



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4065/12
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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AN ACT to amend 13.94 (4) (a) 1., 16.70 (14), 19.42 (13) (a), 25.50 (1) (d), 40.02 (28), 40.02 (36), 66.04 (2) (a) (intro.), 66.066 (1) (a), 66.067, 66.30 (1) (a), 71.26 (1)(bm), 71.26 (1m)(g), 71.36 (1m), 71.45 (1t)(g), 111.02 (7), 111.70 (1)(j), 230.03 (3), 231.01 (4) (a), 231.01 (4) (b) 1., 231.01 (4) (b) 2., 231.01 (4) (c), 231.01 (7) (a) 1., 231.01 (7) (a) 2., 231.01 (7) (a) 4., 231.01 (7) (c), 231.02 (6) (b), 231.03 (5), 231.03 (7), 231.03 (8), 231.03 (11), 231.03 (13), 231.03 (14), 231.03 (15), 231.03 (16), 231.03 (17), 231.03 (18), 231.03 (19), 231.04, 231.05 (1), 231.06, 231.07 (1) (b), 231.07 (2) (a), 231.08 (5), 231.10 (1), 231.12, 231.13 (1) (intro.), 231.13 (2), 231.16 (1), 231.20 and 231.23; to repeal and recreate 40.02 (28); and to create 24.61 (2) (a) 8., 25.17 (3) (b) 11., 66.04 (2) (a) 3r., 70.11 (40), 71.05 (1) (c) 6., 71.05 (1) (c) 7., 71.26 (1m) (h), 71.45 (1t) (h), 77.54 (9a) (h), 219.09 (1) (e), subchapter V of chapter 229 [precedes 229.840], 231.01 (4g), 231.01 (4h), 231.01 (5t), 231.03 (6) (g) and 231.03 (6) (h) of the statutes; relating to: authorizing the creation of a local cultural arts district; giving a local cultural arts district the authority to issue bonds and granting income ^{and franchise} tax exemptions for interest

granting a property tax exemption for the district's property; granting a sales tax and use tax exemption for tangible personal property and services purchased by the district;

authorizing certain local cultural arts districts to acquire property by condemnation;

1 income on bonds issued by the district; and authorizing the Wisconsin Health
2 and Educational Facilities Authority to issue bonds to finance certain cultural
3 arts facilities.

Analysis by the Legislative Reference Bureau

CREATION AND DISSOLUTION OF A DISTRICT

This bill authorizes the creation of a local cultural arts district by a sponsoring city, which is defined as a city with a population of more than 150,000 that creates such a district. To create a district, the mayor of the sponsoring city must issue a written proclamation declaring the need for establishing a district, and the sponsoring city's common council must adopt a resolution that approves of the proclamation and deliver a copy of the resolution to the governor. The resolution ~~shall~~ also prescribe the scope of the district's eminent domain power. A district is a local unit of government that is a body corporate and politic and that is separate and distinct from, and independent of, the state and the sponsoring city. Under the bill, a district's jurisdiction remain ~~fixed~~ ^{fixed} even if the population of the sponsoring city subsequently declines below the minimum described.

must

if any

and powers

revenue

construction of the

In connection with cultural arts facilities, the powers of a district include eminent domain authority; the construction, maintenance, management and acquisition of the facilities; the issuance of bonds to finance the facilities; the authority to enter upon real property within its jurisdiction to make surveys and examinations before locating or constructing cultural arts facilities; and the authority to enter into partnerships, joint ventures, common ownership or other arrangements with other persons to further the district's purposes. A district may also set standards governing the use of, and the conduct within, the facilities, and may set and collect fees for the use of the facilities.

eminent domain

With regard to contracts for construction work and professional service contracts that are awarded by the district, it shall be a goal of the district that at least 5% of the aggregate dollar value of the contracts be awarded to minority-owned businesses and at least 5% of the aggregate dollar value of contracts be awarded to women-owned businesses.

The district is governed by a board. The board consists of, in an ex-officio capacity, the governor, the mayor of the sponsoring city and the county executive of the county in which the sponsoring city is located, or the ~~county~~ ^{district} executive, ^{or if there is no county executive, the board} ~~the~~ designees. If the sponsoring city is a first class city (presently only Milwaukee), the common council shall determine the structure, qualifications and selection procedures for the other members of the board.

greatest percentage of the territory of the

board chairperson

of these persons

If the sponsoring city is not a first class city, the board consists of, other than the ex-officio members listed above, three persons appointed by the governor, one of whom shall be selected from a list of three to five names that is submitted by the University of Wisconsin Board of Regents, six persons appointed by the mayor of the sponsoring city, one of whom shall be selected from a list of three to five names that

of the University of Wisconsin system

principal school board of the

greatest percentage of the territory of the

is submitted by the sponsoring city ~~and the other five of whom may~~ need to be appointed according to procedures that may be required by the common council; and one person appointed by the county executive of the county in which the sponsoring city is located. Of the persons appointed by the mayor, no more than three may be ~~elect~~ city officials.

elective

or, if there is no county executive

In addition, the sponsoring city's common council may increase the size of the board to include the mayor, village president or town board chair, or such person's designee, of a city, village or town that is located within 25 miles of the sponsoring city and that provides substantial support to the district.

having territory

city's hall

retirement

the board chairperson

A district may be dissolved, subject to payment of the district's bonds and fulfillment of its other contractual obligations in one of the following ways: 1) By a law enacted by this state; 2) If the sponsoring city is not a first class city, by the unanimous action of the district board; 3) If the sponsoring city is a first class city, by any means described in the initial resolution under which the first class city created the district.

If a district is dissolved, its property may be transferred either to the sponsoring city or to one of a number of tax-exempt religious, scientific or charitable entities that are described in the Internal Revenue Code, except that in the case of a district created by a first class city, the common council's resolution that created the district must specify the specific entity to which the district's property will be transferred upon dissolution.

educational

Under the bill, a sponsoring city may make grants, gifts or loans of any kind of property, or provide any other form of assistance, to a district; expend public funds to subsidize a district; borrow money to fund grants, loans or subsidies to a district; fix and collect a sum to be paid in lieu of taxes by the district; or audit the financial statements of a district.

records

BONDING

local

The bill grants a district the power to issue revenue bonds for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a cultural arts district. Under the bill, the bonds issued by the district are secured by district property and income placed in a special fund. The bill specifically provides that neither the state nor the sponsoring municipality is liable on bonds issued by the district and that the issuance of bonds by the district does not obligate the state or the sponsoring city to levy taxes for the payment of the bonds. Under the bill, the state pledges to the holders of bonds issued by the district that the state will not alter the rights vested in the district by law until such bonds are fully paid. Finally, with respect to bonds issued by the district, the bill contains provisions authorizing certain state and local government funds and certain regulated financial institutions to invest in bonds issued by the district; provides that all moneys received by a district, including proceeds from the sale of bonds, are trust funds to be held and applied solely for the purposes provided in the bill; and limits the personal liability of members of a district's board with respect to the issuance of bonds.

retirement

retired
unless
adequate
provision
is made by
law for
protection
of the
bondholders'
rights

Under current law, the Wisconsin Health and Educational Facilities Authority (WHEFA) may issue bonds to finance certain projects of health institutions,

educational institutions and, until May 1, 2000, child care centers, and to refinance outstanding debt of health institutions, educational institutions and, until May 1, 2000, child care centers. Projects that may be financed include, among others, the acquisition of a hospital, the construction or operation of an ambulatory surgery center or home health agency, the construction, remodeling, furnishing or equipping of a health or educational facility or related structure and, until May 1, 2000, the construction, remodeling, furnishing or equipping of a building that is used exclusively to provide child care services and that is not operated for profit. ~~This~~ bill authorizes WHEFA to also issue bonds to finance a project undertaken by a cultural arts district for a cultural arts facility, or to refinance outstanding debt of a cultural arts district.

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COLLECTIVE BARGAINING

local cultural arts

The bill specifically exempts the district from coverage under the Municipal Employment Relations Act (MERA). Under MERA, which covers employment relations in municipalities, employees in collective bargaining units for which a representative is recognized or certified may bargain with an employer over wages, hours and conditions of employment to the point of impasse, at which point the parties are required to submit to interest arbitration. Under MERA, however, employees do not have the right to strike. Instead, the bill provides that a district is covered under the Employment Peace Act. The Employment Peace Act generally covers all employers other than the state and its political subdivisions. Under the Employment Peace Act, employees in collective bargaining units for which a representative is recognized or certified may bargain with an employer over wages, hours and conditions of employment. Under the Employment Peace Act, there is no interest arbitration; however, employees are granted the right to strike.

maybe

not covered
under the
national labor
relations act

TAXATION

The bill creates a property tax exemption for the property of a cultural arts district. The property tax exemption, however, does not apply to the property of a cultural arts district that is not a part of the physical structure of a cultural arts facility, if that property is used for a retail business or a restaurant, unless the retail business or restaurant is operated by the cultural arts district or by a nonprofit corporation, organization or association. The exemption also does not apply to parking lots or parking structures that are not used to support the operation of a cultural arts district.

local

local

WHEFA with respect

Under the bill, the income of a cultural arts district is exempt from the income tax and the franchise tax, and the income and interest from the district's obligations are exempt from the income tax and the franchise tax. In addition, the income and interest from bonds that are issued by the health and educational finance authority to a cultural arts district are exempt from the income tax and the franchise tax.

Under the bill, goods and services purchased by a cultural arts district are exempt from the sales tax and the use tax.

FINANCE

~~This~~ bill permits the legislative audit bureau to audit the records of a district. Under the bill, the joint legislative audit committee may review a district's performance.

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ETHICS

Members of a district board are subject to the statutory code of ethics for local public officials. ~~However~~ like other local public officials, district board members are not subject to periodic reporting requirements.

APPLICABILITY OF OTHER LAWS

Numerous laws that ^{local} currently apply to special purpose districts and local units of government apply to a cultural arts district, including, among others:

1. The district is subject to laws requiring, with certain exceptions, public notice of and access to meetings of the district board and public access to the district's records.

2. The district is subject to worker's compensation, unemployment insurance, state minimum wage and hour and family and medical leave laws.

3. The district is subject to the law requiring the payment of prevailing wages on local government public works projects.

4. The district is governed by laws regulating municipal administrative procedures and rights.

5. The district is subject to laws restricting employers from testing employes and prospective employes for human immunodeficiency virus (HIV) or an antibody to HIV.

6. The district is subject to the tort and antitrust liability limitation that currently applies to actions brought against local governmental units of \$50,000 per occurrence, and persons attempting to sue the district are subject to a requirement to file notice of their claims within 120 days of their occurrence.

7. The district is subject to laws regulating buildings and safety.

8. ~~Purchases made by the district, other than purchases of building materials, are subject to the sales tax and use tax and the property of the district is subject to special assessment levies.~~

Under the bill, the district may participate in

~~The state public employe retirement plan and state-administered plans for deferred compensation, health care benefits and disability and survivor benefits.~~

~~The local government property insurance fund.~~

The bill provides that the district is not subject to laws regulating generally the ways in which funds of local governments may be invested.

The bill provides also that the district may:

1. Contract with municipalities and federally recognized Indian tribes and bands in this state for the receipt or furnishing of services or the joint exercise of powers or duties.

2. Participate in the state-operated local government pooled-investment fund.

Under the bill, the assets and liabilities of a district are not assets or liabilities of the sponsoring city.

EMPLOYMENT

Under the bill, any ordinance of a sponsoring city that regulates employment relations or practices of all private employers generally applies to employes of the

district, unless the sponsoring city's common council excludes the application of such an ordinance to the district's employees.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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

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

1 **SECTION 1.** 13.94 (4) (a) 1. of the statutes, as affected by 1999 Wisconsin Act 9,
2 is amended to read:

3 13.94 (4) (a) 1. Every state department, board, examining board, affiliated
4 credentialing board, commission, independent agency, council or office in the
5 executive branch of state government; all bodies created by the legislature in the
6 legislative or judicial branch of state government; any public body corporate and
7 politic created by the legislature including specifically a professional baseball park
8 district, a ^{local} cultural arts district and a family care district under s. 46.2895; every
9 Wisconsin works agency under subch. III of ch. 49; every provider of medical
10 assistance under subch. IV of ch. 49; technical college district boards; development
11 zones designated under s. 560.71; every county department under s. 51.42 or 51.437;
12 every nonprofit corporation or cooperative to which moneys are specifically
13 appropriated by state law; and every corporation, institution, association or other
14 organization which receives more than 50% of its annual budget from appropriations
15 made by state law, including subgrantee or subcontractor recipients of such funds.

16 **SECTION 2.** 16.70 (14) of the statutes is amended to read:

17 16.70 (14) "State" does not include a district created under subch. II ~~or~~ III or
18 V of ch. 229.

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1 SECTION 3. 19.42 (13) (a) of the statutes is amended to read:

2 19.42 (13) (a) All positions to which individuals are regularly appointed by the
3 governor, except the position of trustee of any private higher educational institution
4 receiving state appropriations and the position of member of the district board of a
5 local professional baseball park district created under subch. III of ch. 229 and the
6 position of member of the district board of a ^{local} cultural arts district created under
7 subch. V of ch. 229.

8 SECTION 4. 24.61 (2) (a) 8. of the statutes is created to read:

9 24.61 (2) (a) 8. Bonds issued under ch. 231 with respect to a ^{local} cultural arts
10 district created under subch. V of ch. 229.

11 SECTION 5. 25.17 (3) (b) 11. of the statutes is created to read:

12 25.17 (3) (b) 11. Bonds issued under ch. 231 with respect to a cultural arts
13 district created under subch. V of ch. 229.

14 SECTION 6. 25.50 (1) (d) of the statutes, as affected by 1999 Wisconsin Act 9, is
15 amended to read:

16 25.50 (1) (d) "Local government" means any county, town, village, city, power
17 district, sewerage district, drainage district, town sanitary district, public inland
18 lake protection and rehabilitation district, local professional baseball park district
19 created under subch. III of ch. 229, family care district under s. 46.2895, ^{local} cultural arts
20 district created under subch. V of ch. 229, public library system, school district or
21 technical college district in this state, any commission, committee, board or officer
22 of any governmental subdivision of this state, any court of this state, other than the
23 court of appeals or the supreme court, or any authority created under s. 231.02,
24 233.02 or 234.02.

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SECTION 7

1 **SECTION 7.** 40.02 (28) of the statutes, as affected by 1999 Wisconsin Act 9,
2 section 931b, is amended to read:

3 40.02 (28) "Employer" means the state, including each state agency, any
4 county, city, village, town, school district, other governmental unit or
5 instrumentality of 2 or more units of government now existing or hereafter created
6 within the state and, any federated public library system established under s. 43.19
7 whose territory lies within a single county with a population of 500,000 or more, a
8 local exposition district created under subch. II of ch. 229 and a family care district
9 created under s. 46.2895, except as provided under ss. 40.51 (7) and 40.61 (3) and
10 subch. X. "Employer" does not include a ^{local} cultural arts district created under subch.
11 V of ch. 229. Each employer shall be a separate legal jurisdiction for OASDHI
12 purposes.

13 **SECTION 8.** 40.02 (28) of the statutes, as affected by 1999 Wisconsin Act 9,
14 section 931c, and 1999 Wisconsin Act (this act), is repealed and recreated to read:

15 40.02 (28) "Employer" means the state, including each state agency, any
16 county, city, village, town, school district, other governmental unit or
17 instrumentality of 2 or more units of government now existing or hereafter created
18 within the state, any federated public library system established under s. 43.19
19 whose territory lies within a single county with a population of 500,000 or more, a
20 local exposition district created under subch. II of ch. 229 and a family care district
21 created under s. 46.2895, except as provided under ss. 40.51 (7) and 40.61 (3).
22 "Employer" does not include a ^{local} cultural arts district created under subch. V of ch. 229.
23 Each employer shall be a separate legal jurisdiction for OASDHI purposes.

24 **SECTION 9.** 40.02 (36) of the statutes, as affected by 1999 Wisconsin Act 9, is
25 amended to read:

1 40.02 (36) "Governing body" means the legislature or the head of each state
2 agency with respect to employees of that agency for the state, the common council in
3 cities, the village board in villages, the town board in towns, the county board in
4 counties, the school board in school districts, or the board, commission or other
5 governing body having the final authority for any other unit of government, for any
6 agency or instrumentality of 2 or more units of government, for any federated public
7 library system established under s. 43.19 whose territory lies within a single county
8 with a population of 500,000 or more, for a local exposition district created under
9 subch. II of ch. 229 or for a family care district created under s. 46.2895, but does not
10 include a ^{local} cultural arts district created under subch. V of ch. 229.

11 **SECTION 10.** 66.04 (2) (a) (intro.) of the statutes is amended to read:

12 66.04 (2) (a) (intro.) Any county, city, village, town, school district, drainage
13 district, technical college district or other governing board as defined by s. 34.01 (1),
14 other than a cultural arts district board created under ch. 229, may invest any of its
15 funds not immediately needed in any of the following:

16 **SECTION 11.** 66.04 (2) (a) 3r. of the statutes is created to read:

17 66.04 (2) (a) 3r. Bonds issued by the Wisconsin Health and Educational
18 Facilities Authority under ch. 231, with respect to a local cultural arts district under
19 subch. V of ch. 229.

20 **SECTION 12.** 66.066 (1) (a) of the statutes is amended to read:

21 66.066 (1) (a) "Municipality" means any city, village, town, county, commission
22 created by contract under s. 66.30, public inland lake protection and rehabilitation
23 district established under s. 33.23, 33.235 or 33.24, metropolitan sewerage district
24 created under ss. 66.20 to 66.26 or 66.88 to 66.918, town sanitary district under
25 subch. IX of ch. 60, a local professional baseball park district created under subch.

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SECTION 12

1 III of ch. 229, a local cultural arts district created under subch. V of ch. 229 or a
2 municipal water district or power district under ch. 198 and any other public or
3 quasi-public corporation, officer, board or other public body empowered to borrow
4 money and issue obligations to repay the same out of revenues. "Municipality" does
5 not include the state or a local exposition district created under subch. II of ch. 229.

6 **SECTION 13.** 66.067 of the statutes is amended to read:

7 **66.067 Public works projects.** For financing purposes, garbage
8 incinerators, toll bridges, swimming pools, tennis courts, parks, playgrounds, golf
9 links, bathing beaches, bathhouses, street lighting, city halls, village halls, town
10 halls, courthouses, jails, schools, cooperative educational service agencies, hospitals,
11 homes for the aged or indigent, child care centers, as defined in s. 231.01 (3c),
12 regional projects, waste collection and disposal operations, systems of sewerage,
13 local professional baseball park facilities, local cultural arts facilities and any and
14 all other necessary public works projects undertaken by any municipality are public
15 utilities within the meaning of s. 66.066.

16 **SECTION 14.** 66.30 (1) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
17 is amended to read:

18 66.30 (1) (a) In this section "municipality" means the state or any department
19 or agency thereof, or any city, village, town, county, school district, public library
20 system, public inland lake protection and rehabilitation district, sanitary district,
21 farm drainage district, metropolitan sewerage district, sewer utility district, solid
22 waste management system created under s. 59.70 (2), local exposition district
23 created under subch. II of ch. 229, local professional baseball park district created
24 under subch. III of ch. 229, local cultural arts district created under subch. V of ch.
25 229, family care district under s. 46.2895, water utility district, mosquito control

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1 district, municipal electric company, county or city transit commission, commission
2 created by contract under this section, taxation district or regional planning
3 commission.

4 **SECTION 15.** 70.11 (40) of the statutes is created to read:

5 70.11 (40) LOCAL CULTURAL ARTS DISTRICT. Property of a local cultural arts
6 district under subch. V of ch. 229, except any of the following:

7 (a) Property that is not a part of the physical structure of a cultural arts facility,
8 as defined under s. 229.841 (5), if that property is used for a retail business or a
9 restaurant, unless the retail business or restaurant is operated by the cultural arts
10 district or by a corporation, organization or association that is exempt from taxation
11 under section 501^(a) of the Internal Revenue Code. (local)

12 (b) A parking lot or parking structure that is not used to support the operation
13 of a cultural arts facility, as defined under s. 229.841 (5).

14 **SECTION 16.** 71.05 (1) (c) 6. of the statutes is created to read:

15 71.05 (1) (c) 6. A local cultural arts district created under subch. V of ch. 229.

16 **SECTION 17.** 71.05 (1) (c) 7. of the statutes is created to read:

17 71.05 (1) (c) 7. The Wisconsin Health and Educational Facilities Authority
18 under ~~§ 229.85~~^{ch. 231} if the bonds are used to fund a loan to finance construction,
19 renovation or development of a cultural arts facility, as defined under s. 229.85 (11).

20 **SECTION 18.** 71.26 (1) (bm) of the statutes is amended to read:

21 71.26 (1) (bm) *Certain local districts.* Income of a local exposition district
22 created under subch. II of ch. 229 or, a local professional baseball park district
23 created under subch. III of ch. 229 or a local cultural arts district created under subch. V
24 of ch. 229.

25 **SECTION 19.** 71.26 (1m) (g) of the statutes is amended to read:

1 71.26 (1m) (g) Those issued under s. 66.066 by a local professional baseball
2 park district ^{local} or a [✓] cultural arts district.

3 **SECTION 20.** 71.26 (1m) (h) of the statutes is created to read:

4 71.26 (1m) (h) Those issued under ~~§ 234.65~~ ^{ch. 231 with respect} to a ^{local} cultural arts district.

5 **SECTION 21.** 71.36 (1m) of the statutes is amended to read:

6 71.36 (1m) A tax-option corporation may deduct from its net income all
7 amounts included in the Wisconsin adjusted gross income of its shareholders, the
8 capital gain deduction under s. 71.05 (6) (b) 9. and all amounts not taxable to
9 nonresident shareholders under ss. 71.04 (1) and (4) to (9) and 71.362. For purposes
10 of this subsection, interest on federal obligations, obligations issued under s. 66.066
11 by a local professional baseball park district or a ^{local} cultural arts district, obligations
12 issued under ss. 66.40, 66.431 and 66.4325, obligations issued under s. 234.65 to fund
13 an economic development loan to finance construction, renovation or development
14 of property that would be exempt under s. 70.11 (36) and obligations issued under
15 subch. II of ch. 229 is not included in shareholders' income. The proportionate share
16 of the net loss of a tax-option corporation shall be attributed and made available to
17 shareholders on a Wisconsin basis but subject to the limitation and carry-over rules
18 as prescribed by section 1366 (d) of the internal revenue code. Net operating losses
19 of the corporation to the extent attributed or made available to a shareholder may
20 not be used by the corporation for further tax benefit. For purposes of computing the
21 Wisconsin adjusted gross income of shareholders, tax-option items shall be reported
22 by the shareholders and those tax-option items, including capital gains and losses,
23 shall retain the character they would have if attributed to the corporation, including
24 their character as business income. In computing the tax liability of a shareholder,

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

3 **SECTION 22.** 71.45 (1t) (g) of the statutes is amended to read:

4 71.45 (1t) (g) Those issued under s. 66.066 by a local professional baseball park
5 district or a ^{local} cultural arts district.

6 **SECTION 23.** 71.45 (1t) (h) of the statutes is created to read:

7 71.45 (1t) (h) Those issued under ~~223.108~~ ^{ch. 231 with respect} to a ^{local} cultural arts district.

8 **SECTION 24.** 77.54 (9a) (h) of the statutes is created to read:

9 77.54 (9a) (h) A ^{local} cultural arts district under subch. V of ch. 229.

10 **SECTION 25.** 111.02 (7) of the statutes is amended to read:

11 111.02 (7) The term "employer" means a person who engages the services of an
12 employe, and includes any person acting on behalf of an employer within the scope
13 of his or her authority, express or implied, but shall not include the state or any
14 political subdivision thereof, or any labor organization or anyone acting in behalf of
15 such organization other than when it is acting as an employer in fact. For purposes
16 of this subsection, a person who engages the services of an employe includes the
17 University of Wisconsin Hospitals and Clinics Authority and a ^{local} cultural arts district
18 created under subch. V of ch. 229.

19 **SECTION 26.** 111.70 (1) (j) of the statutes, as affected by 1999 Wisconsin Act 9,
20 is amended to read:

21 111.70 (1) (j) "Municipal employer" means any city, county, village, town,
22 metropolitan sewerage district, school district, family care district or any other
23 political subdivision of the state that engages the services of an employe and includes
24 any person acting on behalf of a municipal employer within the scope of the person's

1 authority, express or implied, but specifically does not include a ^{local} cultural arts district
2 created under subch. V of ch. 229.

3 SECTION 27. 219.09 (1) (e) of the statutes is created to read:

4 219.09 (1) (e) The Wisconsin Health and Educational Facilities Authority
5 under ch. 231, with respect to a local cultural arts district under subch. V of ch. 229.

6 SECTION 28. Subchapter V of chapter 229 [precedes 229.840] of the statutes is
7 created to read:

8 CHAPTER 229

9 SUBCHAPTER V

10 LOCAL CULTURAL

11 ARTS DISTRICTS

12 **229.840 Legislative declaration.** (1) The legislature determines that this
13 subchapter serves a statewide public purpose by assisting the development of
14 cultural arts facilities in the state, which provide educational and recreational
15 opportunities for Wisconsin residents, by enhancing the appreciation of the arts
16 among the states' residents, by encouraging economic development and tourism, by
17 reducing unemployment and by bringing needed capital into the state for the benefit
18 and welfare of people throughout the state.

19 (2) The legislature determines that a ^{cultural arts} district in populous cities serves a public
20 purpose in those cities by providing educational and recreational opportunities for
21 residents of those cities, by enhancing the appreciation of the arts among the
22 residents of those cities, by encouraging economic development and tourism, by
23 reducing unemployment and by bringing needed capital into those cities for the
24 benefit and welfare of people in those cities.

25 **229.841 Definitions.** In this subchapter:

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1 (1) “Bond” means any bond, note or other obligation issued under s. 66.066 by
2 a district.

3 (2) “Bond resolution” means a resolution of the district board authorizing the
4 issuance of, or providing terms and conditions related to, bonds and includes, where
5 appropriate, any trust agreement, trust indenture, indenture of mortgage or deed of
6 trust providing terms and conditions for bonds.

 ****NOTE: We used “bond” and “bond resolution” instead of “debt” to maintain
consistency with other special purpose districts.

7 (3) “County executive” means the county executive or, if the county does not
8 have a county executive, the chairperson of the county board of supervisors, of the
9 county in which the sponsoring city is located. If a sponsoring city is located in more
10 than one county, the city shall be considered to be located solely in the county in
11 which the ^{greatest percentage} ~~territory~~ of its ^{territory} geographical area is located at the time a district is created.

12 (4) “Cultural arts activity” means any performance, program, concert, exhibit,
13 show, broadcast or other activity with any artistic or cultural significance, or any
14 related or incidental activity.

 ****NOTE: We did not include the phrase “An authority board’s determination that
an activity has artistic or cultural significance shall be conclusive evidence that such
activity has such significance” for 2 reasons. First, substantive provisions may not be put
in a definition. Second, and more importantly, if a lawsuit is brought concerning a
“cultural arts activity”, it will be up to the courts, not the district board, to determine
whether the activity has any artistic or cultural significance.

15 (5) “Cultural arts facilities” means district property, tangible or intangible,
16 owned in whole or in part, operated or leased by a district that is principally for a
17 cultural arts activity including auditoriums, music halls, exhibit halls, theaters,
18 practice facilities, dressing rooms, parking lots, garages, restaurants, concession
19 facilities, entertainment facilities, transportation facilities and other functionally
20 related or auxiliary facilities or structures.

1 (6) "District" means a ~~special purpose~~ district created under this subchapter.

2 (7) "District board" means the governing board of a district.

3 (8) "Mayor" means the mayor of a sponsoring city.

4 ~~(9) "Political subdivision" means a city, village, town or county.~~

5 (9) "Populous city" means any city with a population of more than 150,000.

6 (10) "Sponsoring city" means a populous city that creates a district under this
7 subchapter.

8 **229.842 Creation and organization.** (1) A sponsoring ^{city} ~~municipality~~ may
9 create a special purpose district that is a local governmental unit, that is a body
10 corporate and politic, that is separate and distinct from, and independent of, the
11 state and the sponsoring city, that has the powers under s. 229.844 and the name of
12 which includes ~~Cultural Arts District~~ "Cultural Arts District", if all of the following occur:

13 (a) The mayor issues a written proclamation declaring the need for establishing
14 a district.

15 (b) The sponsoring city's common council adopts a resolution that approves the
16 mayor's proclamation, and delivers a copy of the resolution to the governor. The
17 resolution under this paragraph may contain a ~~process~~ ^{procedure} that the mayor must follow
18 in nominating persons to the board under sub. (2) (c), except that the ~~process~~
19 not apply to the person appointed from the list of names submitted by the school
20 board.

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21 (2) A district is governed by its district board. If the sponsoring city is a 1st class
22 city, par. (a) and sub. (4) apply but pars. (b) to (d) and sub. (3) do not apply and the
23 1st class city's common council shall determine the ^{membership} structure, qualifications and
24 selection procedures for the district board. If the sponsoring city is not a 1st class city,

1 and subject to subs. (3) and (4), the district board shall consist of the following
2 members:

3 (a) The following persons, or their designees, shall be ex-officio members of the
4 board, except that a designee serves at the pleasure of his or her appointing
5 authority:

- 6 1. The governor.
- 7 2. The mayor.
- 8 3. The county executive.

****NOTE: As drafted, par. (a) applies to a district created by a 1st class city. Is this OK? Your instructions on this point were unclear.

9 (b) Three persons appointed by the governor, one of whom shall be selected from
10 a list of 3 to 5 names that is submitted by the ~~University of Wisconsin~~ Board of
11 Regents. ^{of the University of Wisconsin SYSTEM} Of the remaining 2 appointees under this paragraph, at least one of the
12 appointees shall have a demonstrated interest in cultural arts activities and one of
13 the appointees may be an ~~elected~~ ^{elective} state official. A person appointed under this
14 paragraph may take his or her seat immediately upon appointment. ^{and qualification}

Of the school district in which the greatest percentage of the sponsoring city's territory is located

15 (c) Subject to sub. (1) (b), 6 persons appointed by the mayor, one of whom shall
16 be selected from a list of 3 to 5 names that is submitted by the ~~sponsoring city's~~
17 ^{board} Of the remaining 5 appointees under this paragraph, at least 2 of the
18 appointees shall have a demonstrated interest in cultural arts activities and not
19 more than 3 of the appointees may be ~~elected~~ ^{elective} city officials. A person appointed under
20 this paragraph may take his or her seat immediately upon appointment. ^{and qualification}

21 (d) One person appointed by the county executive, who may not be a county
22 official. A person appointed under this paragraph may take his or her seat
23 immediately upon appointment. ^{and qualification}

~~At a sponsoring city is located in more than one school district, the city shall be considered to be located in the school district in which the greatest percentage of its territory is located at the time a district is created.~~

1 (3) The terms of office of the persons appointed under sub. (2) (b) to (d) shall
2 be 4 years expiring on July 1, except that the initial terms shall expire on July 1 of
3 the 3rd year beginning after the year of creation of a district. Persons appointed
4 under sub. (2) (b) to (d) must have ~~lived~~^{resided} within 25 miles of the sponsoring city's city
5 hall for at least one year before their appointment. Persons appointed under sub. (2)
6 (b) to (d) may be removed from the district board before the expiration of their terms
7 by the appointing authority but only for cause, as defined in s. 17.16 (2). Vacancies
8 shall be filled by the appointing authority who appointed the person whose office is
9 vacant. A person appointed to fill a vacancy under sub. (2) (b) to (d) shall serve for
10 the remainder of the unexpired term to which he or she is appointed. The appointing
11 authorities shall confer with one another regarding their appointments with a view
12 toward achieving diversity on the district board.

****NOTE: The instructions relating to terms, removals and vacancies in the
"pre-drafted" bill are somewhat convoluted. For the sake of simplicity and consistency,
we based this subsection on the "Packers bill", 1999 AB-730, although the "25-mile
requirement" is based on your instructions. Is this OK?

It also seems to us that the material relating to the common council setting up a
nomination process that the mayor must follow for 5 of his or her 6 appointees is sort of
unwieldy. Have you considered simply making the mayor's appointments subject to
common council approval?

13 (4) If a city, village or town ^{having territory} that is located with 25 miles of the sponsoring city's
14 ^{city hall} provides substantial support to the district, the sponsoring city's common council
15 may increase the size of the board to include the mayor, village president or town
16 board chair of that city, village or town, ^{LS} or the designee of such a mayor, village
17 president or town board chair. (9) ~~NOTE: What if the municipality's support~~
18 (5) The district board shall elect from its membership a chairperson, a vice
19 chairperson, a secretary and a treasurer. A majority of the current membership of
20 the district board constitutes a quorum to do business. The district may take action

1 based on the affirmative vote of a majority of those members of the district board who
2 are present at a meeting of the district board.

3 (6) The members of the district board shall be reimbursed for their actual and
4 necessary expenses incurred in the performance of their duties.

5 (7) Upon the appointment and qualification of at least 7 of the members of a
6 district board, the district board may exercise the powers and duties of a district
7 board under this subchapter.

8 (8) At its first meeting, the district board shall name the district, and the name
9 shall include ~~the~~ Cultural Arts District". *Except as provided under*
D. 229.844(4)(c) &

10 **229.843 Jurisdiction, scope of eminent domain authority.** (1) A district's
11 jurisdiction shall be the boundaries of the sponsoring city.

12 (2) The sponsoring city shall specify in the resolution described under s.
13 229.842 (1) (b) the areas of the district's jurisdiction within which the district board
14 may exercise its powers of eminent domain. This area may be expanded or
15 contracted by an ordinance enacted or a resolution adopted by the sponsoring city's
16 common council. The district's eminent domain powers may be exercised only on
17 property that is adjacent or contiguous to property that is owned by the district.

18 (2) ~~Once created, the~~ ^A district's jurisdiction and powers remain in effect even if
19 the sponsoring city, after the creation of the district, ^{is} no longer meets the population
20 requirements of a sponsoring ^{a populous} city.

***NOTE: This subsection is moved from s. 229.90 (3) of the Quarles draft.

21 **229.844 Powers of a district.** A district has all of the powers necessary or
22 convenient to carry out the purposes and provisions of this subchapter. In addition
23 to all other powers granted by this subchapter, a district may do all of the following:



****NOTE: We did not include the phrase that "All expenditures or payments made by a district may be only for public purposes." As a unit of government, the district may only act for a public purpose in anything that it does.

1 (1) Adopt bylaws to govern the district's activities, subject to this subchapter.

2 (2) Sue and be sued in its own name, plead and be impleaded.

3 (3) Maintain an office.

4 (4) In connection with cultural arts facilities or in support of any cultural arts
5 activity:

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

9 (b) Acquire; lease, as lessor or lessee; use; ^{or} ~~transfer or accept transfers of~~
10 property. ~~Subject to s. 229.843 (2), if the district is not created by a 1st class city, the~~

11 ~~district may acquire property by condemnation under ch. 92. If the district's~~
12 ~~sponsoring city is a 1st class city the district may request condemnation of property~~

13 ~~by ^A the 1st class city's redevelopment authority created under s. 66.431 (3) (a) 1.~~

14 ~~Condemnation of property under this paragraph by a redevelopment authority is~~
15 ~~subject to s. 229.843 (2).~~

****NOTE: Please review this paragraph carefully to ensure that it meets your intent. *We believe that "transfer" includes "sell or otherwise dispose of unneeded or unwanted property."* "Accept transfers of property" is included in sub. (14).

16 ~~(c) Improve, maintain and repair property.~~

17 (d) Enter into contracts, subject to such standards as may be established by the

18 district board. The district board may award any such contract for any combination

19 or division of work it designates and may consider any factors in awarding a contract,

20 including price, time for completion of work and qualifications and past performance

21 of a contractor.

22 (e) Grant concessions.

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20-18

1

(f) Sell or otherwise dispose of unneeded or unwanted property.

****NOTE: This paragraph is meant to accomplish the intent of s. 229.87 (4) (f) of the Overture Foundation's draft. Is it OK?

2

(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, *other than a benefit plan provided under ch. 40,* any employe benefits, including an employe pension plan.

6

(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, *other than a plan provided under ch. 40*

9

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

10

(8) (a) Issue revenue bonds under s. 66.066, subject to ss. 229.849 to 229.854 ^{or 3}

11

and enter agreements related to the issuance of bonds, including liquidity and credit facilities, remarketing agreements, insurance policies, guaranty agreements, letter of credit or reimbursement agreements, indexing agreements, interest exchange agreements and currency exchange agreements.

15

(C) No director, employe of the district *any bonds or other obligations* nor any other person executing any agreements with respect to *such debt is* personally liable on the *basis of* ~~the~~ *obligations* reason of the issuance of such ~~bonds, notes and debt~~ *obligations* *under this subsection*

18

(b) Contract short term obligations, and pledge the full faith and credit of the

19

district for repayment of those obligations.

20

(9) Maintain funds and invest the funds in any investment that the district

21

board considers appropriate.

22

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

23

cultural arts activities.

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

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

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

9 (14) Solicit and accept gifts, loans, grants of land or other property and other
10 aid, and agree to conditions with respect to such gifts, loans, grants or other aid.

11 (15) Administer the receipt of revenues, and oversee the ^{repayment of debt} ~~payment of bonds~~
12 ~~issued~~ ^{contracted} by the district.

13 (16) Adopt and alter an official seal.

14 (17) Direct its agents or employes, if properly identified in writing, to enter
15 upon ^{any} real property ~~within its jurisdiction~~ ^(ins. 22-15) to make surveys and examinations before
16 locating or constructing cultural arts facilities, without incurring liability by the
17 district, its agents or employes except for actual damage done. Before directing
18 anyone to enter real property under this subsection, the district shall give the owner
19 and occupant of the property at least 5 days' written notice.

****NOTE: This is taken from s. 229.44 (10), relating to exposition centers.

20 (18) Provide money or other property, by sale, loan, lease, grant, gift or other
21 form of transfer, to any other person.

****NOTE: Sub. (18) combines your s. 229.87 (17) and (18). Because under your subs. (17) and (18) it seemed that the district could transfer anything to any person, sub. (18) as drafted is a lot simpler. We did not add the "public purpose" requirements for such transfers because, as a unit of government, the district must at all times and for all purposes act for a public purpose.

1 **229.845 Minority contracting goals.** (1) In this section:

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

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

6 (2) It shall be a goal of the district, in awarding construction work and
7 professional services contracts related to cultural arts facilities, that at least 5% of
8 the aggregate dollar value of such contracts awarded by the district shall be awarded
9 to minority businesses and at least 5% of the aggregate dollar value of such contracts
10 awarded by the district shall be awarded to women's businesses.

 ****NOTE: This language more closely tracks 1995 AB-56, the "Brewers Bill". Is
 this OK?

11 **229.846 Powers granted to a sponsoring city.** In addition to any powers
12 that it may otherwise have, a sponsoring city may do any of the following:

13 (1) Make grants, gifts or loans of any kind of property, or provide any other form
14 of assistance, to a district upon terms that the sponsoring city considers appropriate.

15 (2) Expend public funds to subsidize a district.

16 (3) Borrow money under ss. 67.04 and 67.12 (12) for cultural arts facilities or
17 to fund grants, loans or subsidies to a district.

18 (4) Audit the financial *records* ~~statements~~ of a district. The sponsoring city may
19 conduct the audit itself or *may* ~~may~~ contract for the audit to be performed by any other
20 person.

21 (5) Fix and collect a sum to be paid annually, in lieu of *property* ~~taxes~~, by the district.

 ****NOTE: Do you want to limit the authority under sub. (5) in any way? Should
 the sum be limited to an amount of money expended by the sponsoring city for providing
 services to the district? Doesn't a city have ample authority under s. 66.60 to impose
 special assessments or special charges against the district? *Do you mean that the*
 city may be the collection agent for all of the other
 overlying taxation jurisdictions?

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23-21



1 **229.847 Dissolution of a district.** Subject to providing for the payment of
2 its bonds ~~or~~ or other debts that it has incurred, including interest on the bonds,
3 ~~not as~~ ^{stays} other debts, and the performance of its other contractual obligations, a
4 district may be dissolved by one of the following methods:

5 (1) By a law enacted by this state.

6 (2) If the sponsoring city is not a 1st class city, by the unanimous action of the
7 district board.

8 (3) If the sponsoring city is a 1st class city, by any means described in the initial
9 resolution under which the 1st class city created the district.

10 **229.848 Transfers, transfer agreements.** (1) If a district is dissolved under
11 s. 229.847, the property ^{of the district} shall be transferred either to the sponsoring city or to an
12 entity described in sections 501 (c) (3) and 509 (a) (1) or (2) of the Internal Revenue
13 Code. If the sponsoring city is a 1st class city, the specific entity to which the district's
14 property shall be transferred upon dissolution shall be specified in the initial
15 resolution under which the 1st class city created the district. If the sponsoring city
16 is not a 1st class city, the district board shall determine the entity to which the
17 district's property shall be transferred upon dissolution.

****NOTE: It seems to us that it is not necessary to specify all of the IRC sections specified in the Quarles draft, which lists IRC sections 170 (c) (2), 501 (c) (3), 509 (a) (1) or (2), 2055 (a) (2) and 2522 (a) (2) and states that a district's property could be transferred to "any other entity described in each" of those IRC sections. It seems that all of the sections are nearly identical, other than section 509 (a) (1) or (2). Consequently, it is simpler to only refer to 2 IRC sections. Is this OK? Also, this subsection was in the "Dissolution of an authority" section of the Quarles draft. It seems more appropriate to place the subsection in the "Transfer agreements" section. Is this OK?

18 (2) A sponsoring city and a district board may enter into a transfer agreement
19 to provide the terms and conditions upon which the sponsoring city may transfer any
20 interests in an existing or proposed cultural arts facility, or any other property

1 interests owned by the city. A transfer may take the form of a sale, lease, or other
2 conveyance and may be with or without financial consideration.

3 **229.849 District bonds and debt not public debt.** (1) Neither the state nor
4 the sponsoring city is liable on bonds or other debt of the district and the bonds and
5 other debt of the district are not a debt of the state or the sponsoring city. All bonds
6 and other debt of the district shall contain on the face of the bond or the debt
7 instrument a statement to this effect. The issuance of bonds or the incurrence of
8 other debt by the district shall not, directly or indirectly or contingently, obligate the
9 state or the sponsoring city to levy any form of taxation therefor or to make any
10 appropriation for the payment of the bonds or other debt.

11 (2) Nothing in this subchapter authorizes the district to create a debt of the
12 state or the sponsoring city, and all bonds issued by the district and all other debt
13 incurred by the district are payable, and shall state that they are payable solely from
14 the funds pledged for their payment in accordance with the resolution authorizing
15 their issuance or incurrence or in any trust indenture or mortgage or deed of trust
16 executed as security for the bonds or other debt. Neither the state nor the sponsoring
17 city shall in any event be liable for the payment of the principal of or interest on any
18 bonds or other debt of the district or for the performance of any pledge, mortgage,
19 obligation or agreement that may be undertaken by the district. No breach of any
20 such pledge, mortgage, obligation or agreement may impose any pecuniary liability
21 upon the state or the sponsoring city or any charge upon the state's or the sponsoring
22 city's general credit or against the state's or the sponsoring city's taxing power.

23 **229.850 Special fund for payment of principal and interest costs on**
24 **certain bonds.** The district shall maintain a special fund into which it deposits any
25 income or property of the district that is used for the payment of principal and

1 interest costs of bonds issued by the district or by the Wisconsin Health and
2 Educational Facilities Authority or by a redevelopment authority created under s.
3 66.431 (3) for purposes related to the district.

4 **229.851 State pledge.** The state pledges to and agrees with the holders of any
5 bond issued by the district or other debt incurred by the district, and with those
6 parties who may enter into contracts with the district, that the state will not limit
7 or alter the rights vested in the district by this subchapter until such bonds or other
8 debt, together with the interest on the bonds and other debt, are fully met and
9 discharged and such contracts are fully performed on the part of the district, but
10 nothing shall preclude such a limitation or alteration if adequate provision is made
11 by law for the protection of the holders of such bonds or other debt or those entering
12 into such contracts.

13 **229.852 Pledge of revenues. (1)** A district may pledge the revenues derived,
14 or to be derived, from any cultural arts facility for any of the following purposes:

15 (a) The payment of administrative costs and expenses of the district.

16 (b) The payment of the principal of, the premium on, if any, and the interest on
17 outstanding bonds and other debt of the district.

18 (c) The creation and maintenance of a special fund or reserves with respect to
19 bonds issued by the district.

20 (2) The pledge under sub. (1) shall be valid and binding from the time when the
21 pledge is made. The revenues pledged by the district shall immediately be subject
22 to lien without any physical delivery thereof or further act, and the lien shall be valid
23 and binding as against all parties having claims of any kind in tort, contract or
24 otherwise against the district, irrespective of whether the parties have notice of the
25 lien. The bond resolution, debt agreement, financing statement, continuation

1 statement or other instrument by which a pledge is created, or by which the district's
2 interest in revenues is assigned, need not be filed or recorded in any public records
3 in order to perfect the lien thereof as against 3rd parties, except that a copy thereof
4 shall be filed in the records of the district and with the department of financial
5 institutions.

6 **229.853 Trust funds.** All moneys received by the district under this
7 subchapter, whether as proceeds from the issuance of bonds or the incurrence of
8 other debt or as revenues, shall be considered to be trust funds to be held and applied
9 solely as provided in this subchapter. Any officer with whom, or any bank or trust
10 company with which, the moneys are deposited shall act as trustee of the moneys and
11 shall hold and apply the same for the purposes of this subchapter, subject to such
12 regulations as this subchapter and ~~the~~ ^{any} bond resolution or debt agreement
13 authorizing the bonds or debt may provide.

14 ~~**229.854 Investment authorization.** The bonds issued by the district are
15 securities in which all public officers and bodies of this state and all political
16 subdivisions and public officers thereof, all banks, trust companies, savings banks
17 and institutions, savings and loan associations, investment companies and all
18 personal representatives, guardians, trustees and other fiduciaries may legally
19 invest any sinking funds, moneys or other funds belonging to them or within their
20 control.~~

****NOTE: We did not refer to bonds issued by WHEFA in this section because such
bonds are already authorized investments under s. 231.18.

21 ~~229.854~~ ^{854 3 (B)} **Sponsoring city employment regulations.** Any ordinance of a
22 sponsoring city that regulates employment relations or practices of all private
23 employers generally applies to employes of the district, unless the sponsoring city's

1 common council excludes the application of such an ordinance to the district's
2 employes.

****NOTE: Rick, what do you think this means? I basically copied it from the Quarles draft. Does it apply to prevailing wage ordinances? I don't really know what kind of "employment relations" ordinances a city may enact. What do you think the requester is trying to accomplish?

3 SECTION 29. 230.03 (3) of the statutes is amended to read:

4 230.03 (3) "Agency" means any board, commission, committee, council or
5 department in the state government or a unit thereof created by the constitution or
6 statutes if such board, commission, committee, council, department, unit or the head
7 thereof, is authorized to appoint subordinate staff by the constitution or statute,
8 except a legislative or judicial board, commission, committee, council, department or
9 unit thereof or an authority created under ch. 231, 232, 233, 234 or 235. "Agency"
10 does not mean any local unit of government or body within one or more local units
11 of government that is created by law or by action of one or more local units of
12 government.

****NOTE: Ch. 230 only applies to state agencies; the district is a local unit of government created by a municipality. Nonetheless, the definition of "agency" in s. 230.03 (3) could be worded to more clearly state this.

13 SECTION 30. 231.01 (4) (a) of the statutes is amended to read:

14 231.01 (4) (a) "Cost" means the sum of all costs incurred by a participating
15 health institution, participating educational institution, participating cultural arts
16 district or participating child care provider, as approved by the authority, as are
17 reasonable and necessary to accomplish the project, exclusive of any private or
18 federal, state or local financial assistance received by the participating health
19 institution, participating educational institution, participating cultural arts district
20 or participating child care provider for the payment of the project cost.

21 SECTION 31. 231.01 (4) (b) 1. of the statutes is amended to read:

1 231.01 (4) (b) 1. The cost incurred by or on behalf of the participating health
2 institution, participating educational institution, participating cultural arts district
3 or participating child care provider of all necessary developmental, planning and
4 feasibility studies, surveys, plans and specifications, architectural, engineering,
5 legal or other special services, the cost of acquisition of land and any buildings and
6 improvements on the land, site preparation and development including demolition
7 or removal of existing structures, construction, reconstruction and equipment,
8 including machinery, fixed equipment and personal property.

9 **SECTION 32.** 231.01 (4) (b) 2. of the statutes is amended to read:

10 231.01 (4) (b) 2. The reasonable cost of financing incurred by a participating
11 health institution, participating educational institution, participating cultural arts
12 district or participating child care provider in the course of the development of the
13 project to the occupancy date.

14 **SECTION 33.** 231.01 (4) (c) of the statutes is amended to read:

15 231.01 (4) (c) All rents and other net revenues from the operation of the real
16 property, improvements or personal property on the project site by a participating
17 health institution, participating educational institution, participating cultural arts
18 district or participating child care provider on and after the date on which the
19 contract between a participating health institution, participating educational
20 institution, participating cultural arts district or participating child care provider
21 and the authority was entered into, but prior to the occupancy date, shall reduce the
22 sum of all costs in this subsection.

23 **SECTION 34.** 231.01 (4g) of the statutes is created to read:

24 231.01 (4g) "Cultural arts district" means a ^{local} cultural arts district created under
25 subch. V of ch. 229.

1 **SECTION 35.** 231.01 (4h) of the statutes is created to read:

2 231.01 (4h) "Cultural arts facility" has the meaning given in s. 229.841 (5).

3 **SECTION 36.** 231.01 (5t) of the statutes is created to read:

4 231.01 (5t) "Participating cultural arts district" means a ^{local} cultural arts district
5 that undertakes the financing and construction or acquisition of a project or
6 undertakes the refunding or refinancing of obligations or of a mortgage or of
7 advances as provided in this chapter.

8 **SECTION 37.** 231.01 (7) (a) 1. of the statutes is amended to read:

9 231.01 (7) (a) 1. A specific health facility, educational facility, cultural arts
10 facility or child care center work or improvement to be refinanced, acquired,
11 constructed, enlarged, remodeled, renovated, improved, furnished or equipped by
12 the authority with funds provided in whole or in part under this chapter.

13 **SECTION 38.** 231.01 (7) (a) 2. of the statutes is amended to read:

14 231.01 (7) (a) 2. One or more structures suitable for use as a child care center,
15 health facility, cultural arts facility, laboratory, laundry, nurses' or interns' residence
16 or other multi-unit housing facility for staff, employes, patients or relatives of
17 patients admitted for treatment or care in a health facility, physician's facility,
18 administration building, research facility, maintenance, storage or utility facility.

19 **SECTION 39.** 231.01 (7) (a) 4. of the statutes is amended to read:

20 231.01 (7) (a) 4. Any structure useful for the operation of a health facility,
21 educational facility, cultural arts facility or child care center, including facilities or
22 supporting service structures essential or convenient for the orderly conduct of the
23 health facility, educational facility, cultural arts facility or child care center.

24 **SECTION 40.** 231.01 (7) (c) of the statutes is amended to read:

1 231.01 (7) (c) "Project" may include any combination of projects undertaken
2 jointly by any participating health institution, participating educational institution,
3 participating cultural arts district or participating child care provider with one or
4 more other participating health institutions, participating educational institutions,
5 participating cultural arts districts or participating child care providers.

6 **SECTION 41.** 231.02 (6) (b) of the statutes is amended to read:

7 231.02 (6) (b) Notwithstanding any other provision of law, it is not a conflict
8 of interest or violation of this section or of any other law for a trustee, director, officer
9 or employe of a participating health institution, participating educational
10 institution, participating cultural arts district or participating child care provider or
11 for a person having the required favorable reputation for skill, knowledge and
12 experience in state and municipal finance or for a person having the required
13 favorable reputation for skill, knowledge and experience in the field of health facility,
14 educational facility, cultural arts facility or child care center architecture to serve as
15 a member of the authority; if in each case to which par. (a) is applicable, the trustee,
16 director, officer or employe of the participating health institution, participating
17 educational institution, participating cultural arts district or participating child
18 care provider abstains from discussion, deliberation, action and vote by the authority
19 in specific respect to any undertaking pursuant to this chapter in which his or her
20 participating health institution, participating educational institution, participating
21 cultural arts district or participating child care provider has an interest, or the
22 person having the required favorable reputation for skill, knowledge and experience
23 in state and municipal finance abstains from discussion, deliberation, action and
24 vote by the authority in specific respect to any sale, purchase or ownership of bonds
25 of the authority in which any business of which such person is a participant, owner,

1 officer or employe has a past, current or future interest, or such person having the
2 required favorable reputation for skill, knowledge and experience in the field of
3 health facility, educational facility, cultural arts facility or child care center
4 architecture abstains from discussion, deliberation, action and vote by the authority
5 in specific respect to construction or acquisition of any project of the authority in
6 which any business of which such person is a participant, owner, officer or employe
7 has a past, current or future interest.

8 **SECTION 42.** 231.03 (5) of the statutes is amended to read:

9 231.03 (5) Determine the location and character of any project to be financed
10 under this chapter, and construct, reconstruct, remodel, maintain, enlarge, alter, add
11 to, repair, lease as lessee or lessor and regulate the same, enter into contracts for any
12 such purpose, enter into contracts for the management and operation of a project or
13 other health facilities, educational facilities, cultural arts facilities or child care
14 centers owned by the authority, and designate a participating health institution,
15 participating educational institution, participating cultural arts district or
16 participating child care provider as its agent to determine the location and character
17 of a project undertaken by the participating health institution, participating
18 educational institution, participating cultural arts district or participating child
19 care provider under this chapter and as the agent of the authority, to construct,
20 reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease
21 as lessee or lessor and regulate the same, and as the agent of the authority, to enter
22 into contracts for any such purpose, including contracts for the management and
23 operation of such project or other health facilities, educational facilities, cultural arts
24 facilities or child care centers owned by the authority.

25 **SECTION 43.** 231.03 (6) (g) of the statutes is created to read:

1 231.03 (6) (g) Finance any project undertaken for a cultural arts facility.

2 **SECTION 44.** 231.03 (6) (h) of the statutes is created to read:

3 231.03 (6) (h) Refinance outstanding debt of any participating cultural arts
4 district.

5 **SECTION 45.** 231.03 (7) of the statutes is amended to read:

6 231.03 (7) Fix and revise from time to time and charge and collect rates, rents,
7 fees and charges for the use of and for the services furnished or to be furnished by
8 a project or other health facilities, educational facilities, cultural arts facilities or
9 child care centers owned by the authority or any portion thereof, contract with any
10 person in respect thereto and coordinate its policies and procedures and cooperate
11 with recognized health facility, educational facility, cultural arts facility or child care
12 center rate setting mechanisms.

13 **SECTION 46.** 231.03 (8) of the statutes is amended to read:

14 231.03 (8) Adopt rules for the use of a project or other health facility,
15 educational facility, cultural arts facility or child care center or any portion of the
16 project or facility owned, financed or refinanced in whole or in part by the authority,
17 including any property used as security for a loan secured through, from or with the
18 assistance of the authority. The authority may designate a participating health
19 institution, participating educational institution, participating cultural arts district
20 or participating child care provider as its agent to establish rules for the use of a
21 project or other health facilities, educational facilities, cultural arts facilities or child
22 care centers undertaken for that participating health institution, participating
23 educational institution, participating cultural arts district or participating child
24 care provider. The rules shall ensure that a project, health facility, educational
25 facility, cultural arts facility, child care center or property may not be used primarily

1 for sectarian instruction or study or as a place for devotional activities or religious
2 worship.

3 SECTION 47. 231.03 (11) of the statutes is amended to read:

4 231.03 (11) Establish or contract with others to carry out on its behalf a health
5 facility, educational facility, cultural arts facility or child care center project cost
6 estimating service, and make this service available on all projects to provide expert
7 cost estimates and guidance to the participating health institution, participating
8 educational institution, participating cultural arts district or participating child
9 care provider and to the authority. To implement this service and, through it, to
10 contribute to cost containment, the authority may require such reasonable reports
11 and documents from health facility, educational facility, cultural arts facility or child
12 care center projects as are required for this service and for the development of cost
13 reports and guidelines. The authority shall appoint a technical committee on health
14 facility, educational facility, cultural arts facility or child care center project costs and
15 cost containment.

16 SECTION 48. 231.03 (13) of the statutes is amended to read:

17 231.03 (13) Make loans to any participating health institution, participating
18 educational institution, participating cultural arts district or, before May 1, 2000,
19 participating child care provider for the cost of a project in accordance with an
20 agreement between the authority and the participating health institution,
21 participating educational institution, participating cultural arts district or
22 participating child care provider. The authority may secure the loan by a mortgage
23 or other security arrangement on the health facility, educational facility, cultural
24 arts facility or child care center granted by the participating health institution,
25 participating educational institution, participating cultural arts district or

1 participating child care provider to the authority. The loan may not exceed the total
2 cost of the project as determined by the participating health institution,
3 participating educational institution, participating cultural arts district or
4 participating child care provider and approved by the authority.

5 **SECTION 49.** 231.03 (14) of the statutes is amended to read:

6 231.03 (14) Make loans to a health facility, educational facility, cultural arts
7 facility or, before May 1, 2000, child care center for which bonds may be issued under
8 sub. (6) (b), (d) ~~or~~ (f) or (h) to refinance the health facility's, educational facility's,
9 cultural arts facility's or child care center's outstanding debt. The authority may
10 secure the loan or bond by a mortgage or other security arrangement on the health
11 facility, educational facility, cultural arts facility or child care center granted by the
12 participating health institution, participating educational institution, participating
13 cultural arts district or participating child care provider to the authority.

14 **SECTION 50.** 231.03 (15) of the statutes is amended to read:

15 231.03 (15) Mortgage all or any portion of a project and other health facilities,
16 educational facilities, cultural arts facilities or child care centers and the site thereof,
17 whether owned or thereafter acquired, for the benefit of the holders of bonds issued
18 to finance the project, health facilities, educational facilities, cultural arts facilities
19 or child care centers or any portion thereof or issued to refund or refinance
20 outstanding indebtedness of participating health institutions, educational
21 institutions, participating cultural arts districts or child care providers as permitted
22 by this chapter.

23 **SECTION 51.** 231.03 (16) of the statutes is amended to read:

24 231.03 (16) Lease to a participating health institution, participating
25 educational institution, participating cultural arts district or participating child

1 care provider the project being financed or other health facilities, educational
2 facilities, cultural arts facilities or child care centers conveyed to the authority in
3 connection with such financing, upon such terms and conditions as the authority
4 deems proper, and charge and collect rents therefor and terminate any such lease
5 upon the failure of the lessee to comply with any of the obligations thereof; and
6 include in any such lease, if desired, provisions that the lessee thereof shall have
7 options to renew the term of the lease for such periods and at such rent as the
8 authority determines or to purchase all or any part of the health facilities,
9 educational facilities, cultural arts facilities or child care centers or that, upon
10 payment of all of the indebtedness incurred by the authority for the financing of such
11 project or health facilities, educational facilities, cultural arts facilities or child care
12 centers or for refunding outstanding indebtedness of a participating health
13 institution, participating educational institution, participating cultural arts district
14 or participating child care provider, the authority may convey all or any part of the
15 project or such other health facilities, educational facilities, cultural arts facilities or
16 child care centers to the lessees thereof with or without consideration.

17 **SECTION 52.** 231.03 (17) of the statutes is amended to read:

18 231.03 (17) Charge to and apportion among participating health institutions,
19 participating educational institutions, participating cultural arts districts and
20 participating child care providers its administrative costs and expenses incurred in
21 the exercise of the powers and duties conferred by this chapter.

22 **SECTION 53.** 231.03 (18) of the statutes is amended to read:

23 231.03 (18) Make studies of needed health facilities, educational facilities,
24 cultural arts facilities and child care centers that could not sustain a loan were it
25 made under this chapter and recommend remedial action to the legislature; and do

1 the same with regard to any laws or rules that prevent health facilities, educational
2 facilities, cultural arts facilities and child care centers from benefiting from this
3 chapter.

4 **SECTION 54.** 231.03 (19) of the statutes is amended to read:

5 231.03 (19) Obtain, or aid in obtaining, from any department or agency of the
6 United States or of this state or any private company, any insurance or guaranty
7 concerning the payment or repayment of, interest or principal, or both, or any part
8 thereof, on any loan, lease or obligation or any instrument evidencing or securing the
9 same, made or entered into under the provisions of this chapter; and
10 notwithstanding any other provisions of this chapter, to enter into any agreement,
11 contract or any other instrument with respect to that insurance or guaranty, to
12 accept payment in the manner and form provided therein in the event of default by
13 a participating health institution, participating educational institution,
14 participating cultural arts district or participating child care provider, and to assign
15 the insurance or guaranty as security for the authority's bonds.

16 **SECTION 55.** 231.04 of the statutes is amended to read:

17 **231.04 Expenses.** All expenses of the authority incurred in carrying out this
18 chapter shall be payable solely from funds provided under the authority of this
19 chapter, and no liability may be incurred by the authority beyond the extent to which
20 moneys have been provided under this chapter except that, for the purposes of
21 meeting the necessary expenses of initial organization and operation of the authority
22 for the period commencing on June 19, 1974 and continuing until such date as the
23 authority derives moneys from funds provided to it under the authority of this
24 chapter, the authority may borrow such moneys as it requires to supplement the
25 funds provided under s. 20.440. Such moneys borrowed by the authority shall

1 subsequently be charged to and apportioned among participating health
2 institutions, participating educational institutions, participating cultural arts
3 districts and participating child care providers in an equitable manner, and repaid
4 with appropriate interest over a reasonable period of time.

5 **SECTION 56.** 231.05 (1) of the statutes is amended to read:

6 231.05 (1) By means of this chapter, it is the intent of the legislature to provide
7 assistance and alternative methods of financing to nonprofit health institutions to
8 aid them in providing needed health services consistent with the state's health plan,
9 to nonprofit educational institutions to aid them in providing needed educational
10 services, ~~to nonprofit~~ cultural arts districts to aid them in providing needed cultural
11 arts activities and events and to nonprofit child care providers to aid them in
12 providing needed child care services.

***NOTE: Are all cultural arts districts nonprofit by definition?

13 **SECTION 57.** 231.06 of the statutes is amended to read:

14 **231.06 Property acquisition.** The authority may acquire, directly or by and
15 through a participating health institution, participating educational institution,
16 participating cultural arts district or participating child care provider as its agent,
17 by purchase or by gift or devise, such lands, structures, property, rights,
18 rights-of-way, franchises, easements and other interests in lands, including lands
19 lying under water and riparian rights, which are located within this state as it deems
20 necessary or convenient for the construction or operation of a project, upon such
21 terms and at such prices as it considers reasonable and can be agreed upon between
22 it and the owner thereof, and take title thereto in the name of the authority or in the
23 name of a health facility, educational facility, cultural arts facility or child care center
24 as its agent.

1 **SECTION 58.** 231.07 (1) (b) of the statutes is amended to read:

2 231.07 (1) (b) Convey to the participating health institution, participating
3 educational institution, participating cultural arts district or participating child
4 care provider the authority's interest in the project and in any other health facility,
5 educational facility, cultural arts facility or child care center leased, mortgaged or
6 subject to a deed of trust or any other form of security arrangement to secure the
7 bond.

8 **SECTION 59.** 231.07 (2) (a) of the statutes is amended to read:

9 231.07 (2) (a) The principal of and interest on any bond issued by the authority
10 to finance a project or to refinance or refund outstanding indebtedness of one or more
11 participating health institutions, participating educational institutions,
12 participating cultural arts districts or participating child care providers, including
13 any refunding bonds issued to refund and refinance the bond, have been fully paid
14 and the bonds retired or if the adequate provision has been made to pay fully and
15 retire the bond; and

16 **SECTION 60.** 231.08 (5) of the statutes is amended to read:

17 231.08 (5) In addition to the other authorizations under this section, bonds of
18 the authority may be secured by a pooling of leases whereby the authority may assign
19 its rights, as lessor, and pledge rents under 2 or more leases of health facilities,
20 educational facilities, cultural arts facilities or child care centers with 2 or more
21 health institutions, educational institutions, cultural arts districts or child care
22 providers, as lessees respectively, upon such terms as may be provided for in bond
23 resolutions of the authority.

24 **SECTION 61.** 231.10 (1) of the statutes is amended to read:

SECTION 61

1 231.10 (1) The state is not liable on notes or bonds of the authority and the notes
2 and bonds are not a debt of the state. All notes and bonds of the authority shall
3 contain on the face thereof a statement to this effect. The issuance of bonds under
4 this chapter shall not, directly or indirectly or contingently, obligate the state or any
5 political subdivision thereof to levy any form of taxation therefor or to make any
6 appropriation for their payment. Nothing in this section prevents the authority from
7 pledging its full faith and credit or the full faith and credit of a health institution,
8 educational institution, cultural arts district or child care provider to the payment
9 of bonds authorized under this chapter.

10 **SECTION 62.** 231.12 of the statutes is amended to read:

11 **231.12 Studies and recommendations.** It is the intent and purpose of this
12 chapter that the exercise by the authority of the powers granted to it shall be in all
13 respects for the benefit of the people of this state to assist them to provide needed
14 health facilities, educational facilities, cultural arts facilities and child care centers
15 of the number, size, type, distribution and operation that will assure admission and
16 health care, education, ^{cultural enrichment} ~~culture~~ or child care of high quality to all who need it. The
17 authority shall identify and study all projects which are determined by health
18 planning agencies to be needed, but which could not sustain a loan were such to be
19 made to it under this chapter. The authority shall formulate and recommend to the
20 legislature such amendments to this and other laws, and such other specific
21 measures as grants, loan guarantees, interest subsidies or other actions the state
22 may provide which would render the construction and operation of needed health
23 facilities, educational facilities, cultural arts facilities and child care centers feasible
24 and in the public interest. The authority also shall identify and study any laws or
25 rules ~~which~~ that it finds handicaps or bars a needed health facility, educational

1 facility, cultural arts facility or child care center from participating in the benefits
2 of this chapter, and recommend to the legislature such actions as will remedy such
3 situation.

***NOTE: Should this be culture or cultural arts or something else?

4 **SECTION 63.** 231.13 (1) (intro.) of the statutes is amended to read:

5 231.13 (1) (intro.) The authority shall collect rents for the use of, or other
6 revenues relating to the financing of, each project. The authority shall contract with
7 a participating health institution, participating educational institution,
8 participating cultural arts district or participating child care provider for each
9 issuance of bonds. The contract shall provide that the rents or other revenues
10 payable by the health facility, educational facility, cultural arts facility or child care
11 center shall be sufficient at all times to:

12 **SECTION 64.** 231.13 (2) of the statutes is amended to read:

13 231.13 (2) The authority shall pledge the revenues derived and to be derived
14 from a project and other related health facilities, educational facilities, cultural arts
15 facilities or child care centers for the purposes specified in sub. (1), and additional
16 bonds may be issued which may rank on a parity with other bonds relating to the
17 project to the extent and on the terms and conditions provided in the bond resolution.
18 Such pledge shall be valid and binding from the time when the pledge is made, the
19 revenues so pledged by the authority shall immediately be subject to the lien of such
20 pledge without any physical delivery thereof or further act and the lien of any such
21 pledge shall be valid and binding as against all parties having claims of any kind in
22 tort, contract or otherwise against the authority, irrespective of whether such parties
23 have notice thereof. Neither the bond resolution nor any financing statement,
24 continuation statement or other instrument by which a pledge is created or by which

1 the authority's interest in revenues is assigned need be filed or recorded in any public
2 records in order to perfect the lien thereof as against 3rd parties, except that a copy
3 thereof shall be filed in the records of the authority and with the department of
4 financial institutions.

5 **SECTION 65.** 231.16 (1) of the statutes is amended to read:

6 231.16 (1) The authority may issue bonds to refund any outstanding bond of
7 the authority or indebtedness that a participating health institution, participating
8 educational institution, participating cultural arts district or participating child
9 care provider may have incurred for the construction or acquisition of a project prior
10 to or after April 30, 1980, including the payment of any redemption premium on the
11 outstanding bond or indebtedness and any interest accrued or to accrue to the
12 earliest or any subsequent date of redemption, purchase or maturity, or to pay all or
13 any part of the cost of constructing and acquiring additions, improvements,
14 extensions or enlargements of a project or any portion of a project. No bonds may be
15 issued under this section unless the authority has first entered into a new or
16 amended agreement with a participating health institution, participating
17 educational institution, participating cultural arts district or participating child
18 care provider to provide sufficient revenues to pay the costs and other items
19 described in s. 231.13.

20 **SECTION 66.** 231.20 of the statutes is amended to read:

21 **231.20 Waiver of construction and bidding requirements.** In exercising
22 its powers under s. 101.12, the department of commerce or any city, village, town or
23 county may, within its discretion for proper cause shown, waive any particular
24 requirements relating to public buildings, structures, grounds, works and
25 improvements imposed by law upon projects under this chapter; the requirements

1 of s. 101.13 may not be waived, however. If, however, the prospective lessee so
2 requests in writing, the authority shall, through the participating health institution,
3 participating educational institution, participating cultural arts district or
4 participating child care provider as its agent, call for construction bids in such
5 manner as is determined by the authority with the approval of the lessee.

6 SECTION 67. 231.23 of the statutes is amended to read:

7 **231.23 Nonprofit institutions.** It is intended that all nonprofit health and
8 educational institutions, cultural arts districts and child care providers in this state
9 be enabled to benefit from and participate in this chapter. To this end, all nonprofit
10 health and educational institutions, cultural arts districts and child care providers
11 operating, or authorized to be operated, under any law of this state may undertake
12 projects and utilize the capital financing sources and methods of repayment provided
13 by this chapter, the provisions of any other laws to the contrary notwithstanding.

14 **SECTION 68. Initial applicability.**

15 (1) ^{Income and franchise tax exemptions. CS} The treatment of sections 71.05 (1) (c) 6. and 7., 71.26 (1) (bm) and (1m) (g)
16 and (h), 71.36 (1m) and 71.45 (1t) (g) and (h) of the statutes first applies to taxable
17 years beginning on January 1, 2000.

18 (2) ^{Property tax exemption. CS} The treatment of section 70.11 (40) of the statutes first applies to the
19 property tax assessments as of January 1, 2000.

20 **SECTION 69. Effective dates.** This act takes effect on the day after publication,
21 except as follows:

22 (1) ~~SALES TAX EXEMPTIONS LOCAL CULTURAL ARTS DISTRICT~~ The treatment of
23 section 77.54 (9a) (h) of the statutes takes effect on first day of the 2nd month
24 beginning after publication.

1 (2) DEFINITION OF EMPLOYER UNDER THE WISCONSIN RETIREMENT SYSTEM. The
2 repeal and recreation of section 40.02 (28) of the statutes takes effect on January 1,
3 2010.

4 (END)

D - NOTE →

INS
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CONDEMNATION

anal + title = head

A district's eminent domain power may be used only within ~~is limited to~~ the area specified for use of ~~that~~ of the ^{sponsoring} city specified in the resolution ~~adopt~~ creating the district, and only on property that is adjacent ^{or} contiguous to property owned by the district. The sponsoring city may ~~expand~~ ^{or} contract that ^{area} by ~~subsequently~~ ordinance or resolution but may not contract the ^{area} beyond that ~~established~~ ^{specified} in the initial resolution. ~~In~~ If the sponsoring city is a first class city, ~~the district does not have~~ ^{the power of} eminent domain but may request the city's redevelopment authority to exercise its power of



INS
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eminent domain on behalf of the
district, subject to the limitations
described above.

(END OF INSERT)

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INS 10-5

Sec.#; RN; 66.066(5); 66.066(5)(a)

Sec.#; CR; 66.066(5) (c)

① 66.066(5)(c) Revenue bonds issued by
a local cultural arts district created
under subch. IV of ch. 229 are subject
to the provisions in ss. 229.849 to
229.853.

(END INSERT 105)

16 - 20

(91) (c) The resolution under ~~the paragraph~~
par. (b) specifies
I ~~shall specify~~ 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 or the redevelopment
authority may exercise its powers of
eminent domain on behalf of the
district.

(END OF INSERT)

25-16:1

that is adjacent or contiguous to property owned by the district

(a) (c) 1. If the district's sponsoring city is not a 1st class city, acquire property by condemnation, subject to the limits specified in the resolution under s. 229.842(1)(c) or the ordinance or resolution under s. 229.846(6).

2. If the district's sponsoring city is a 1st class city, ^{request} the lot class city's ^{redevelopment} ^{authority} ^{created under s. 66.43(3)(a)3} to condemn property on behalf of the district, subject to the limits specified in the resolution under s. 229.842(1)(c) or the ordinance or resolution under s. 229.846(6). The redevelopment authority may condemn property under this subdivision only if the property is adjacent or contiguous to property owned by the district.

FNS 20-16:2
CS

NOTE: Please review carefully

the use of "adjacent or contiguous."

Under City of Waukesha v. Salbathian, 128 Wis. 2d 334 (1986), it appears that "contiguous" means "touching" or "bordering", but

"adjacent" could mean either "nearby" or "contiguous." Does the use of these terms accomplish your intent? ~~Under~~ Under

this paragraph, could a district condemn property that is across the street from district property?

(END OF INQUIRY)

move text

22-15

no II, that the district has the authority
to condemn or that the
redevelopment authority has the
authority to condemn on behalf
of the district,

(END OF INSERT)

23 - 21

(91) (6) Enact an ordinance or adopt a resolution
that expands or contracts the area within
the district's jurisdiction in which the

district board may exercise its power of
eminent domain, except that a sponsoring city,

or the redevelopment authority
acting on behalf of the district

may not remove ^{from} that area any
property that was included in the
resolution under s. 229.842(1)(c).

(END OF INSERT)

7-24:1

INSPG

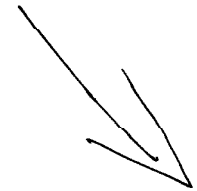
Section #. 32.02 (11) of the statutes is amended to read:

32.02 (11) Any housing authority created under ss. 66.40 to 66.404, redevelopment authority created under s. 66.431, community development authority created under s. 66.4325 or local exposition district created under subch. II of ch. 229.

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

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local cultural arts district created under subch. V of ch. 229, subject to s. 229.844 (4)(c).



7-24:2

Section #. 32.05 (intro.) of the statutes is amended to read:

over for cultural arts facilities under subch. V of ch. 229

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. All other condemnation of property for public alleys, streets, highways, airports, mass transit facilities, or other transportation facilities, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, storm sewers and sanitary sewers, watercourses or water transmission and distribution facilities shall proceed as follows:

History: 1971 c. 244, 287, 307; 1973 c. 244; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 218, 311, 410, 421; 1977 c. 29, 203, 338; 1977 c. 418 ss. 259, 924 (8m); 1977 c. 438, 440, 447, 449; 1979 c. 310; 1981 c. 282 s. 47; 1981 c. 390 s. 252; 1983 a. 27; 1983 a. 219 ss. 3, 46; 1983 a. 236 s. 13; 1983 a. 249; 1985 a. 29 s. 3200 (51); 1985 a. 135; 1987 a. 378; 1989 a. 31, 89; 1991 a. 32, 39, 316; 1993 a. 246, 263, 301, 453, 491; 1995 a. 417; 1997 a. 184, 282; s. 13.93 (2) (c).

~~Condemnation by a cultural arts district under subch. V of ch. 229 may proceed under this section or under s. 32.06 at the option of the district board of directors of the cultural arts district.~~
grantpr(lrbunx11) Thu Dec 9 1999 3:34 pm

7-24:3

Section #. 32.05 (1) (a) of the statutes is amended to read:

local cultural arts district
created under subch. V
of ch. 229.

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, town 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~~ ^{66.0735}, housing authority under ss. 66.40 to 66.404, local exposition district created under subch. II of ch. 229, 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, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, housing project, redevelopment project, exposition center or exposition center 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 or, in lieu of filing a copy of the order, a plat may be filed or recorded in accordance with s. 84.095.

NOTE: Par. (a) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

History: 1971 c. 244, 287, 307; 1973 c. 244; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 218, 311, 410, 421; 1977 c. 29, 203, 338; 1977 c. 418 ss. 259, 924 (8m); 1977 c. 438, 440, 447, 449; 1979 c. 310; 1981 c. 282 s. 47; 1981 c. 390 s. 252; 1983 a. 27; 1983 a. 219 ss. 3, 46; 1983 a. 236 s. 13; 1983 a. 249; 1985 a. 29 s. 3200 (51); 1985 a. 135; 1987 a. 378; 1989 a. 31, 89; 1991 a. 32, 39, 316; 1993 a. 246, 263, 301, 453, 491; 1995 a. 417; 1997 a. 184, 282; s. 13.93 (2) (c).

cultural arts facilities,

7-24-9

Section #. 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, 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.

History: 1973 c. 305; 1975 c. 68; 1979 c. 175 s. 53; 1981 c. 346; 1983 a. 27; 1985 a. 187; 1993 a. 134, 263; 1997 a. 184, 204.

local cultural arts district created
under subch V of ch. 229,

(END OF INSERT)
7-24

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4065/P2insrc
RAC:.....

INS RAC

7-10

SECTION 1. 24.61 (2) (a) 9. of the statutes is created to read:

24.61 (2) (a) 9. Bonds issued by a local cultural arts district under subch. V of ch. 229.

7-13

SECTION 2. 25.17 (3) (b) 12. of the statutes is created to read:

25.17 (3) (b) 12. Bonds issued by a local cultural arts district under subch. V of ch. 229.

INS
A-19

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

66.04 (2) (a) 3t. Bonds issued by a local cultural arts district under subch. V of ch. 229.

14-5

SECTION 4. 219.09 (1) (f) of the statutes is created to read:

219.09 (1) (f) Bonds issued by a local cultural arts district under subch. V of ch. 229.

RAC D-Note Insert:

In light of the creation of ss. 24.61 (2) (a) 8. and 9., 25.17 (3) (b) 11. and 12., 66.04 (2) (a) 3r. and 3t. and 219.09 (1) (e) and (f), there is no need to draft the proposed s. 229.96 in the Quarles draft.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4065/Pldn

MS/JK/RC/PK/JK/PG:cmh:ch

February 11, 2000

Paul Ziegler:

1. This proposal establishes a district's jurisdiction as the city limits of the sponsoring city. This just seemed to us to be the simplest and most natural choice to make. However, under the draft, the eminent domain authority of the district may be specifically limited geographically by the common council. See proposed s. 3 229.842(1)(c) and 229.846(5) (6)

2. Per our discussion, we have not included any special provisions concerning telephonic meetings of the district board [your proposed s. 229.86 (11)]. The attorney general has concluded that, with limited exceptions, governmental bodies may conduct telephonic meetings provided that certain measures are taken to ensure that the public and news media are able to monitor the meetings effectively. See 69 O.A.G. 143 (1980) and *Badke v. Village of Greendale*, 143 Wis. 2d 553 (1993). As we understand it, you are able to live within the guidelines applicable to other governmental bodies on this point.

3. This draft does not amend s. 893.80, stats., relating to notice of claims and limitation of liability, because s. 893.80, stats., applies to any "political corporation" and proposed s. 3 provides that the cultural arts district is a "body corporate and politic". The analysis also speaks to this point. 229.842(1)(intro.)

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

5. ~~In various places, the Quarles draft states that the district may "issue debt" (see, for example, s. 229.87 (8) of the Quarles draft) and in other places it uses the term "bonds" (see for example s. 229.90(1) of the Quarles draft, which states that the district~~

Per our telephone discussion on February 10, we have revised the proposed draft to limit the district to incurring 2 kinds of debt on its own: revenue bonds and short-term obligations. See proposed s. 229.844(8). The draft also allows use of a special fund to secure debt issued by others. See proposed s. 229.850.

INS RACD-NOTE INSET - 2

under s. 66.066, and LRR-4065/P1dn
MS/JK/RC/PK/JK/PG:cmh:ch

may be dissolved if its "bonds" are paid off.) The phrase "issue debt" is not used in the statutes. We have decided that it would be best for the draft to state that the district may "issue bonds, notes and incur debt." Is this OK? Also see the ~~following~~ s. 229.844(8) of the bill.

the district to "Contract short term obligations" also authorize s. 29.844(8)

Constitutional issues:

This draft adheres to the structure of 1995 Act 56 in several respects, and the constitutionality of relevant provisions of that act were upheld in *Libertarian Party v. State*, 199 Wis.2d 790 (1996). Therefore, the issues that were novel prior to enactment of 1995 Act 56 have now in many instances been reviewed and decided. There is no better authority on a point of state law than a recent holding of the Wisconsin Supreme Court that is almost directly in point. Every enactment of the legislature enjoys a presumption of constitutionality and any doubt must be resolved in favor of the constitutionality of a statute. *Samb v. City of Brookfield*, 97 Wis. 2d 356 at 370 (1980). Nevertheless, the language and reasoning of ~~that decision~~ in some cases left unexplained logical issues and inconsistencies with the Court's prior decisions, which may indicate that there is some risk that the Court might refine its thinking if the issues are ably reargued. Given this situation, it may be the better part of wisdom to design this draft to fit this recent holding as closely as possible. However, because alternative choices are available, we raise these issues for your consideration:

Libertarian Party

1. Article VIII, section 10, of the Wisconsin Constitution prohibits the state from being a party to carrying on works of internal improvement. In *Libertarian Party*, because the Court found that construction of stadium facilities serves a predominately governmental purpose, it found no violation of the internal improvements clause. 199 Wis. 2d 790 at 816. In other cases, however, the Court has said this is not enough: see, for example, *State ex rel. Jones v. Froehlich*, 115 Wis. 32 (1902), where the Court requires that there be an essential governmental function and that private capital be inadequate to fund the project. 115 Wis. 32 at 41. See also *State ex rel. Martin v. Giessel*, 252 Wis. 363 at 365-374 (1948) and *Dept. of Development v. Building Comm.*, 139 Wis. 2d 1 at 9-11 (1987). In *Libertarian Party*, the Court did not distinguish these cases. Because the public purpose doctrine stands independently of the internal improvements clause [see, for example, *Rath v. Community Hospital*, 160 Wis. 2d 853 at 862 (Ct. App., 1991)], it would have been helpful for the Court to explain what, if anything, remains of the internal improvements clause under its revised interpretation. Despite the remaining uncertainty, it should be noted that while this draft retains some state involvement (see proposed s.), it does not include any requirement for the department of administration to provide services generally to a cultural arts district (see ss. 16.82 and 16.854, stats.), nor any state involvement in the issuance of bonds by a cultural arts district (see s. 229.74, stats.) so state involvement here is less extensive than under *Libertarian Party*. To resolve all uncertainty, however, state involvement would need to be completely removed.

✓
229.842
(2)

2. Also related to the issue of state involvement is the line of cases that holds that tax revenue must be spent at the level of government at which the tax is raised. See *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d. 391 at 421 (1973) and 77 Marquette Law Review, 466-67 (1994). If the district is not viewed as a unit of local government, this

governmental unit

73-
229.842 (1) (intro.)

229.842(2)

principle would be offended. The draft states that the district is a ~~subunit~~ local government (see proposed s. 1). However, under proposed s. 1, the governor appoints three members of the district board. Unfortunately, the Court in *Libertarian Party* did not determine what exactly constitutes a unit of local government, thereby leaving for another day the issue of whether a unit of government, like this one, with mixed state and local control is pure enough to pass the test.

other

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3. Also related to the issue of expenditure at the level of taxation is the question of whether this principle would be offended if a sponsoring city subsidizes a district, as authorized in proposed s. 1. Here again, this issue was not discussed in *Libertarian Party*. It can probably be said, however, that if any subsidy would serve a legitimate, independent public purpose of the municipality, rather than serve simply as a means of circumventing revenue raising at the ~~district~~ level, the proposed language, as applied, would not offend the "spend at the level of taxation" principle.

or
district

229.846, or if a district subsidizes

4. Article XI, section 3 (2), of the Wisconsin Constitution imposes a debt limitation on "municipal corporation[s]". Article XI, section 3 (3), further requires that any such indebtedness be repaid within 20 years by levying a direct, annual [property] tax. However, Article XI, section 3 (5), provides that the debt limitation does not apply to indebtedness created for the purpose of "purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility of a ...special district...[if]...secured solely by the property or income of such public utility...". Taking advantage of this exception, the draft, like 1995 Act 56, provides in its treatment of s. 66.067, stats., that cultural arts facilities are public utilities. Under *Payne v. Racine*, 217 Wis. 550 at 555 (1935), the term "public utilities", as used in article XI, section 3 (5), "... must be considered to include all plants or activities which the legislature can reasonably classify as public utilities in the ordinary meaning of the term." *Libertarian Party* in effect holds that the legislature's classification of baseball stadium facilities as "public utilities" is a permissible interpretation of the term. 199 Wis. 2d 790 at 820. From this decision, we can conclude that the courts will probably construe this term very liberally. Under art. XI, sec. 3 (5), the indebtedness must be secured "solely by the property or income of such public utility [cultural arts facilities]". The draft permits a cultural arts district to "...issue debt [in the constitutional sense] and to enter into any agreements relating thereto" (see proposed s. 1). The draft further contemplates that the district may become indebted to the Wisconsin health and educational facilities authority to retire bonds that may be issued by WHEFA to finance the district's cultural arts facilities, see s. 231.09, stats. and the treatment of ss. 231.01 (4m) and (5w), 231.05 (1), 231.08 (5) and 231.23, stats. Provided that the courts agree that the cultural arts facilities are a public utility and the income of the facilities is sufficient to retire the district's debts, this should not be a problem.

of government where a subsidy is received

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229.844
(18)

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229.844
(8)(a)

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or by
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5. Under s. 229.848 (1) a district's property, upon dissolution of the district, could be transferred to an entity that is "organized and operated exclusively for religious . . . purposes. . . ." See section 501 (c) (3) of the Internal Revenue Code. This could be challenged as a violation of the Establishment Clause of the First Amendment to the

proposed

proposed s.
229.850.
See also

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4065/P1dnRJM
RJM:.....

INSERT DATE 2

6. There are several issues regarding the lien provision in proposed s. 229.852. Although this provision is similar to language currently in ch. 231, stats., you may want to draft this lien provision differently in order to ensure that the language accomplishes your intent. First, it is unclear under the proposed language whether the lien has priority over a valid security interest in the accounts of the district. If you intend to give the lien this priority, you may want to generally exempt the lien from ch. 409, stats., [see s. 409.104 (3), stats. (exemption of certain other statutory liens)] and specify the prioritization you intend in a provision similar to s. 409.310, stats.

Second, to the extent that this provision is intended to establish priority for bankruptcy purposes, the provision may not accomplish your intent. Let me know if you would like me to research federal law in order to determine the priority given to a lien of this type in a bankruptcy proceeding.

Third, the proposed language may unconstitutionally impair existing contracts because the lien is ^{please fix quotation mark} valid and binding as against all parties having claims of any kind . . . in contract." In addition, an impairment issue may exist to the extent that the lien is given priority over existing perfected security interests. In order to avoid this issue, you may want to specify that the lien is valid and binding against any claim arising under a contract entered into after the date that the pledge was made and is valid against any claims against the district other than under a contract. You may also want to give the lien priority over any security interest perfected after the date that the pledge was made.

There are also two clarifications you may want to make. First, it may be helpful to specify who has the lien (for example, the person holding the instrument that evidences the pledge). Second, under the proposed language, it appears that filing is a prerequisite to perfection. However, the language could be interpreted to treat perfection and filing as separate issues. If you intend to require filing in order to perfect the lien, please let us know and we can clarify this point.

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Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

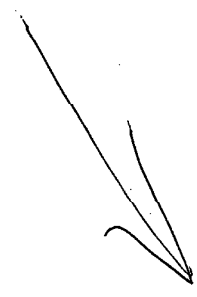
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FROM THE
LEGISLATIVE REFERENCE BUREAU

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7. ^g Concerning proposed s. 229.844 (17), we assumed you intended to limit the district's power to enter upon private property to the geographic area in which the district has eminent domain authority (rather than anywhere in the city). In this connection, see also *Redevelopment Authority v. Uptown Arts*, 229 Wis. 2d 458 (Ct. App., 1999) in which this entry power was essentially declared unconstitutional on its face. In that case, the court read in a requirement for the property owner to be afforded the opportunity to consider the necessity of the entry, the scope of the entry and the time, place and manner of the entry. Do you wish to amend the draft to address this issue?



U.S. Constitution and of the Preference clause of Article I, section 18, of the Wisconsin Constitution.

If you have any further questions regarding the above issues, please let us know.

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RJM

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4065/linsJTK
MS/JTK/RC/PK/.....

INSERT 12-12:

SECTION 1. 66.04 (1) of the statutes is renumbered 66.04 (1e).

SECTION 2. 66.04 (1a) of the statutes is created to read:

66.04 (1a) **DEFINITION.** In this section, "governing board" has the meaning given under s. 34.01 (1) but does not include a local cultural arts district board created under subch. V of ch. 229.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4065/P2dn
MS/JK/RC/PK/JK/PG/RM:cmh:jf

February 16, 2000

Paul Ziegler:

1. This proposal establishes a district's jurisdiction as the city limits of the sponsoring city. This just seemed to us to be the simplest and most natural choice to make. However, under the draft, the eminent domain authority of the district may be specifically limited geographically by the common council. See proposed ss. 229.842 (1) (c) and 229.846 (6).

2. Per our discussion, we have not included any special provisions concerning telephonic meetings of the district board [your proposed s. 229.86 (11)]. The attorney general has concluded that, with limited exceptions, governmental bodies may conduct telephonic meetings provided that certain measures are taken to ensure that the public and news media are able to monitor the meetings effectively. See 69 O.A.G. 143 (1980) and *Badke v. Village of Greendale*, 143 Wis. 2d 553 (1993). As we understand it, you are able to live within the guidelines applicable to other governmental bodies on this point.

3. This draft does not amend s. 893.80, stats., relating to notice of claims and limitation of liability, because s. 893.80, stats., applies to any "political corporation" and proposed s. 229.842 (1) (intro.) provides that the cultural arts district is a "body corporate and politic". The analysis also speaks to this point.

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

5. Per our telephone discussion on February 10, we have revised the proposed draft to limit the district to incurring 2 kinds of debt on its own: revenue bonds and

short-term obligations. See proposed s. 229.844 (8). The draft also allows use of a special fund to secure debt issued by others. See proposed s. 229.850.

6. In light of the creation of ss. 24.61 (2) (a) 8. and 9., 25.17 (3) (b) 11. and 12., 66.04 (2) (a) 3r. and 3t. and 219.09 (1) (e) and (f), there is no need to draft the proposed s. 229.96 in the Quarles draft.

Constitutional issues:

This draft adheres to the structure of 1995 Act 56 in several respects, and the constitutionality of relevant provisions of that act were upheld in *Libertarian Party v. State*, 199 Wis.2d 790 (1996). Therefore, the issues that were novel prior to enactment of 1995 Act 56 have now in many instances been reviewed and decided. There is no better authority on a point of state law than a recent holding of the Wisconsin Supreme Court that is almost directly in point. Every enactment of the legislature enjoys a presumption of constitutionality and any doubt must be resolved in favor of the constitutionality of a statute. *Samb v. City of Brookfield*, 97 Wis. 2d 356 at 370 (1980). Nevertheless, the language and reasoning of *Libertarian Party* in some cases left unexplained logical issues and inconsistencies with the Court's prior decisions, which may indicate that there is some risk that the Court might refine its thinking if the issues are ably reargued. Given this situation, it may be the better part of wisdom to design this draft to fit this recent holding as closely as possible. However, because alternative choices are available, we raise these issues for your consideration:

1. Article VIII, section 10, of the Wisconsin Constitution prohibits the state from being a party to carrying on works of internal improvement. In *Libertarian Party*, because the Court found that construction of stadium facilities serves a predominately governmental purpose, it found no violation of the internal improvements clause. 199 Wis. 2d 790 at 816. In other cases, however, the Court has said this is not enough: see, for example, *State ex rel. Jones v. Froehlich*, 115 Wis. 32 (1902), where the Court requires that there be an essential governmental function and that private capital be inadequate to fund the project. 115 Wis. 32 at 41. See also *State ex rel. Martin v. Giessel*, 252 Wis. 363 at 365-374 (1948) and *Dept. of Development v. Building Comm.*, 139 Wis. 2d 1 at 9-11 (1987). In *Libertarian Party*, the Court did not distinguish these cases. Because the public purpose doctrine stands independently of the internal improvements clause [see, for example, *Rath v. Community Hospital*, 160 Wis. 2d 853 at 862 (Ct. App., 1991)], it would have been helpful for the Court to explain what, if anything, remains of the internal improvements clause under its revised interpretation. Despite the remaining uncertainty, it should be noted that while this draft retains some state involvement (see proposed s. 229.842 (2)), it does not include any requirement for the department of administration to provide services generally to a cultural arts district (see ss. 16.82 and 16.854, stats.), nor any state involvement in the issuance of bonds by a cultural arts district (see s. 229.74, stats.) so state involvement here is less extensive than under *Libertarian Party*. To resolve all uncertainty, however, state involvement would need to be completely removed.

2. Also related to the issue of state involvement is the line of cases that holds that tax revenue must be spent at the level of government at which the tax is raised. See *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391 at 421 (1973) and 77 Marquette Law

Review, 466-67 (1994). If the district is not viewed as a unit of local government, this principle would be offended. The draft states that the district is a local governmental unit [see proposed s. 229.842 (1) (intro.)]. However, under proposed s. 229.842 (2), the governor or his or her designee is a member of the district board and the governor appoints three other members of the district board. Unfortunately, the Court in *Libertarian Party* did not determine what exactly constitutes a unit of local government, thereby leaving for another day the issue of whether a unit of government, like this one, with mixed state and local control is pure enough to pass the test.

3. Also related to the issue of expenditure at the level of taxation is the question of whether this principle would be offended if a sponsoring city subsidizes a district, as authorized in proposed s. 229.846, or if a district subsidizes another governmental unit, as authorized in s. 229.844 (18). Here again, this issue was not discussed in *Libertarian Party*. It can probably be said, however, that if any subsidy would serve a legitimate, independent public purpose of the municipality or district, rather than serve simply as a means of circumventing revenue raising at the level of government where a subsidy is received, the proposed language, as applied, would not offend the "spend at the level of taxation" principle.

4. Article XI, section 3 (2), of the Wisconsin Constitution imposes a debt limitation on "municipal corporation[s]". Article XI, section 3 (3), further requires that any such indebtedness be repaid within 20 years by levying a direct, annual [property] tax. However, Article XI, section 3 (5), provides that the debt limitation does not apply to indebtedness created for the purpose of "purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility of a ...special district...[if]...secured solely by the property or income of such public utility...". Taking advantage of this exception, the draft, like 1995 Act 56, provides in its treatment of s. 66.067, stats., that cultural arts facilities are public utilities. Under *Payne v. Racine*, 217 Wis. 550 at 555 (1935), the term "public utilities", as used in article XI, section 3 (5), "... must be considered to include all plants or activities which the legislature can reasonably classify as public utilities in the ordinary meaning of the term." *Libertarian Party* in effect holds that the legislature's classification of baseball stadium facilities as "public utilities" is a permissible interpretation of the term. 199 Wis. 2d 790 at 820. From this decision, we can conclude that the courts will probably construe this term very liberally. Under article XI, section 3 (5), the indebtedness must be secured "solely by the property or income of such public utility [cultural arts facilities]". The draft permits a cultural arts district to "...issue revenue bonds... and to enter into any agreements relating thereto" (see proposed s. 229.844 (8) (a)). The draft further contemplates that the district may become indebted to the Wisconsin Health and Educational Facilities Authority (WHEFA) to retire bonds that may be issued by WHEFA or by a city redevelopment authority to finance the district's cultural arts facilities. See proposed s. 229.850. See also s. 231.09, stats. and the treatment of ss. 231.01 (4m) and (5w), 231.05 (1), 231.08 (5) and 231.23, stats. Provided that the courts agree that the cultural arts facilities are a public utility and the income of the facilities is sufficient to retire the district's debts, this should not be a problem.

5. Under proposed s. 229.848 (1) a district's property, upon dissolution of the district, could be transferred to an entity that is "organized and operated exclusively for religious . . . purposes. . . ." See section 501 (c) (3) of the Internal Revenue Code. This could be challenged as a violation of the Establishment Clause of the First Amendment to the U.S. Constitution and of the Preference clause of article I, section 18, of the Wisconsin Constitution.

6. There are several issues regarding the lien provision in proposed s. 229.852. Although this provision is similar to language currently in ch. 231, stats., you may want to draft this lien provision differently in order to ensure that the language accomplishes your intent. First, it is unclear under the proposed language whether the lien has priority over a valid security interest in the accounts of the district. If you intend to give the lien this priority, you may want to generally exempt the lien from ch. 409, stats., [see s. 409.104 (3), stats. (exemption of certain other statutory liens)] and specify the prioritization you intend in a provision similar to s. 409.310, stats.

Second, to the extent that this provision is intended to establish priority for bankruptcy purposes, the provision may not accomplish your intent. Let me know if you would like me to research federal law in order to determine the priority given to a lien of this type in a bankruptcy proceeding.

Third, the proposed language may unconstitutionally impair existing contracts because the lien is "valid and binding as against all parties having claims of any kind . . . in contract." In addition, an impairment issue may exist to the extent that the lien is given priority over existing perfected security interests. In order to avoid this issue, you may want to specify that the lien is valid and binding against any claim arising under a contract entered into after the date that the pledge was made and is valid against any claims against the district other than under a contract. You may also want to give the lien priority over any security interest perfected after the date that the pledge was made.

There are also two clarifications you may want to make. First, it may be helpful to specify who has the lien (for example, the person holding the instrument that evidences the pledge). Second, under the proposed language, it appears that filing is a prerequisite to perfection. However, the language could be interpreted to treat perfection and filing as separate issues. If you intend to require filing in order to perfect the lien, please let us know and we can clarify this point.

7. Concerning proposed s. 229.844 (17), we assumed you intended to limit the district's power to enter upon private property to the geographic area in which the district has eminent domain authority (rather than anywhere in the city). In this connection, see also *Redevelopment Authority v. Uptown Arts*, 229 Wis. 2d 458 (Ct. App., 1999) in which this entry power was essentially declared unconstitutional on its face. In that case, the court read in a requirement for the property owner to be afforded the opportunity to consider the necessity of the entry, the scope of the entry and the time, place and manner of the entry. Do you wish to amend the draft to address this issue?

If you have any further questions regarding the above issues, please let us know.

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