The directors shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(13) Upon the appointment and qualification of at least seven directors of an authority, the authority may exercise the powers and duties of an authority under this subchapter.

(14) At its first meeting the authority board shall name the authority, but such name shall include "Cultural Arts Authority."

229.87 Powers of an authority.

An authority has all of the powers necessary or convenient to carry out the purposes and provisions of this subchapter. All expenditures made by an authority shall be for exclusively public purposes. Any payments in lieu of taxes made by the authority shall be considered to have been made for exclusively public purposes. In addition to all other powers granted by this subchapter, an authority may do all of the following:

- (1) Adopt and alter an official seal.
- (2) Sue and be sued in its own name, plead and be impleaded.
- (3) Maintain an office.
- (4) In connection with any cultural arts facilities or the support of any cultural arts activity:

(a) Acquire, construct, equip, maintain, improve, operate and manage the cultural arts facilities as a revenue-generating enterprise or otherwise, or engage or contract for other persons to do these things.

(b) Acquire; lease, as lessor or lessee; use; or transfer property. The power to acquire property shall include the power to acquire property by condemnation within the condemnation area under ch. 32 for any authority other than a first class city cultural arts authority. A first class city cultural arts authority may request condemnation of property by

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the redevelopment authority created with respect to such city under s. 66.431(3)(a)1., and such redevelopment authority may determine whether to proceed with such condemnation under and subject to the condemnation powers granted to it under the statutes.

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(c) Improve real property.

(d) Enter into contracts, subject to such standards as may be established by the authority board. The authority board may award any such contract for any combination or division of work it designates and may consider any factors in awarding a contract, including price, time for completion of work and qualifications and past performance of a contractor.

(e) Grant concessions.

(f) Make a grant of land or other property to the state, or to any city or other governmental unit located in the state.

(5) Employ personnel, and fix and regulate their compensation; and provide, either directly or subject to an agreement under s. 66.30 as a participant in a benefit plan of another governmental entity, any employee benefits, including an employee pension plan.

(6) Purchase insurance, establish and administer a plan of self-insurance or, subject to an agreement with another governmental entity under s. 66.30, participate in a governmental plan of insurance or self-insurance.

(7) Mortgage, pledge or otherwise encumber the authority's property or funds.

(8) Issue debt and enter into any agreements relating thereto. Neither the directors, any employee of the authority nor any person executing any agreements with respect to any debt are personally liable on the debt or subject to any personal liability or accountability by reason of the issuance thereof. For financing purposes, cultural arts facilities are public utilities.

(9) Maintain funds and invest the funds in any investment that the authority board considers appropriate.

(10) Promote, advertise and publicize its cultural arts facilities and cultural arts activities.

(11) Set standards governing the use of, and the conduct within, its cultural arts facilities in order to promote public safety and convenience and to maintain order.

(12) Establish and collect fees, and establish shared revenue arrangements or other charges for the use of its cultural arts facilities or for services rendered by the authority.

(13) Enter into partnerships, joint ventures, common ownership or other arrangements with other persons to further the authorities' purposes.

(14) Solicit and accept gifts, loans, grants of land or other property, and other aid, from any person, any private entity, any sponsoring city, or any other governmental entity or unit of government, and agree to conditions with respect to such gifts, loans, grants or other aid.

*Public
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(15) Administer the receipt of revenues, and oversee the payment of debt issued by the authority.

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debt
paid*

(16) Direct its agents or employees, if properly identified in writing, to enter upon real property within its jurisdiction to make surveys and examinations before locating or constructing cultural arts facilities, without incurring liability by the authority, its agents or employees except for actual damage done. Before directing anyone to enter real property under this subsection, the district shall give the owner and occupant of the property at least 5 days' written notice.

(17) Provide money, real property or other property, whether by sale, loan, lease or otherwise for appropriate consideration, to private persons or entities, public entities or other governmental units.

(18) In addition to the powers under sub. (17), provide money, real property or other property, whether by grant, gift, loan, lease or other transfer, whether for consideration or without consideration, for the support of any cultural arts activity or cultural arts facility either:

(a) to any entity described in each of Sections 170(c)(2), 501(c)(3), 509(a)(1) or (2), 2055(a)(2) and 2522(a)(2) of the Internal Revenue Code of the United States at the time of such transfer; or

(b) to any other individual or organization, if it is provided pursuant to the objectives of a program adopted by the authority board consistent with the purposes such authority.

229.88 Minority Contracting Goals.

(1) In this section:

(a) "Minority business" has the meaning given in s. 560.036(1) (e).

(b) "Women's business" means a sole proprietorship, partnership, joint venture or corporation that is at least 51% owned, controlled and actively managed by women.

(2) When the authority enters into contracts for construction work or professional services, it shall seek to enter into contracts with minority businesses and women's businesses, with a goal that at least 5% of the aggregate dollar value of contracts awarded by the authority for such contracts be awarded to minority businesses and at least 5% of the aggregate dollar value of contracts awarded by the authority for such contracts be awarded to women's businesses.

229.89 Powers granted to sponsoring city; authority for others to transfer property.

(1) In addition to any powers that it may otherwise have and notwithstanding any other provision of law or its charter, a sponsoring city may do any of the following:

Public Purpose doctrine problem?

(a) Make grants, gifts or loans of real property or other property or funds, or provide any other aid to an authority, all upon terms that the sponsoring municipality considers appropriate.

(b) Expend public funds to subsidize an authority.

(c) Borrow money under ss. 67.04 and 67.12 (12) for cultural arts facilities or to fund grants, loans or subsidies to an authority.

(d) Audit the financial statements of an authority. Such audit shall be conducted by the sponsoring city's controller or other fiscal agent of the sponsoring city.

(2) Notwithstanding any requirement of law to the contrary or the absence of direct provision therefor in the instrument under which a fiduciary is acting, every executor, administrator, trustee, guardian or other person, holding trust funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, the state, its subdivisions, cities, all other public bodies, all public officers, corporations organized under or subject to the provisions of the banking law, the division of banking as conservator, liquidator or rehabilitator of any such person, partnership or corporation, persons, partnerships and corporations organized under or subject to the provisions of the banking law, the commissioner of insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation, any of which owns or holds any real property may grant, sell, lease or otherwise transfer any such real property to a cultural arts authority, and receive and hold any cash, stocks, income debentures, mortgages, or other securities or obligations, secured or unsecured, exchanged therefor by such cultural arts authority, and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the cultural arts authority in connection with a cultural arts facility.³²

Why?

³²This provision provides that various entities will have authority to assign real property to the cultural arts authority. The language, though sweeping, has precedent in connection with urban

229.90 Dissolution of an authority.

(1) Subject to providing for the payment of its bonds, including interest on the bonds, and the performance of its other contractual obligations, once created, an authority may be dissolved only as follows:

*home rule problem?
city creates, but
state may dissolve?*

(a) Any authority may be dissolved by law enacted by the State of Wisconsin.

(b) An authority other than a first class city cultural arts authority may be dissolved by the unanimous consent of all directors of the authority board. Once created, no authority, other than a first class city cultural arts authority, may be dissolved by the sponsoring city (whether by the mayor or the common council).

(c) A first class city cultural arts authority may be dissolved in the manner provided in the initial resolutions creating such authority.

(2) If an authority is dissolved, the property of the authority shall be transferred to either the sponsoring city or to any other entity described in each of Sections 170(c)(2), 501(c)(3), 509(a)(1) or (2), 2055(a)(2) and 2522(a)(2) of the Internal Revenue Code of the United States at the time of such transfer. For class 1 city cultural arts authorities, the specific transferee shall be determined in the manner set forth in the initial resolutions creating the authority. For authorities that are not class 1 city cultural arts authorities, the transferee shall be determined by the majority of the authority board as it exists at the time of the dissolution.

(3) Once created, any subsequent failure of the sponsoring city to qualify as a sponsoring city shall have no effect on the existence or powers of the authority.

229.91 Transfer agreements.

In addition to any other agreements, grants or other transfers authorized under this subchapter or another provision of law, a sponsoring city and an authority may enter into a transfer agreement to provide the terms and conditions upon which the sponsoring city may transfer any interests in an existing or proposed cultural arts facility or any other property interests owned by the city. A transfer may take the form of a sale, lease or other conveyance and may be with or without financial consideration.

229.92 Debt not public debt.

(1) Neither the state nor the sponsoring city is liable on debt of any authority created under this subchapter and the debt is not a debt of the state, the sponsoring city or

redevelopment. See Wis. Stat. § 66.412.

any other political subdivision of the state other than such authority. All debt of an authority shall contain on the face thereof a statement to this effect. The issuance of debt by the authority shall not, directly or indirectly or contingently, obligate the state or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for the payment of such debt. Nothing in this section prevents an authority from pledging its full faith and credit; however, an authority's full faith and credit shall not be considered pledged on any debt unless the face of the instrument creating the debt contains a statement to that effect.

(2) Nothing in this chapter authorizes the authority to create a debt of the state, and all debt issued by the authority under this chapter is payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the agreements creating or securing the debt. Neither the state nor the sponsoring city shall in any event be liable for the payment of the principal of or interest on any debt of the authority or for the performance of any pledge, mortgage, obligation or agreement which may be undertaken by an authority. No breach of any such pledge, mortgage, obligation or agreement may impose any pecuniary liability upon the state or the sponsoring city or any charge upon the state's or the sponsoring city's general credit or against the state's or the sponsoring city's taxing power.

229.93 State pledge.

The state pledges to and agrees with the holders of any debt issued under this chapter, and with those parties who may enter into contracts with the authority under this chapter, that the state will not limit or alter the rights vested in an authority by this chapter until such obligations, together with the interest thereon, are fully met and discharged and such contracts are fully performed on the part of such authority, but nothing shall preclude such a limitation or alteration if adequate provision is made by law for the protection of the holders of such obligations of the authority or those entering into such contracts with the authority.

229.94 Pledge of revenues.

(1) An authority may pledge the revenues derived and to be derived from any cultural arts facility for the purposes of:

- (a) paying administrative costs and expenses of such authority;
- (b) paying the principal of, the premium, if any, and the interest on outstanding bonds of the authority issued in respect of such project or another project as they become due and payable; and
- (c) creating and maintaining reserves with respect to any debt.

(2) Additional debt may be issued which may rank on a parity with other debt relating to a cultural arts facility to the extent and on the terms and conditions provided in the debt agreements. A pledge under sub. (1) shall be valid and binding from the time when the pledge is made, the revenues so pledged by such authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against such authority, irrespective of whether such parties have notice thereof. Neither the debt agreements nor any financing statement, continuation statement or other instrument by which a pledge is created or by which an authority's interest in revenues is assigned need be filed or recorded in any public records in order to perfect the lien thereof as against 3rd parties, except that a copy thereof shall be filed in the records of an authority and with the department of financial institutions.

229.95 Trust funds.

All moneys received under an authority under this subchapter, whether as proceeds from the issuance of debt or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this subchapter. Any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this chapter, subject to such regulations as this subchapter and the bond resolution authorizing the bonds of any issue provide.

229.953

229.96 Investment authorization.

The notes of an authority and bonds issued by the Wisconsin Health and Educational Finance Authority under ch. 231 with respect to an authority are securities in which all public officers and bodies of this state and all political subdivisions and public officers thereof, all banks, trust companies, savings banks and institutions, savings and loan associations, investment companies and all personal representatives, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control.

229.954

229.97 Sponsoring city employment regulations.

Notwithstanding that an authority is a governmental unit that is a body corporate and politic, any ordinances of a sponsoring city that are intended to regulate employment relations or practices of all private employers generally within the sponsoring city (but not provisions or ordinances applicable only to the city or its subdivisions) shall apply to the authority created with respect to the sponsoring city unless the common council specifically excludes the application of such ordinance to such authority.

SECTION 32. 230.03(3) of the statutes is amended to read:

(3) "Agency" means any board, commission, committee, council or department in the state or unit thereof created by the constitution or statutes if such board, commission, committee, council, department, unit or the head thereof, is authorized to appoint subordinate staff by the constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof or an authority created under subch. IV of ch. 229 or ch. 231, 232, 233, 234 or 235.³³

SECTION 33. 230.03(13m) of the statutes is created to read:

230.03(13m) "State" does not include any authority created under subchapter IV of ch.229 and no director, officer or employee of such authority shall be considered a director, officer or employee of the state for purposes of this chapter or subch. V of ch. 111.³⁴

SECTION 34. 231.01(4m) of the statutes is amended to read:

231.01(4m) "Educational facility" means a regionally accredited, private, postsecondary educational institution described in section 501 (c) (3) of the Internal Revenue Code, as defined in s. 71.22 (4), that is exempt from federal taxation under section 501 (a) of the Internal Revenue Code or any cultural arts facility as defined in s. 229.85.³⁵

SECTION 35. 231.01(5w) of the statutes is amended to read:

231.01(5w) "Participating educational institution" means each of the following:

(a) A corporation, agency or association which is authorized by state law to provide or operate an educational facility and which undertakes the financing and construction or

³³Together with the addition of Wis. Stat. § 230.03(13m), exempts the cultural arts authority and its employees and officials from certain provisions applicable to state employees, such as civil service requirements. Since Wis. Stat. §111.81(7)(a) also refers to ch. 230 to define "employee," these provisions also exempt cultural arts authorities from collective bargaining and no-strike provisions under subch. V of ch. 111. However, cultural arts authorities would be subject to the general employment peace provisions applicable to private employers under subch. I of ch. 111 (see section 28 of this draft).

³⁴Clarification to ch. 230 in order to exempt the cultural arts authority and its employees and officials from various civil service, collective bargaining, and no-strike provisions applicable to state employees.

³⁵Redefines educational facility under WHEFA legislation to include a cultural arts facility, which would permit WHEFA to issue bonds for the cultural arts authority to finance the acquisition, development and construction of cultural arts facilities in the same manner as educational facilities.

acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in this chapter.

(b) A cultural arts authority created under subch. IV, ch. 229 that undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in this chapter.³⁶

SECTION 36. 231.05(1) of the statutes is amended to read:

231.05(1) By means of this chapter, it is the intent of the legislature to provide assistance and alternative methods of financing to nonprofit health institutions to aid them in providing needed health services consistent with the state's health plan, to nonprofit educational institutions to aid them in providing needed educational services, to cultural arts authorities to aid them in providing needed cultural arts facilities and to nonprofit child care providers to aid them in providing needed child care services.³⁷

SECTION 37. 231.08(5) of the statutes is amended to read:

231.08(5) In addition to the other authorizations under this section, bonds of the authority may be secured by a pooling of leases whereby the authority may assign its rights, as lessor, and pledge rents under 2 or more leases of health facilities, educational facilities or child care centers with 2 or more health institutions, educational institutions, cultural arts authorities or child care providers, as lessees respectively, upon such terms as may be provided for in bond resolutions of the authority.³⁸

SECTION 38. 231.23 of the statutes is amended to read:

231.23 Nonprofit institutions.

It is intended that all nonprofit health and educational institutions, cultural arts authorities and child care providers in this state be enabled to benefit from and participate in this chapter. To this end, all nonprofit health and educational institutions and child care providers operating, or authorized to be operated, under any law of this state may undertake

³⁶Redefines participating educational institution under WHEFA statute. See footnote above.

³⁷Since this part of the WHEFA statute does not specifically use the defined term "participating educational institution," "cultural arts authorities" is included for completeness.

³⁸Since this part of the WHEFA statute does not specifically use the defined term "participating educational institution," "cultural arts authorities" is included for completeness.

projects and utilize the capital financing sources and methods of repayment provided by this chapter, the provisions of any other laws to the contrary notwithstanding.³⁹

SECTION 39. 893.80(9) of the statutes is created to read:

For purposes of this Section 893.80, the term "governmental subdivision" includes specifically a cultural arts authority created under subch. IV of ch. 229.⁴⁰

³⁹Since this part of the WHEFA statute does not specifically use the defined term "participating educational institution," "cultural arts authorities" is included for completeness.

⁴⁰Clarifies that a cultural arts authority is a governmental subdivision for purposes of the limitations provided in s. 893.80 for claims against governmental bodies.

Kahler, Pam

From: Ziegler, Paul
Sent: Wednesday, February 23, 2000 12:40 PM
To: Shovers, Marc; Kuesel, Jeffery
Cc: Grant, Peter; Champagne, Rick; Kreye, Joseph; Kahler, Pam; Marchant, Robert
Subject: Cultural Arts District draft -- changes to p2

Attached is a list of changes that we would like to make to the cultural arts district draft (LRB-4065/p2). The list includes a few questions as well. Most of the changes are modest.

Aside from a modification of the LRB analysis to match the income tax changes in the draft, the attachment covers all of the desired changes to "p2" to date. Joe Kreye and I discussed this income tax issue yesterday.

Please contact me by email or phone with any questions that arise. Thank you.

Paul Ziegler
State Budget Office
6-5468



4065_p2 changes.doc

Proposed changes and questions -- draft 4065/p2 Cultural Arts District Legislation

- ✓ 1. *MES STK* Section 16. Investment authority. (Page 12 lines 13-17.) This section excepts local cultural arts district boards from provisions authorizing certain local boards to invest in various bonds and securities. While there is general language included in Section 229.844(9) that gives the district the power to invest in many different interests, we are concerned that the exception in section 16 might be construed as limiting the board's investment authority by implication. *MES SEE INSERT*
- ✓ 2. *JK* Section 24. Property tax exemption. While this section appears to meet our intent, could the section be reformatted and clarified? (See in particular, s.70.11(40)(a) on page 14 lines 17-22.)
- ✓ 3. *JK* Section 26. Income tax exemption. (Page 15 lines 2-5). We think this provision should read: "The Wisconsin Health and Educational Facilities Authority under ch. 231, if the bonds are issued with respect to a local cultural arts district." This tracks the language used in Section 29.
- ✓ 4. *JK* Section 30. Income tax exemption. (Page 15 beginning on line 17.) This section should include bonds issued by WHEFA for a cultural arts district.
- ✓ 5. *MES* Section 38: 229.842(1)(b). *City's procedure for appointing board members.* Please change "nominating" in the second sentence to "appointing" (on page 20 line 8) and delete ", except that the procedure may not apply to the person appointed from the list of names submitted by the school board" (page 20 lines 8-10). Deleting the language beginning with "except" reflects our intent to allow the city to have a greater role in appointing persons to the board than allowed by the current draft.
- ✓ 6. *PLG* Section 38: 229.842(1)(c). *Area for condemnation power.* (Page 20, lines 11-14.) Please replace the section with the following: "If the sponsoring city is not a first class city, the resolution under par. (b) specifies the area of the district's jurisdiction as described in s. 229.843(1), within which the district board may exercise its power of eminent domain." Also, in Section 38: 229.844(4)(c)(2), remove "subject to the limits specified in the resolution under s. 229.842(1)(c) or the ordinance or resolution under s. 229.846(6)." (page 24 lines 7-8) Finally, Section 229.846(6) (page 28 lines 1-5) should be revised to apply only to the condemnation authority of the district board. District boards from 1st class cities would not have any of their own condemnation authority. However, the redevelopment authorities of 1st class cities (and other sponsoring cities) should be able to condemn properties under existing statutes without additional restrictions.
- ✓ 7. *MES* Section 38: 229.842(2)(a). *Board Structure.* (Response to drafter's note after line 1 on page 21.) It is our understanding that Milwaukee would like the entire board structure and appointment to be left open and completed as part of the initial resolution, if that city would ever decide to use this statute. Therefore, the mayor, county executive and governor should not automatically be ex officio members of the district board.

8. ✓ *MES* Section 38: 229.842(2)(c). City's appointments to board. To clarify that any additional procedures adopted by the city apply to the seating of the appointees, please add the following after "appointment" in the last sentence: "subject to any procedures specified pursuant to sub. (1) (b)". (Page 21 line 16.)

9. ✓ *MES* Section 38: 229.842(3). Initial terms of board members. It is important that the board terms be staggered to maintain the stability and continuity of the board. This means the initial terms for some directors must be longer and for some shorter than 4 years. We suggest something like the following to replace the first sentence of Section 229.842(3) (page 21 lines 20-22):

(a) "The persons appointed under sub. (2) (b) to (d) shall serve staggered terms of 4 years expiring on July 1, except ~~the initial terms shall vary in length to establish the staggered terms as follows:~~ *that*

- "1. The initial term of the director appointed by the county executive shall expire on July 1 of the 3rd year beginning after the year of creation of a district.
- "2. The initial term of one director appointed by the governor and two directors appointed by the mayor shall expire on July 1 of the 4th year beginning after the year of creation of a district.
- "3. The initial term of one director appointed by the governor and two directors appointed by the mayor shall expire on July 1 of the 5th year beginning after the year of creation of a district.
- "4. The initial term of one director appointed by the governor and two directors appointed by the mayor shall expire on July 1 of the 6th year beginning after the year of creation of a district.

(b) ~~5.~~ The governor and mayor shall each designate with their initial appointments the terms to which directors have been appointed."

(c) *Persons appointed . . .*

10. ✓ *MES JTK* Section 38: 229.842(4). Additional board member if substantial support from another municipality. (Page 22 lines 9-13.) We would like the wording to provide that the additional directorship may be canceled if the substantial support ends.

For example, this could read as follows: "For so long as a city, village or town having territory that is located within 25 miles of the sponsoring city's city hall provides substantial support to the district, the sponsoring city's common council may by resolution include on the board the mayor, village president or town board chair of that city, village or town, or the designee of such a mayor, village president or town board chair."

11. ✓ *MES* Section 38: 229.842(6). Retmbursement of board member expenses. Please

clarify that reimbursement is by the district by adding "by the district" after "reimbursed". (Page 22 line 19.)

✓ 12. *Section 38: 229.843. Jurisdiction of the district.* (Page 23 lines 6-7.) We're not sure of the purpose of the "jurisdiction of the district" other than for eminent domain purposes (which is fine for that purpose). However, we are concerned this may be used by some to suggest that there are other jurisdictional limitations not intended here. Therefore, perhaps the jurisdiction of the district might be drafted to refer only to the eminent domain authority.

✓
JTK
MES
see disto
insert

✓ 13. *Section 38: 229.844(4)(c). Condemnation.* (Page 24 lines 1-10.) Both the phrase in section 1 that reads: "that is adjacent or contiguous to property owned by the district" and all of the last sentence of section 2 should be deleted. While we have discussed including this conceptual limitation on the eminent domain power in the common council resolution creating the district, we do not want it specified in the statute itself since that will unduly limit the flexibility of the city to make changes, if required by federal tax rulings or otherwise. (Note - under item #6 above, we request that language on lines 7-8 of page 24 also be removed.)

PCF

✓ 14. *Section 38: 229.844(8)(a). Bonding.* (Page 25 beginning on line 6.) The language providing specific authority to "enter agreements related to the issuance of bonds..." should also apply to bonds issued under WHEFA or the community development authority.

RAE
PSK

✓ 15. *Section 38: 229.846(5). Payments in lieu of property taxes.* (Page 27 lines 19-20.) We would prefer language like that used in s. 66.40(22), which provides a cap based on the property taxes that would have been due and relates to the property exempted from taxation under the statute.

MES

✓ 16. *Section 38: 229.848- Note. Transfers upon dissolution.* (Page 28 lines 15-22.) Please use these references (which we realize are a bit different from the ones we originally gave you): "or to an entity described either in section 170(c)(1) or in both sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code." Section 170(c)(1) includes governmental units.

MES

✓ 17. *Section 38: 229.848(2). Transfer agreements.* (Page 29 lines 1-5.) Modify to allow transfers to go in both directions (allowing transfers from the city to the district and from the district to the city.) Possible modification to current draft may be as follows -- insert "or the district" after "sponsoring city" on line 2 and replace "by the city" with "to the other member of the transfer agreement" on line 3.

MES

✓ 18. *Section 38: 229.850. Special fund for bond costs.* Change "shall" to "may." (Page 30 line 4.) The district should have the authority to set up a special fund, but may choose not to do so. We understand that the district will not be able to pledge its full faith and credit for long-term debt.

RAE

✓ 19. *Section 38: 229.854. Sponsoring city employment regulations.* (Page 31 lines 20-24.) This paragraph seems a bit ambiguous. Does the law have to relate to private employers generally, or does the law, if it relates to all private employers,

MES

generally apply to the employees. Our intent is the former. Perhaps it could be clarified by replacing "generally applies" on line 22 of page 31 with "shall apply".

RTM

20. Drafter's Note - Item 6 (page 4). Lien provision. We agree that the additional complexity is unnecessary. Please just delete the entire section 229.852(2) (page 31 lines 1-11). Instead, revise Section 229.844(7), to clarify that revenues may be pledged by adding ", revenues or" after "district's property" on page 25, line 5.

JTK
MES
SEE INSERT

21. Drafter's Note - Item 7 (page 4). Entry power. Please draft the provision under section 229.844 (17) to conform to the court of appeals case you cited. (Page 26 lines 11-18.)

MES

22. Section 38: 229.842 (2) intro. Board membership if sponsoring city not a 1st class city. Clarify the applicability of the draft's language regarding membership by deleting "and subject to subs (3) and (4)" on line 19 of page 20 and adding "subject to (4)" before the colon on line 20.

Received 12/16/99

CULTURAL ARTS AUTHORITY LEGISLATION

EXECUTIVE SUMMARY

The Overture Foundation is proposing legislation to authorize the creation of a Madison "cultural arts authority" to which the Overture Foundation (or its support trust) would donate cash and/or property worth \$100 million. The Madison cultural arts authority would acquire, construct and operate cultural arts facilities for the benefit of the citizens of the state, including particularly residents of Madison and Dane County. The proposed legislation would also allow any other cities with more than ~~125~~¹⁵⁰,000 residents to create similar cultural arts authorities. Following is a summary of the principal provisions of the proposed legislation.

150,000

1. Creation, Nature and Governance.

- **Creation.** Cultural arts authorities could be created upon the written declaration of a mayor of a populous city (i.e., greater than 125,000 residents), approved by resolution of such city's common council and delivered to the governor.
- **Separate Governmental Entities.** To address certain constitutional issues, a cultural arts authority would be a governmental entity separate and distinct from both the state and the sponsoring city. Any debt of the authority would not be the debt of the state or the sponsoring city.
- **Board of Directors.** Thirteen directors would be appointed to the authority's governing board. The governor, the mayor of the sponsoring city and the county executive of the county in which the sponsoring city is located, or their respective designees, would serve ex officio. In addition, the governor would appoint three directors, the mayor would appoint six directors, and the county executive would appoint one director. Five of the appointees would come from nominations made by specified public and private nominating entities. The directors, all of whom must live within 25 miles of the city, would serve staggered terms of 4 years each.
- **Continuation.** Once created, a cultural arts authority would remain in existence until dissolved by the unanimous consent of the board or by subsequent legislation. The state would pledge that it would not dissolve a cultural arts authority until its debt obligations were discharged.

1/6/00
Paul Zeigler
says keep
pop at 150,000

use simplified
procedures from
the 1st exec summary

2. Powers of Cultural Arts Authorities and Sponsoring Cities.

- **General Powers.** Cultural arts authorities would have typical powers necessary for it to carry out the acquisition, construction and operation of cultural arts facilities, such as the powers: to acquire real property, including by condemnation; to sue and be sued; to construct, equip, maintain, improve, operate and manage the

cultural arts facilities; to lease as lessor or lessee; to enter into contracts; to incur debt; to mortgage its real property; to employ personnel; and to collect fees with respect to use of cultural facilities. The condemnation power is crucial to enable the authority to acquire property in a cohesive downtown district for the public good, and to ensure that the authority is considered a governmental entity for federal tax purposes relating to the deductibility of contributions made by private persons or entities such as the Overture Foundation. ~~The same powers can be exercised only in a geographic area described in the resolution creating the authority and by subsequent resolutions and would be limited to the same geographic area.~~ authority. No taxing authority would be granted in this legislation. Cities of the first class (presently just Milwaukee) are given authority to modify certain structural and governance provisions.

- **Gifts, Grants and Loans.** Cultural arts authorities could receive gifts and donations from public and private groups or individuals. Authorities could also grant property to public and private groups that are qualified under certain federal tax provisions (such as 501(c)(3)) organizations) for the purpose of supporting cultural arts activities or facilities or to other individuals or groups for such purposes pursuant to the objectives of a program adopted by the authority board.
- **Expenditures Exclusively for Public Purposes.** All of a cultural arts authority's expenditures must be made exclusively for public purposes, including payments in lieu of taxes.
- **Inter-governmental Powers.** Cultural arts authorities could work out inter-governmental relationships with sponsoring cities or other governmental agencies under s. 66.30 and could participate in the local government pooled investment fund.
- **Sponsoring City Powers.** The sponsoring cities would have authority to make a gift, grant or loan of property or funds to the cultural arts districts and to expend funds to subsidize an authority.

3. WHEFA Bond Authority and Tax Exemptions.

- **WHEFA Bonds.** The Wisconsin Health and Educational Finance Authority (WHEFA) would have authority to issue bonds for financing cultural arts facilities in the same manner that it has authority to issue bonds for financing educational facilities.
- **Investment in Bonds and Debt.** Various state funds and regulated companies would be authorized to invest in such bonds.
- **Tax Exemption on Bonds and Debt.** Interest on such bonds and other debt of cultural arts authorities would be exempt from state taxes.

- **Tax Exemption on Property and Income.** Certain real estate owned by, and income of, a cultural arts authority would be exempt from state and local taxes. The property tax exemption would not apply to any property used as a restaurant or retail property that is not adjacent or connected to or contiguous with property of the authority used for artistic or cultural purposes.

4. State Administrative and Employment Provisions.

- **Public Records and Open Meetings Laws.** Cultural arts authorities would be subject to open meetings and public records requirements of state law.
- **Employment Relations.** Cultural arts authorities would not be subject to state or municipal civil service, employment relations, retirement plan and other employment provisions that apply to state or municipal employees, but would be subject to state employment peace and fair employment laws, as well as federal wage and hour and labor relations laws and municipal equal employment opportunity ordinances.
- **Purchasing Requirements.** An authority would not be subject to various purchasing requirements that apply to state agencies. Cultural arts authorities would be added to the list of entities that are not considered part of the state for purposes of the purchasing requirements (also includes exposition and baseball districts). A cultural arts authority is not an agency for purposes of these provisions.
- **Audit by State Legislative Audit Bureau.** The authority would be subject to audit by the State Legislative Audit Bureau and the comptroller or other fiscal agent of the sponsoring municipality.

12/16/99

**Summary of Appointment of Cultural Arts District Board
(Non-Class 1 Cities)**

- **Three Directors Serving Ex Officio or Their Designees¹**
 - **Directors**
 - Governor or his designee
 - Mayor or her designee
 - County Executive or her designee
 - **Removal of Designees**
 - Designees, if appointed, serve at pleasure of the appointing official
- **Ten Appointed Directors²**
 - **Three Directors Appointed by the Governor:**
 - One director appointed from among 3-5 candidates nominated by UW Board of Regents (or the current director for that position)
 - The remaining directors appointed from qualified candidates at large:
 - one of these two directors may (but is not required to be) an elected state official
 - at least one of these two directors should have a demonstrated interest in cultural arts activities
 - **Six Directors Appointed by the Mayor:**
 - One director appointed from among 3-5 candidates nominated by school board for principal school district in the sponsoring city (or the current director for that position)
 - The remaining directors appointed from qualified candidates at large:
 - up to three of these five directors may (but are not required to be) elected city officials
 - at least two of these five directors should have a demonstrated interest in cultural arts activities
 - The common council may provide for a nomination process relating to mayoral appointments in its resolution creating the city.
 - **One Director Appointed by the County Executive:**
 - from qualified candidates at large
 - not a county official
 - **Diverse Interests of Community:**
 - In appointing these directors, the Governor, Mayor and County Executive should take into account the diverse interests of the community to be served by the cultural arts facilities
 - **Terms, Vacancies and Removal:**
 - as provided in previous Overture draft

¹If another city within 25 miles of the sponsoring city provides substantial support to the district, the common council of the sponsoring city may increase the board to include the mayor of that city or such mayor's designee as an additional director.

²To qualify for appointment a candidate must have lived within 25 miles of the sponsoring city's city hall for at least one year prior to the candidate's appointment.

SECTION ____. 70.11(39) of the statutes is created to read:

70.11(39) CULTURAL ARTS AUTHORITY. Any property of a cultural arts authority under subch. IV of ch. 229, except the following real property:

(a) The real property satisfies both of the following:

1. The property is not physically integrated with or part of the same physical structure as a cultural arts facility (as defined in s. 229.85) used principally for performances, programs, concerts, exhibits, shows, broadcasts or other activities with any artistic or cultural significance; and

2. The property is used for the operation of a restaurant or other retail business by a person other than either the authority or an entity qualified as a 501(c)(3) organization under the Federal Internal Revenue Code; or

(b) The real property is a parking lot, structure or garage that does not support the operation of a cultural arts facility (as defined in s. 229.85) used principally for performances, programs, concerts, exhibits, shows, broadcasts or other activities with any artistic or cultural significance.

Shovers, Marc

From: Ziegler, Paul
Sent: Wednesday, January 05, 2000 4:31 PM
To: Shovers, Marc
Subject: Cultural Arts District - payments in lieu of taxes

Below is an additional piece to add to the cultural arts district draft. The referenced section of the Q&B draft specifies powers of the sponsoring city:

To Section 229.89 of the Q&B draft add the following:

"(1) (e) Fix and collect a sum to be paid annually in lieu of taxes by the authority.."

Thank you.

(BOND) ISSUES

- 1) Under s. 67.01(5) is CAD Not a muni corp? can't levy a tax?
- 2) If I can borrow \$/issue debt under s. 67.04, is its debt limitation, 5% of Madison rev? that's its jurisd?
If so, why bother w/ saying it's a public utility?
- 3) Promissory notes under s. 67.12(12)?
- 4) a) can't issue bus improvement bonds; s. 66.059
b) spec. assessments; s. 66.60
or spec. charges s. 66.60(15) + ~~is debt~~
c) can't issue spec. improvement bonds; s. 66.54
d) can't issue IR bonds s. 66.58

[Issue bonds, notes + incur debt

IRC § 170(c)(2)

- 1 -

(c) Charitable contribution defined

For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of--

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation--

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

FRC § 501 (c) (3)

used in
the bill

- 1 -

3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

IRC § 509(a) (1) or (2)
(used in the bill)

- 1 -

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

(2) an organization which--

(A) normally receives more than one-third of its support in each taxable year from any combination of--

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year,

from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from the sum of--

(i) gross investment income (as defined in subsection (e)) and

(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511;

FPC § 2055(a)(2)

- 1 -

(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

IRC § 2522(a)(2)

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(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

Paul Ziegler says to use the "2nd" Exec. Summary

1st Exec Summary

CULTURAL ARTS AUTHORITY LEGISLATION
EXECUTIVE SUMMARY

The Overture Foundation is proposing legislation to authorize the creation of a Madison "cultural arts authority" to which the Overture Foundation's Madison Cultural Arts Support Trust (MCAST) would donate \$100 million in cash and/or real property. The Madison cultural arts authority would own and operate cultural arts facilities for the benefit of the citizens of Madison, Dane County and the State of Wisconsin. The proposed legislation would apply to cities with more than 150,000 residents, although it is expected that Madison would be the only Wisconsin city initially to make use of the legislative authority. Following is a summary of the principal provisions of the proposed legislation.

1. Creation, Nature and Governance.

- **Creation.** A cultural arts authority could be created upon the written declaration of a mayor of a populous city (i.e., greater than 150,000 residents), approved by resolution of such city's common council and delivered to the governor.
- **Separate Governmental Entities.** A cultural arts authority would be a governmental entity separate and distinct from both the state and the sponsoring city. Any debt of the authority would not be the debt of the state or the sponsoring city.
- **Board of Directors.** Thirteen directors would be appointed to the authority's governing board: The mayor of the sponsoring city and the county executive of the county in which the sponsoring city is located, or their respective designees, would serve ex officio. In addition, the governor would appoint three directors, the mayor would appoint two directors, and the county executive would appoint one director. The directors, all of whom must live within 25 miles of the city, would serve staggered terms of 4 years each. The statute would permit expansion of the board to include representatives of municipalities in the region served by the facilities of the cultural arts authority.

Classification problems?

clarify when it takes effect.

If Bd can expand membership, could Madison members vote to expand jurisdiction to other cities beyond city? Clarify mechanism

hard to determine why not 25 miles from city hall

home rule problem - city creates D but vote a bolish it

- **Continuation.** Once created, a cultural arts authority would remain in existence until dissolved by the unanimous consent of the board or by subsequent legislation. The state would pledge that it would not dissolve a cultural arts authority until its debt obligations were discharged.

2. Powers of Cultural Arts Authorities and Sponsoring Cities.

- **General Powers.** A cultural arts authority would have typical powers necessary for the ownership and operation of cultural arts facilities, such as the powers: to acquire real property, including by condemnation, within a defined area; to sue and be sued; to construct, equip, maintain, improve, operate and manage the cultural arts

clarify the parameters

facilities; to lease as lessor or lessee; to enter into contracts; ~~to impose taxes for~~
~~specified purposes and subject to a specified ceiling on the amount of mortgage on~~
~~real property; to employ personnel; and to collect fees with respect to use of cultural~~
facilities. ~~The condemnation and taxation powers, which are crucial to ensure that~~
the authority is considered a governmental subdivision for federal tax purposes, ~~will~~
~~be defined and limited by the city's resolution creating the authority, and as it may~~
~~be expanded by subsequent resolution.~~ It is expected that Madison's creating *by whom?*

? { power of taxation to an amount approximately equal to the City's current subsidy of the Madison Civic Center.

- Gifts, Grants and Loans. A cultural arts authority could receive gifts and donations from public and private groups or individuals. An authority could also grant property to public and private groups that are qualified under certain federal tax provisions (such as 501(c)(3)) organizations) for the purpose of supporting cultural arts activities or facilities or to other individuals or groups for such purposes pursuant to the objectives of a program adopted by the authority board.
- Expenditures Exclusively for Public Purposes. All of a cultural arts authority's expenditures must be made for exclusively public purposes, including payments in lieu of taxes.
- Inter-governmental Powers. A cultural arts authority could work out inter-governmental relationships, including regional cooperation agreements, with and among its sponsoring city and other governmental agencies under s. 66.30, and could participate in the local government pooled investment fund.
- Sponsoring City Powers. The sponsoring city would have authority to make a gift, grant or loan of property or funds to the cultural arts district and to expend funds to subsidize an authority.

is this a way around mini, amend P, M, S,

3. WHEFA Bond Authority and Tax Exemptions.

- WHEFA Bonds. The Wisconsin Health and Educational Finance Authority (WHEFA) would have authority to issue bonds for financing cultural arts facilities in the same manner that it has authority to issue bonds for financing educational facilities. *scope?*
- Investment in Bonds and Debt. Various state funds and regulated companies would be authorized to invest in such bonds.
- Tax Exemption on Bonds and Debt. Interest on such bonds and other debt of cultural arts authorities would be exempt from state taxes.

do private establishments
get profit tax exemption?
uniformity clause issues? Clarify -

• Tax Exemption on Property and Income. Certain real estate owned by, and income of, a cultural arts authority would be exempt from state and local taxes. The property tax exemption would not apply to any property used as a restaurant or retail property that is not adjacent or connected to or contiguous with property of the authority used for artistic or cultural purposes.

4. State Administrative and Employment Provisions.

- Public Records and Open Meetings Laws. Cultural arts authorities would be subject to open meetings and public records requirements of state law.
- Employment Relations. Cultural arts authorities would not be subject to state or municipal civil service, employment relations, retirement plan and other employment provisions that apply to state or municipal employees, but would be subject to state employment peace and fair employment laws, as well as federal wage and hour and labor relations laws and municipal equal employment opportunity ordinances.
- Purchasing Requirements. An authority would not be subject to various purchasing requirements that apply to state agencies. Cultural arts authorities would be added to the list of entities that are not considered part of the state for purposes of the purchasing requirements (also includes exposition and baseball districts). A cultural arts authority is not an agency for purposes of these provisions.
- Audit by State Legislative Audit Bureau. The authority would be subject to audit by the State Legislative Audit Bureau and the comptroller or other fiscal agent of the sponsoring municipality.

Cultural Arts Auth

12/17/99 meeting

Intent: make the auth a "pure auth" --
an entity that's sep. from the city & the state
desire: it's a governmental entity

* Pure Auth model - it's a unit of local gov't
It's not a state auth.

assumption is that the ~~auth~~ A owns the bldgs -
city owns some bldgs now & wld deed the bldgs to
the auth.

* Make sure A wld not have to levy a prop tax
to pay off bonds under art X sec. 3 (3)
because the A is not a ~~unit~~ unit of gov't.

Board of Directors - use the generic, simplified
procedure in the 1st exec summary

Residency of Bd of dir: directors must
live w/in 25 miles of city hall of
the sponsoring city

①

Problems

1) Authorities may not impose a tax, ∴
the entity must be a district -- a
special purpose district that is a unit of govt
see JS L₂ Article -- "The Auth. to Tax in WI."

2) a) State or local control? D is created upon
un. decl. of mayor & common council OK --
D has 13 directors, but statute provides
for expansion of bod if jurisd of D expands

b) D may be dissolved by a) unanimous OK
of bod of dir. or b) state legislation

3) Power to tax: details needed -- instructions
say D has authority "to impose taxes
for 'specified purposes' and subject to a
specified ceiling; to incur debt; to mort/real
prop."

1) what kind of taxes?

2) over what area?

3) ~~Does~~ "Incur debt" → issue bonds or notes that must be
paid off by a prop. tax. see Art. XI sec. 3 (3)

2

4) do you want state stat to limit the
amt of tax that can be imposed? But instructions
say Madison would "initially restrict" tax taxation
auth to = Civil Center's subsidiary -

Would Madison then, unilaterally, change
the D's auth to tax?

5) Cite to federal tax provisions that req.
the govt entity to which Overlake gives its
to have taxation & emin. dom. auth.

debt limit -- look at const. debt limit provisions