

1999 DRAFTING REQUEST

Bill

Received: 12/22/98

Received By: **hubliks**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Wong**

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

Drafter: **hubliks**

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Subject: **Environment - env. cleanup
Bonding - state**

Extra Copies: **RCT**

Topic:

DOA:.....Wong - PECFA revenue bonding

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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16-2-2-99 #2/2 #15 2/2
17-2-2-99 King #2/2 J/K

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reed.groethe@foleylaw.com
Frank Hoadley, Frank

Instructions:

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PECFA - 101.143 Analyst - Manjee Wong

2. Revenue Bond Authority

- Authorize \$150 million in bonding.
- Require that debt service be paid from a sum-sufficient appropriation from the Petroleum Inspection Fund.

3. Interest Cost Reimbursement

- Cap interest reimbursement at the rate on state revenue bonds issued for the program.
- Eliminate interest reimbursement for site owners with gross revenues in excess of \$20 million in the most recent tax year prior to submission of a claim.
- Authorize Commerce to collect and audit owner revenue information.

4. Deductibles

- Change current deductible structure for owners of underground storage tanks with petroleum stored for resale or which handle in excess of 10,000 gallons per month to add \$7,500 for **each** \$100,000 increment after the first \$100,000 in costs.
- Change current deductible structure for owners of underground storage tanks with petroleum not stored for resale and handling less than or equal to 10,000 gallons per month to add \$7,500 for the **first** \$100,000 increment after the first \$100,000 in costs up to a maximum of \$15,000 per occurrence.
- No change is necessary for aboveground, small farm, home heating, and school districts.

5. Petroleum Inspection Fee

- Beginning January 1, 2002 and each January 1 thereafter, require the Department of Commerce to determine the backlog of claim reimbursements. If claim backlog exceeds two times the revenue collected and available for claim reimbursements in the previous fiscal year, authorize the Department of Commerce to increase the petroleum inspection fee on the following April 1 by an amount, rounded to the nearest 0.1 cent, that reduces the backlog to twice the revenues collected in the previous fiscal year.
- Beginning April 1, 2003 and each April thereafter, require the Department of Commerce to reduce the petroleum inspection fee by an amount, rounded to the nearest 0.1 cent, equal to the difference between the balance in the petroleum inspection fund on June 30 of the previous year and \$10 million.

6. Claim Prioritization Process

- Authorize the Department of Commerce to establish a process for prioritizing claims through rule.
- Allow claim priority to be based on environmental factors as established through rule.
- Authorize Commerce to deny payment of interest costs to claimant that proceeds with cleanup prior to notification from Commerce, as defined in rule.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1432/P1

KSH: King

DOA:.....Wong - PECFA Revenue Bonding

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

See
D NOTE

1 AN ACT *do not get cat*; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

(department)

Under current law, the department of commerce administers a program to reimburse owners of certain petroleum product storage tanks for a portion of the costs of cleaning up discharges from those tanks. This program is commonly known as PECFA.

This bill authorizes the department of commerce to issue revenue bonds, to be paid from revenues deposited in the petroleum inspection fund, to fund the PECFA program. No more than \$150,000,000 in revenue bonding may be issued under the bill. The building commission may pledge any portion of revenues received from the bond proceeds or the petroleum inspection fund to secure revenue obligations issued under this subsection. The building commission may issue the revenue obligations when it reasonably appears to the building commission that the bonds can be fully paid on a timely basis from the petroleum inspection fund.

bill

For further information see the *state* 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. 20.143 (3) (s) of the statutes is created to read:

that are

2 20.143 (3) (s) *Petroleum inspection fund — revenue bonding proceeds.* As a
 3 continuing appropriation, all proceeds from revenue obligations issued under subch.
 4 II or IV of ch. 18, ~~all~~ authorized under s. 101.143 (9m) and deposited in ~~the~~ fund in
 5 the state treasury created under s. 18.57 (1), ~~providing~~ for reserves and for expenses
 6 of issuance and management of the revenue obligations, and the remainder to be
 7 transferred to the petroleum inspection fund for the purposes of the petroleum
 8 storage remedial action program under s. 101.143. Estimated disbursements under
 9 this paragraph shall not be included in the schedule under s. 20.005.

a

to provide

10 SECTION 2. 20.143 (3) (t) of the statutes is created to read:

11 20.143 (3) (t) *Petroleum inspection fund — revenue bonding repayment.* From
 12 the petroleum inspection fund, a sum sufficient to repay the fund in the state
 13 treasury created under s. 18.57 (1) the amount needed to retire revenue obligations
 14 issued under subch. II or IV of ch. 18, as authorized under s. 101.143 (9m).

15 SECTION 3. 20.143 (3) (u) of the statutes is created to read:

16 20.143 (3) (u) *Revenue bonding principal and interest repayment — petroleum*
 17 *inspection fund.* From the fund in the state treasury created under s. 18.57 (1), all
 18 moneys received by the fund for the purpose of the retirement of revenue obligations,
 19 providing for reserves and for operations relating to the management and retirement
 20 of revenue obligations issued under subch. II or IV of ch. 18, as authorized under s.
 21 101.143 (9m). All moneys received are irrevocably appropriated in accordance with
 22 subch. II of ch. 18 and further established in resolutions authorizing the issuance of
 23 the revenue obligations and setting forth the distribution of funds to be received
 24 thereafter.

by the fund

1 SECTION 4. 25.47 of the statutes is renumbered 25.47 (intro.) and amended to
2 read:

3 **25.47 (intro.) Petroleum inspection fund.** There is established a separate
4 nonlapsible trust fund designated as the petroleum inspection fund, to consist of the:

5 (1) The fees imposed under s. 168.12 (1), the.

6 (2) The payments under s. 101.143 (4) (h) 1m, the

7 (3) The payments under s. 101.143 (5) (a) and the.

8 (4) The net recoveries under s. 101.143 (5) (c). *money transferred*

History: 1987 a. 27, 399; 1991 a. 269; 1993 a. 16; 1997 a. 27.

9 SECTION 5. 25.47 (5) of the statutes is created to read:

10 25.47 (5) The ~~portion of the proceeds of the issuance of revenue obligations~~
11 ~~issued under ch. 18 the purpose of s. 101.143 (9m) transferred~~ under s. 20.143 (3) (s).

12 SECTION 6. 101.143 (9m) of the statutes is created to read:

13 101.143 (9m) REVENUE BONDING. (a) The petroleum inspection fee under s. *from the appropriation account*

14 168.12, in conjunction with the petroleum storage remedial action program under
15 this section, is a revenue-producing enterprise or program ¹ as defined in s. 18.52 (6).

16 (b) Deposits, appropriations or transfers to the petroleum inspection fund for
17 the purposes of the petroleum storage remedial action program may be funded with
18 the proceeds of revenue obligations issued subject to and in accordance with subch.
19 II of ch. 18 or in accordance with subch. IV of ch. 18 if designated a higher education
20 bond.

21 (c) The department of administration may, under s. 18.56 (5) and (9) (j), deposit
22 in a separate and distinct fund in the state treasury or in an account maintained by
23 a trustee outside the state treasury, any portion of the revenues derived under s.
24 25.47. The revenues deposited with a trustee outside the state treasury are the

1 trustee's revenues in accordance with the agreement between this state and the
2 trustee or in accordance with the resolution pledging the revenues to the repayment
3 of revenue obligations issued under this subsection.

4 (d) The department may pledge any portion of ^{the} revenues received or to be
5 received in the fund established in par. (c) or the petroleum inspection fund to secure
6 revenue obligations issued under this subsection.

7 (e) The department shall have all other powers necessary and convenient to
8 distribute the pledged revenues and to distribute the proceeds of the revenue
9 obligations in accordance with subch. II of ch. 18 or in accordance with subch. IV of
10 ch. 18 if designated a higher education bond.

11 (f) The department may enter into agreements with the federal government or
12 its agencies, political subdivisions of this state, individuals or private entities to
13 insure or in any other manner provide additional security for the revenue obligations
14 issued under this subsection.

15 (g) Revenue obligations may be contracted by the building commission when
16 it reasonably appears to the building commission that all obligations incurred under
17 this subsection can be fully paid on a timely basis from moneys received or
18 anticipated to be received. Revenue obligations issued under this subsection ~~shall~~
19 not exceed \$150,000,000 in principal amount, excluding obligations issued to refund ^{may}
20 outstanding revenue obligation notes.

may

21 (h) Unless otherwise expressly provided in resolutions authorizing the
22 issuance of revenue obligations or in other agreements with the holders of revenue
23 obligations, each issue of revenue obligations under this subsection shall be on a
24 parity with every other revenue obligation issued under this subsection and in

1 accordance with subch. II of ch. 18 or with subch. IV of ch. 18, if designated a higher
2 education bond,

3 (END)

in accordance

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1432/P1dn

KSH:.....
hmg

Because the revenues pledged to repay the bonds are not derived from the ^{the} project built with the proceeds of the bonds, this draft does not fit the traditional "revenue bonding" model. As a result, I strongly recommend that you have this draft reviewed by Frank Hoadley and by bond counsel before proceeding with this draft.

Case law does not appear to be entirely clear on what constitutes a "revenue bond". In *City of Hartford*, the Wisconsin supreme court discussed whether tax incremental financing (TIF) bonds were revenue bonds. The TIF bonds were to be repaid by a portion or increment of the property tax levied on the property in the TIF district. The court concluded that the TIF bonds were not revenue bonds "because of the nature of the funds from which they are paid. The infrastructure constructed with the funds raised through the ^{the} City's TIF bonds does not generate revenue directly. This dissimilarity [with traditional revenue bonds] is critical." *City of Hartford v. Kirley*, 172 Wis. 2d 191, 209 (1992). More recently, however, in *Libertarian Party v. State*, 199 Wis. 2d, 790 (1996), the Wisconsin supreme court found that "the bonds to be issued by a baseball park district are revenue bonds which are payable only from the sales and use taxes the district is authorized to impose and revenue from the stadium itself". Despite the fact that the bonds were repayable in part from an indirect source, such as a sales and use tax, rather than directly from the project to be constructed, the court found that the bonds were "revenue bonds".

In this draft, the revenue source (the petroleum inspection fee) and the expenditure purpose (PECFA) seem to have even less of a connection than in either *City of Hartford* or *Libertarian Party*. It is my understanding that the petroleum inspection fee existed prior to PECFA and that the petroleum inspection fee would continue to generate money if PECFA were ended. The groups of people paying the tax are not necessarily the same people receiving PECFA assistance. A similar issue was raised in a draft requested, but not introduced, by DOA last session. Frank Hoadley and Reed Groethe were involved in that draft and should be familiar with these issues. I recommend that you have them review the draft and this drafter's note before proceeding.

Is there a reason why you want this done as revenue bonding rather than as general bonding? The interest rate would presumably be lower. Moreover, there is a 1994 attorney general's opinion opining that general obligation bonding could be used for PECFA funding. If you choose to go the revenue-bonding route, we may need to rewrite parts of ch. 18 to broaden the concept of revenue-producing enterprise.

stet

In addition, please have bond counsel or the capital finance people at DOA review the appropriations structure in the draft. Often, with a revenue bond issuance, DOA will establish a separate fund under s. 18.57 (1). I am not sure that the appropriations properly reflect the relationship between the petroleum inspection fund and the separate fund under s. 18.57 (1).

If you have any questions on the draft or if any part of it is inconsistent with your intent, please let me know.

K. Scott Hubli
Legislative Attorney
266-0135

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1432/P1dn

KSH:kmg:km

December 29, 1998

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266-0135

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CLIENT/MATTER NUMBER
015438/0101

January 21, 1999

VIA FACSIMILE

Mr. K. Scott Hubli
Legislative Attorney
Legislative Reference Bureau
100 North Hamilton Street
Madison, Wisconsin

Re: PECFA Revenue Bonding

Dear Scott:

Frank Hoadley asked me to consider the draft legislation creating PECFA revenue bonding. I am sending you a preliminary draft of my thoughts on this matter. I still need to do some work on the material covered in Section 18.562 (as it would be created by this draft), but it may be helpful for you to see the draft at this time.

Very truly yours,



Reed Groethe

Enclosure

cc: Mr. Frank R. Hoadley

DRAFT

**Suggested Revisions to LRB - 1432/P1
PECFA Revenue Bonding**

SECTION __. 18.51 of the statutes is amended to read:

18.51 Provisions applicable. The following sections apply to this subchapter, except that all references to "public debt" or "debt" are deemed to refer to a "revenue obligation" and all references to "evidences of debt" are deemed to refer to "evidences of revenue obligations": ss. 18.02, 18.03, 18.06 (8), 18.07 (1), (2), (4) to (9) and (11) and 18.17.

SECTION __. 18.52 (2m) of the statutes is created to read:

18.52 (2m) "Enterprise obligation" means every undertaking by the state to repay a certain amount of borrowed money which is:

(a) Created for the purpose of purchasing, acquiring, leasing, constructing, extending, expanding, adding to, improving, conducting, controlling, operating or managing a revenue-producing enterprise or program;

(b) Payable solely from and secured solely by the property or income or both of the enterprise or program; and

(c) Not public debt under s. 18.01 (4).

~~18.52 (5) "Revenue obligation" means every undertaking by the state to repay a certain amount of borrowed money which is:~~

~~(a) Created for the purpose of purchasing, acquiring, leasing, constructing, extending, expanding, adding to, improving, conducting, controlling, operating or managing a revenue producing enterprise or program;~~

~~(b) Payable solely from and secured solely by the property or income or both of the enterprise or program; and~~

~~(c) Not public debt under s. 18.01 (4) either an enterprise obligation or a special-fund obligation.~~ ✓

SECTION __. 18.52 (7) of the statutes is created to read:

18.52 (7) "Special-fund obligation" means every undertaking by the state to repay a certain amount of borrowed money which is:

(a) Payable exclusively from a special fund created by the imposition of fees, penalties or excise taxes; and

(b) Not public debt under s. 18.01 (4).

SECTION __. 18.52 (8) of the statutes is created to read:

18.52 (8) "Special-fund program" means a state program or facility with respect to which the legislature determines that financing with special-fund obligations is appropriate and will serve a public purpose.

SECTION __. 18.53 (3) of the statutes is amended to read:

18.53 (3) The commission shall authorize money to be borrowed and evidences of revenue obligations to be issued therefor up:

(a) Up to the amounts specified by the legislature to purchase, acquire, lease, construct, extend, expand, add to, improve, conduct, control, operate or manage such revenue-producing enterprises or programs as are specified by the legislature as the funds are required, up:

(b) Up to the amounts specified by the legislature for expenditures to be paid from special-fund obligations.

~~The requirements for funds shall be established by the state department or agency head carrying out program responsibilities for which the revenue obligations have been authorized by the legislature.~~

SECTION __. 18.53 (3m) of the statutes is created to read:

18.53 (3m) The requirements for funds shall be established by the state department or agency head carrying out program responsibilities for which the revenue obligations have been authorized by the legislature.

SECTION __. 18.56 (1) is amended to read:

18.56 (1) The commission may authorize, for any of the purposes described in s. 18.53 (3), the issuance of revenue-obligation bonds. The bonds

shall mature at any time not exceeding 30 years from the date thereof as the commission shall determine. The bonds shall be payable only out of the redemption fund provided under s. 18.561 (5) or s. 15.562 ___ and each bond shall contain on its face a statement to that effect. Any such bonds may contain a provision authorizing redemption, in whole or in part, at stipulated prices, at the option of the commission and shall provide the method of redeeming the bonds. ~~The state and a contracting party may provide in any contract for purchasing or acquiring a revenue producing enterprise or program, that payment shall be made in such bonds.~~

SECTION __. 18.561 (intro.) of the statutes is created to read:

18.561 Enterprise Obligations. The following provisions apply only to enterprise obligations.

not needed?

SECTION __. 18.561 (1) is created to read:

18.561 (1) The state and a contracting party may provide in any contract for purchasing or acquiring a revenue producing enterprise or program, that payment shall be made in such obligations.

SECTION __. 18.56 (2) - (10) are renumbered as 18.561 (2) - (10).

SECTION __. 18.562 of the statutes are created to read:

18.562. Special-fund Obligations. The following provision apply only to special-fund obligations.

(1) The commission may provide in the authorizing resolution for the special-fund obligations that a fund created by the imposition of fees, penalties or excise taxes relating to a special fund program shall constitute a redemption fund.

(2) If any surplus is accumulated in a redemption fund, subject to any contract rights vested in holders of revenue obligations secured thereby, it shall be paid over to the treasury.

(3) The commission may provide in the authorizing resolution for special-fund obligations or by subsequent action all things necessary to carry into effect this section. Any authorizing resolution shall constitute a contract with the holder of any special-fund obligations issued pursuant to such provisions or covenants, without limiting the generality of the power to adopt the resolution, as it deemed necessary or desirable for the security of holders or the marketability of the special-fund obligations.

SECTION __. 18.57 (title) of the statutes is amended to read:

18.57 ~~Enterprise and program capital~~ Funds established for revenue obligations.

SECTION __. 18.57 (1) of the statutes is amended to read:

18.57 (1) A separate and distinct fund shall be established in the state treasury or in an account maintained by a trustee under s. 18.56 (9) (j) with

respect to each revenue-producing enterprise or program the income of which is to be applied to the payment of any revenue enterprise obligation or any special fund which is created by the imposition of fees, penalties or excise taxes and is applied to the payment of any special fund obligation. All moneys resulting from the issuance of evidences of revenue obligations shall be credited to the appropriate fund or applied for refunding or note renewal purposes, except that moneys which represent premium or earned interest received on the issuance of evidences shall be credited to the appropriate redemption fund.

SECTION __. 101.143 (9m) of the statutes is created to read:

101.143 (9m) REVENUE OBLIGATIONS (a) The petroleum inspection fee under s. 168.12, in conjunction with the petroleum storage remedial action program under this section, is a special-fund program as defined in s. 18.52 (8). The fund established in paragraph (d) is a segregated fund created by the imposition of fees, penalties or excise taxes.

...

(g) . . . , excluding obligations issued to fund or refund outstanding revenue bond notes.

...

(i) The legislature covenants that it will use its best efforts to appropriate sufficient amounts to pay the principal and interest on any revenue

obligations issued under subch. II of ch. 18 or subch. IV of ch. 18 in the event it reduces the amount of the petroleum inspection fee.

Comments

1. Do existing appropriations of the petroleum inspection fee have to be modified? *See, e.g.,* 20.370 (br), (dw), (mu), (ms) and (mw). How can the department of administration pledge these amounts if they are appropriated for other expenses?
2. It may be desirable to do two additional things:
 - a. Repeal and re-enact the petroleum inspection fee
 - b. Make a finding of the nexus between the petroleum inspection fee and petroleum storage remedial action program
3. It seems to me, the petroleum inspection fee is susceptible to being judicially recharacterized as an excise tax. I don't think the recharacterization would adversely affect the issuance of revenue obligations.

1 SECTION 1. 20.143 (3) (s) of the statutes is created to read:

2 20.143 (3) (s) *Petroleum inspection fund — revenue bonding proceeds.* As a
3 continuing appropriation, all proceeds from revenue obligations that are issued
4 under subch. II or IV of ch. 18, authorized under s. 101.143 (9m) and deposited in a
5 fund in the state treasury created under s. 18.57 (1), to provide for reserves and for
6 expenses of issuance and management of the revenue obligations, and the remainder
7 to be transferred to the petroleum inspection fund for the purposes of the petroleum
8 storage remedial action program under s. 101.143. Estimated disbursements under
9 this paragraph shall not be included in the schedule under s. 20.005.

10 SECTION 2. 20.143 (3) (t) of the statutes is created to read:

11 20.143 (3) (t) *Petroleum inspection fund — revenue bonding repayment.* From
12 the petroleum inspection fund, a sum sufficient to repay the fund in the state
13 treasury created under s. 18.57 (1) the amount needed to retire revenue obligations
14 issued under subch. II or IV of ch. 18, as authorized under s. 101.143 (9m).

15 SECTION 3. 20.143 (3) (u) of the statutes is created to read:

16 20.143 (3) (u) *Revenue bonding principal and interest repayment — petroleum*
17 *inspection fund.* From the fund in the state treasury created under s. 18.57 (1), all
18 moneys received by the fund for the purpose of the retirement of revenue obligations,
19 providing for reserves and for operations relating to the management and retirement
20 of revenue obligations issued under subch. II or IV of ch. 18, as authorized under s.
21 101.143 (9m). All moneys received by the fund are irrevocably appropriated in
22 accordance with subch. II of ch. 18 and further established in resolutions authorizing
23 the issuance of the revenue obligations and setting forth the distribution of funds to
24 be received thereafter.

*Estimated disbursements under this
paragraph shall not be included in the schedule
under s. 20.005.*

1 SECTION 4. 25.47 of the statutes is renumbered 25.47 (intro.) and amended to
2 read:

3 25.47 Petroleum inspection fund. (intro.) There is established a separate
4 nonlapsible trust fund designated as the petroleum inspection fund, to consist of the:

- 5 (1) The fees imposed under s. 168.12 (1), the,
- 6 (2) The payments under s. 101.143 (4) (h) 1m., the
- 7 (3) The payments under s. 101.143 (5) (a) and the,
- 8 (4) The net recoveries under s. 101.143 (5) (c).

9 SECTION 5. 25.47 (5) of the statutes is created to read:

10 25.47 (5) The moneys transferred from the appropriation account under s.
11 20.143 (3) (s).

12 SECTION 6. 101.143 (9m) of the statutes is created to read:

13 101.143 (9m) REVENUE ^(OBLIGATIONS.) ~~SONDERS~~ (a) The petroleum inspection fee under s.
14 168.12, in conjunction with the petroleum storage remedial action program under
15 this section, is a revenue-producing enterprise program, as defined in s. 18.52 (6). 8

16 (b) Deposits, appropriations or transfers to the petroleum inspection fund for
17 the purposes of the petroleum storage remedial action program may be funded with
18 the proceeds of revenue obligations issued subject to and in accordance with subch.
19 II of ch. 18 or in accordance with subch. IV of ch. 18 if designated a higher education
20 bond.

21 (c) The department of administration may, under s. 18.56 (5) and (9) (j), deposit
22 in a separate and distinct fund in the state treasury or in an account maintained by
23 a trustee outside the state treasury, any portion of the revenues derived under s.
24 25.47. The revenues deposited with a trustee outside the state treasury are the
25 trustee's revenues in accordance with the agreement between this state and the

The fund established in paragraph (c) is a segregated fund created by the imposition of fees, penalties or excise taxes.

1999 - 2000 Legislature

LRB-1432/P1
KSH:kmg:km
SECTION 6

1 trustee or in accordance with the resolution pledging the revenues to the repayment
2 of revenue obligations issued under this subsection.

3 (d) The department may pledge any portion of the revenues received or to be
4 received in the fund established in part (d) of the petroleum inspection fund to secure
5 revenue obligations issued under this subsection.

6 (e) The department shall have all other powers necessary and convenient to
7 distribute the pledged revenues and to distribute the proceeds of the revenue
8 obligations in accordance with subch. II of ch. 18 or in accordance with subch. IV of
9 ch. 18 if designated a higher education bond.

10 (f) The department may enter into agreements with the federal government or
11 its agencies, political subdivisions of this state, individuals or private entities to
12 insure or in any other manner provide additional security for the revenue obligations
13 issued under this subsection.

14 (g) Revenue obligations may be guaranteed by the building commission when
15 it reasonably appears to the building commission that all obligations incurred under
16 this subsection can be fully paid on a timely basis from moneys received or
17 anticipated to be received. Revenue obligations issued under this subsection may not
18 exceed \$150,000,000 in principal amount, excluding obligations issued to refund
19 outstanding revenue obligation notes. Fund or

20 (h) Unless otherwise expressly provided in resolutions authorizing the
21 issuance of revenue obligations or in other agreements with the holders of revenue
22 obligations, each issue of revenue obligations under this subsection shall be on a
23 parity with every other revenue obligation issued under this subsection and in

1999 - 2000 Legislature

5 -

LRB-1432/P1
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SECTION 6

1 accordance with subch. II of ch. 18, if designated a higher education bond, in
 2 accordance with subch. IV of ch. 18,
 3 (END)

(i) The legislature covenants that it will use its best efforts to appropriate sufficient amounts to pay the principal and interest ~~on~~ on any obligations issued under subch. II of ch. 18 or subch. IV of ch. 18 in the event it reduces the rate of the petroleum inspection fee.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1432/P1
KSH:kmg:km

1

DOA:.....Wong - PECFA revenue bonding

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

MONDAY A.M.

D-NOTE

do not go cat.

1 AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau
ENVIRONMENT

Obligations

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Under current law, the department of commerce (department) administers a program to reimburse owners of certain petroleum product storage tanks for a portion of the costs of cleaning up discharges from those tanks. This program is commonly known as PECFA.

This bill authorizes the department to issue revenue bonds, to be paid from revenues deposited in the petroleum inspection fund, to fund the PECFA program. No more than \$150,000,000 in revenue bonding may be issued under the bill. The building commission may pledge any portion of revenues received from the bond proceeds or the petroleum inspection fund to secure revenue obligations issued under this bill. The building commission may issue the revenue obligations when it reasonably appears to the building commission that the bonds can be fully paid on a timely basis from the petroleum inspection fund.

of the obligations

For further information see the state 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:

no #
Insert ANL

Obligations

Insert 2-1

obligation principal

1 SECTION 1. 20.143 (3) (s) of the statutes is created to read:

2 20.143 (3) (s) *Petroleum inspection fund — revenue bonding* proceeds. As a
3 continuing appropriation, all proceeds from revenue obligations that are issued
4 under subch. II or IV of ch. 18, authorized under s. 101.143 (9m) and deposited in a
5 fund in the state treasury created under s. 18.57 (1), to provide for reserves and for
6 expenses of issuance and management of the revenue obligations, and the remainder
7 to be transferred to the petroleum inspection fund for the purposes of the petroleum
8 storage remedial action program under s. 101.143. Estimated disbursements under
9 this paragraph shall not be included in the schedule under s. 20.005.

NOTE: BUD

10 SECTION 2. 20.143 (3) (t) of the statutes is created to read:

11 20.143 (3) (t) *Petroleum inspection fund — revenue bonding* repayment. From
12 the petroleum inspection fund, a sum sufficient to repay the fund in the state
13 treasury created under s. 18.57 (1) the amount needed to retire revenue obligations
14 issued under subch. II or IV of ch. 18, as authorized under s. 101.143 (9m).

NOTE: BUD

15 SECTION 3. 20.143 (3) (u) of the statutes is created to read:

16 20.143 (3) (u) *Revenue bonding* principal and interest repayment — *petroleum*
17 *inspection fund*. From the fund in the state treasury created under s. 18.57 (1), all
18 moneys received by the fund for the purpose of the retirement of revenue obligations,
19 providing for reserves and for operations relating to the management and retirement
20 of revenue obligations issued under subch. II or IV of ch. 18, as authorized under s.
21 101.143 (9m). All moneys received by the fund are irrevocably appropriated in
22 accordance with subch. II of ch. 18 and further established in resolutions authorizing
23 the issuance of the revenue obligations and setting forth the distribution of funds to
24 be received thereafter.

Estimated disbursements under this paragraph shall not be included in the schedule under s. 20.005.

NOTE: BUD

1 SECTION 4. 25.47 of the statutes is renumbered 25.47 (intro.) and amended to
2 read:

3 25.47 Petroleum inspection fund. (intro.) There is established a separate
4 nonlapsible trust fund designated as the petroleum inspection fund, to consist of the:

5 (1) The fees imposed under s. 168.12 (1), the

6 (2) The payments under s. 101.143 (4) (h) 1m., the

7 (3) The payments under s. 101.143 (5) (a) and the

8 (4) The net recoveries under s. 101.143 (5) (c).

9 SECTION 5. 25.47 (5) of the statutes is created to read:

10 25.47 (5) The moneys transferred from the appropriation account under s.

11 20.143 (3) (s).

→ Ins. 3-11

OBLIGATIONS.

12 SECTION 6. 101.143 (9m) of the statutes is created to read:

13 101.143 (9m) REVENUE BONDING. (a) The petroleum inspection fee under s.

14 168.12, in conjunction with the petroleum storage remedial action program under

15 this section, is a ~~revenue-producing enterprise or~~ program, as defined in s. 18.52 (6). (8)

16 (b) Deposits, appropriations or transfers to the petroleum inspection fund for
17 the purposes of the petroleum storage remedial action program may be funded with
18 the proceeds of revenue obligations issued subject to and in accordance with subch.
19 II of ch. 18 or in accordance with subch. IV of ch. 18 if designated a higher education
20 bond.

18.562

18.562

21 (c) The department of administration may, under s. ~~18.562 (6)~~, deposit
22 in a separate and distinct fund in the state treasury or in an account maintained by
23 a trustee outside the state treasury, any portion of the revenues derived under s.
24 25.47. The revenues deposited with a trustee outside the state treasury are the
25 trustee's revenues in accordance with the agreement between this state and the

special fund

The fund established under par. (c) is a segregated fund created by the imposition of fees, penalties or excise taxes.

1 trustee or in accordance with the resolution pledging the revenues to the repayment
2 of revenue obligations issued under this subsection.

3 (d) The department may pledge any portion of the revenues received or to be
4 received in the fund established in par. (c) or the petroleum inspection fund to secure
5 revenue obligations issued under this subsection.

6 (e) The department shall have all other powers necessary and convenient to
7 distribute the pledged revenues and to distribute the proceeds of the revenue
8 obligations in accordance with subch. II of ch. 18 or in accordance with subch. IV of
9 ch. 18 if designated a higher education bond.

10 (f) The department may enter into agreements with the federal government or
11 its agencies, political subdivisions of this state, individuals or private entities to
12 insure or in any other manner provide additional security for the revenue obligations
13 issued under this subsection.

14 (g) Revenue obligations may be contracted by the building commission when
15 it reasonably appears to the building commission that all obligations incurred under
16 this subsection can be fully paid on a timely basis from moneys received or
17 anticipated to be received. Revenue obligations issued under this subsection may not
18 exceed \$150,000,000 in principal amount, excluding obligations issued to refund
19 outstanding revenue obligation notes. *fund or*

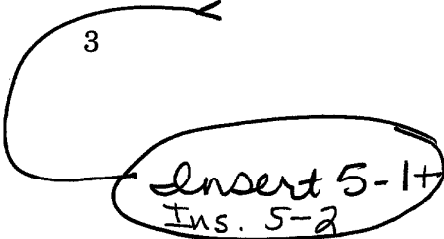
20 (h) Unless otherwise expressly provided in resolutions authorizing the
21 issuance of revenue obligations or in other agreements with the holders of revenue
22 obligations, each issue of revenue obligations under this subsection shall be on a
23 parity with every other revenue obligation issued under this subsection and in

1 accordance with subch. II of ch. 18, if designated a higher education bond, in

2 accordance with subch. IV of ch. 18.

3

(END)



Insert 5-1+
Ins. 5-2

INSERT ANL:

The bill provides a so-called "moral obligation pledge" which applies if the legislature reduces the rate of the petroleum inspection fee. If the rate is reduced and there are insufficient funds in the petroleum inspection fund to pay the principal and interest on the revenue obligations, the legislature expresses its expectation and aspiration that it would make an appropriation from the general fund sufficient to pay the principal and interest on the obligations. ✓

STATE GOVERNMENT

STATE FINANCE

Under current law, the state may issue "revenue obligations" for certain specified purposes. In general, a revenue obligation is an obligation that is: 1) incurred to purchase, acquire, lease, construct, improve, operate or manage a revenue-producing enterprise; and 2) repayable solely from, and secured solely by the property or income from the revenue-producing enterprise. ✓

This bill broadens the definition of revenue obligation to allow revenue bonding in situations which would not meet the current law definition of revenue obligation. Under the bill, revenue obligations consist of two different types: enterprise obligations and special fund obligations. The first type of revenue obligation, called an enterprise obligation, includes all obligations authorized under current law, i.e., obligations that are incurred to purchase, acquire, lease, construct, improve, operate or manage a revenue-producing enterprise and are repayable solely from, and secured solely by, the property or income from that revenue-producing enterprise. ✓

The second type of revenue obligation, a special fund obligation, is created by the bill. Special fund obligations are an undertaking by the state to repay a certain amount of borrowed money that is payable exclusively from a special fund consisting of fees, penalties or excise taxes. The bill uses this second type of revenue obligation in order to authorize not more than \$150,000,000 of revenue obligation bonding for the PECFA program. See ENVIRONMENT, HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP. These revenue obligations are to be repaid from, and are secured by, the petroleum inspection fund and are to be repaid from this fund. If, however, the legislature reduces the rate of the petroleum inspection fee and the fees in the fund prove insufficient to pay the principal and interest on the revenue obligations, the bill expresses the legislature's expectation and aspiration that it would make an appropriation from the general fund sufficient to pay the principal and interest on the obligations. ✓

4

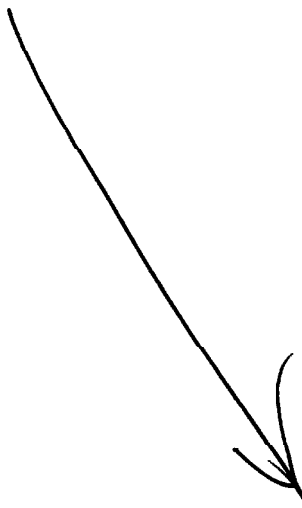
insert 3-11

Section #. 45.79 (9) (a) of the statutes is amended to read:

45.79 (9) (a) All moneys received from any source for repayment of loans, mortgages or mortgage loan notes funded with proceeds of revenue obligations issued under sub. (6) (c) shall be deposited into one or more separate nonlapsible trust funds in the state treasury or with a trustee as provided in s. ~~18.56~~(9) (j). The board may pledge revenues received by the funds to secure revenue obligations issued under sub. (6) (c) and shall have all other powers necessary and convenient to distribute the proceeds of the revenue obligations and loan repayments in accordance with subch. II of ch. 18. Unrestricted balances in the funds may be used to fund additional loans issued under sub. (6) (c) and pay the balances owing on loans after the assumptions of the loans or the closings of the sales of residences under sub. (10) (c).

History: 1973 c. 208, 333; 1975 c. 26, 198, 199; 1977 c. 4, 381; 1979 c. 4, 107, 155; 1979 c. 168 s. 21; 1979 c. 221; 1981 c. 45 s. 51; 1981 c. 93, 336; 1983 a. 27, 368; 1985 a. 6, 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 319; 1987 a. 403 s. 255; 1989 a. 31, 56; 1991 a. 39; 1993 a. 16, 254, 490; 1995 a. 252, 255; 1997 a. 27.

18.561



Section #. 84.59 (2) of the statutes is amended to read:

18.561

84.59 (2) The department may, under s. ~~18.56~~ (5) and (9) (j), deposit in a separate and distinct fund outside the state treasury, in an account maintained by a trustee, revenues derived under s. 341.25. The revenues deposited are the trustee's revenues in accordance with the agreement between this state and the trustee or in accordance with the resolution pledging the revenues to the repayment of revenue obligations issued under this section.

History: 1983 a. 27, 212; 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 113; 1997 a. 27.

Section #. 85.52 (5) (c) of the statutes is amended to read:

✓
18.561

85.52 (5) (c) The department of administration may, under s. ~~18.56~~ (5) and (9) (j), deposit in a separate and distinct fund in the state treasury or in an account maintained by a trustee outside the state treasury, any portion of the revenues derived under s. 25.405 (2). The revenues deposited with a trustee outside the state treasury are the trustee's revenues in accordance with the agreement between this state and the trustee or in accordance with the resolution pledging the revenues to the repayment of revenue obligations issued under this subsection.

History: 1997 a. 27, 237.

(encl)

(Insert 2-1 is attached.)

INSERT 5-1:

(i) Recognizing its moral obligation to do so, the legislature expresses its expectation and aspiration that, if the legislature reduces the rate of the petroleum inspection fee and if the funds in the petroleum inspection fund are insufficient to pay the principal and interest on the revenue obligations issued under subch. II or IV of ch. 18 pursuant to this subsection, the legislature shall make an appropriation from the general fund sufficient to pay the principal and interest on the obligations.

Insert 5-2

Section #. 281.59 (4) (b) of the statutes is amended to read:

18.561 ✓

281.59 (4) (b) The department of administration may, under s. ~~18.56~~ (5) and (9) (j), deposit in a separate and distinct fund in the state treasury or in an account maintained by a trustee outside the state treasury, any portion of the revenues derived under s. 25.43 (1). The revenues deposited with a trustee outside the state treasury are the trustee's revenues in accordance with the agreement between this state and the trustee or in accordance with the resolution pledging the revenues to the repayment of revenue obligations issued under this subsection.

History: 1989 a. 366 ss. 40, 63, 65, 66, 97, 99, 106, 108 to 110, 115; 1991 a. 32, 39, 189, 315; 1993 a. 16; 1995 a. 27; 1995 a. 227 s. 426; Stats. 1995 s. 281.59; 1995 a. 452; 1997 a. 27, 237.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1432/1dn

KSH::

KMG

Please review the draft carefully to ensure that it is consistent with your intent. In particular, please consider the following:

1. I based the ch. 18 changes on the special fund obligation draft that I did for you last session. This uses much the same language as Reed, but puts the draft in proper drafting form and fixes the necessary cross-references. There is one significant substantive difference between Reed's language and the special fund obligation draft from last session. The special fund language in s. 18.562 in last session's draft differs from the language Reed provided. I went with the language from last session, rather than Reed's suggested language, because Reed's language seemed to assume some things that weren't necessarily stated. For example, s. 18.562 (2) talks about obligations secured by the redemption fund, but doesn't appear to have language creating the security interest in the fund. (Even if this will be done in the authorizing resolution, the authorizing resolution is not required by statute to grant a security interest, and the statutes should not assume something that may not be the case.) For this reason, at least for purposes of this draft, I left in the language that ~~had been~~ in s. 18.562 last session. If any part of this language is inconsistent with your intent, please let me know. *was*

2. With respect to the legislative pledge, I tried to track existing moral obligation language. If the language in s. 101.143 (9m) is inconsistent with your intent, please let me know.

3. With respect to Reed's first comment: Do existing appropriations of the petroleum inspection fund have to be modified? Although I understand the concern, I don't know *that* amendments are needed. For example, there are numerous sum sufficient *repayment* appropriations from the general fund for bond principal and interest; the other appropriations from the general fund don't each provide that they may be used only to the extent that there are sufficient funds in the general fund to pay off the general obligation bonds. I believe the situation is similar with the transportation fund. *will* If you want *will* to create some sort of priority language, you ~~would~~ need to address the issue of exactly when the other appropriation could be drawn upon *from* i.e., would you wait *until* the end of each calendar quarter to see how much is left over after paying principal and interest to determine what could be spent *from* for the other appropriations? Let me know what you think.

4. With respect to Reed's second comment: Should we repeal and ~~re~~enact the petroleum inspection fee to create a closer nexus between the fee and PECFA? This

is, I suppose, a possibility. I am unsure how much this would matter to a court. If it is simply a matter of repealing and recreating the existing arrangement, I'm not sure that such an action would be given much weight. To do so would seem to elevate form over substance. The safest way create more of a nexus between the fee and the PECFA program would seem to be to "split" the existing petroleum inspection fee into a PECFA fee (which would go only to PECFA) and a petroleum inspection fee (which would go to the other programs funded by the inspection fee). If you want to go this route, let me know how the fee should be split.

5. With respect to Reed's third comment: The petroleum inspection fee may be recharacterized as an excise tax. I think the fee is an excise tax, regardless of it being called a fee. I haven't done a whole lot of PECFA drafting (Becky Tradewell does these drafts), but it is my understanding the the fee has long since ceased to only cover the costs of petroleum inspections.

As you may know, I am transitioning my drafting responsibilities in the area of state finance to another attorney in the office, Rick Champagne. I will be in the office on Monday and Tuesday of next week (1/25 and 1/26), but hope to be able to be out of the office on Wednesday (1/27) at a conference and hope to be able to be out of town from Thursday afternoon (1/28) until Sunday morning (1/31). I have gone over the draft with Rick please feel free to contact him at 266-9930 in my absence. Thank you.



K. Scott Hubli
Administrative Services Manager
266-0135

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Amended stats. w/stats.

1 (u), 25.17 (1) (es), 25.95, 77.52 (1g), 77.52 (2) (b), 77.53 (1g) and 775.045 of the
2 statutes; **relating to:** the creation of an extraordinary judgment payment
3 program, granting bonding authority and making appropriations.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
For further information see the **state** fiscal estimate, which will be printed as
an appendix to this bill.

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

SECTION 1. 13.485 (2) of the statutes is amended to read:

13.485 (2) The building commission may, under s. ~~18.56~~ 18.561 (5) and (9) (j),
deposit in a separate and distinct fund, outside the state treasury, in an account
maintained by a trustee, fees and charges derived from the facilities or from
agreements entered into under sub. (4). The fees and charges deposited are the
trustee's moneys in accordance with the agreement between this state and the
trustee or in accordance with the resolution pledging the fees and charges to the
repayment of revenue obligations issued under this section.

SECTION 2. 18.51 of the statutes is amended to read:

18.51 Provisions applicable. The following sections apply to this
subchapter, except that all references to "public debt" or "debt" are deemed shall be
read to refer to a "revenue obligation" and all references to "evidences of
indebtedness" shall be read to refer to "evidences of revenue obligations": ss. 18.02,
18.03, 18.06 (8), 18.07, 18.10 (1), (2), (4) to (9) and (11) and 18.17.

SECTION 3. 18.52 (2m) (intro.) of the statutes is created to read:

Insert
2-1

WPO: Keep Sec 1
in this Insert.

1 18.52 (2m) (intro.) “Enterprise obligation” means every undertaking by the
2 state to repay a certain amount of borrowed money that is all of the following:

3 **SECTION 4.** 18.52 (5) (intro.) of the statutes is renumbered 18.52 (5) and
4 amended to read:

5 18.52 (5) “Revenue obligation” means ~~every undertaking by the state to repay~~
6 ~~a certain amount of borrowed money which is:~~ an enterprise obligation or a special
7 fund obligation.

8 **SECTION 5.** 18.52 (5) (a) of the statutes is renumbered 18.52 (2m) (a) and
9 amended to read:

10 18.52 (2m) (a) Created for the purpose of purchasing, acquiring, leasing,
11 constructing, extending, expanding, adding to, improving, conducting, controlling,
12 operating or managing a revenue-producing enterprise or program;.

13 **SECTION 6.** 18.52 (5) (b) of the statutes is renumbered 18.52 (2m) (b) and
14 amended to read:

15 18.52 (2m) (b) Payable solely from and secured solely by the property or income
16 or both of the enterprise or program; ~~and.~~

17 **SECTION 7.** 18.52 (5) (c) of the statutes is renumbered 18.52 (2m) (c).

18 **SECTION 8.** 18.52 (7) of the statutes is created to read:

19 18.52 (7) “Special fund obligation” means every undertaking by the state to
20 repay a certain amount of borrowed money which is all of the following:

21 (a) Payable exclusively from a special fund consisting of fees, penalties or excise
22 taxes.

23 (b) Not public debt under s. 18.01 (4).

24 **SECTION 9.** 18.52 (8) of the statutes is created to read:

SECTION 9

1 18.52 (8) "Special fund program" means a state program with respect to which
2 the legislature has determined that financing with special fund obligations is
3 appropriate and will serve a public purpose.

4 **SECTION 10.** 18.53 (3) of the statutes is renumbered 18.53 (3) (intro.) and
5 amended to read:

6 18.53 (3) (intro.) The commission shall authorize money to be borrowed and
7 evidences of revenue obligation to be issued therefor up to the amounts specified by
8 the legislature to purchase, acquire, lease, construct, extend, expand, add to,
9 improve, conduct, control, operate or manage such revenue producing enterprises
10 or programs as are specified by the legislature as the funds are required. The
11 requirements for funds shall be established by the state department or agency head
12 carrying out program responsibilities for which the revenue obligations have been
13 authorized by the legislature, but shall not exceed the following:

14 **SECTION 11.** 18.53 (3) (a) and (b) of the statutes are created to read:

15 18.53 (3) (a) In the case of enterprise obligations, the amounts specified by the
16 legislature to purchase, acquire, lease, construct, extend, expand, add to, improve,
17 conduct, control, operate or manage such revenue-producing enterprises or
18 programs as are specified by the legislature.

19 (b) In the case of special fund obligations, the amount specified by the
20 legislature for such expenditures to be paid from special fund obligations.

21 **SECTION 12.** 18.56 (1) of the statutes is renumbered 18.56 and amended to read:

22 **18.56 Revenue bonds.** The commission may authorize, for any of the
23 purposes described in s. 18.53 (3), the issuance of ~~revenue obligation bonds~~. The
24 ~~bonds~~ shall mature at any time not exceeding 50 years from the date thereof as the
25 commission shall determine. The ~~bonds~~ shall be payable only out of the redemption

obligations

bonds obligations
bold

revenue obligations

Revenue obligation

1 fund provided under sub. s. 18.561 (5) or 18.562 (2) and each ~~bond~~ shall contain on
2 its face a statement to that effect. ~~Any such bonds~~ may contain a provision
3 authorizing redemption, in whole or in part, at stipulated prices, at the option of the
4 commission and shall provide the method of redeeming the ~~bonds~~. The state and a
5 ~~contracting party may provide in any contract for purchasing or acquiring a~~
6 ~~revenue producing enterprise or program, that payment shall be made in such~~
7 ~~bonds.~~

A revenue obligation

obligations

8 SECTION 13. 18.56 (2) to (6) of the statutes are renumbered 18.561 (2) to (6) and
9 amended to read:

ENTERPRISE OBLIGATION HOLDERS

10 18.561 (2) ~~(TITLE) SECURITY INTEREST OF BONDHOLDERS~~ There shall be a mortgage
11 lien upon or security interest in the income and property of each revenue-producing
12 enterprise or program to the holders of the related ~~enterprise obligation~~ ~~bonds~~ and
13 to the holders of the coupons of the ~~bonds~~. The note or other instrument evidencing

(1)

14 the security interest of a ~~bondholder~~ in a loan made or purchased with revenue
15 obligation ~~enterprise obligation~~ ~~bonds~~ shall constitute a statutory lien on the
16 ~~revenue obligations~~ loan. No physical delivery, recordation or other action is
17 required to perfect the security interest. The revenue-producing enterprise or
18 program shall remain subject to the lien until provision for payment in full of the
19 principal and interest of the ~~enterprise obligation~~ ~~bonds~~ has been made. Any holder

enterprise obligations

20 of such ~~bonds~~ or attached coupons may either at law or in equity protect and enforce
21 the lien and compel performance of all duties required by this section. If there is any
22 default in the payment of the principal or interest of any of such ~~bonds~~, any court
23 having jurisdiction of the action may appoint a receiver to administer the
24 revenue-producing enterprise or program on behalf of the state and the ~~bondholders~~,
25 with power to charge and collect rates sufficient to provide for the payment of the

holders of the obligations

obligations

means of an enterprise obligation

1 operating expenses and also to pay any ~~bonds~~ or enterprise obligations outstanding
 2 against the revenue-producing enterprise or program, and to apply the income and
 3 revenues thereof in conformity with this subchapter and the authorizing resolution,
 4 or the court may declare the whole amount of the ~~bonds~~ obligations due and payable,
 5 if such relief is requested, and may order and direct the sale of the
 6 revenue-producing enterprise or program. Under any sale so ordered, the purchaser
 7 shall be vested with an indeterminate permit to maintain and operate the
 8 revenue-producing enterprise or program. The legislature may provide for
 9 additions, extensions and improvements to a revenue-producing enterprise or
 10 program to be financed by additional issues of ~~enterprise obligation bonds~~ enterprise obligation bonds as
 11 provided by this section. Such additional issues of ~~bonds~~ shall be subordinate to all
 12 prior related issues of ~~bonds~~ which may have been made under this section, unless
 13 the legislature, in the statute authorizing the initial issue of ~~bonds~~, permits the issue
 14 of additional ~~bonds~~ on a parity therewith. obligations

15 (3) ~~title~~ DEDICATION OF REVENUES. As accurately as possible in advance, the
 16 commission and the state department or agency carrying out program
 17 responsibilities for which ~~enterprise obligation bonds~~ enterprise obligation bonds are to be issued shall
 18 determine, and the commission shall fix in the authorizing resolution for such ~~bonds~~:
 19 the proportion of the revenues of the revenue-producing enterprise or program
 20 which shall be necessary for the reasonable and proper operation and maintenance
 21 thereof; the proportion of the revenues which shall be set aside as a proper and
 22 adequate replacement and reserve fund; and the proportion of the revenues which
 23 shall be set aside and applied to the payment of the principal and interest of the
 24 ~~enterprise obligation bonds~~ enterprise obligation bonds and shall provide that the revenues be set aside in
 25 separate funds. At any time after one year's operation, the state department or

1 agency and the commission may recompute the proportion of the revenues which
2 shall be assignable under this subsection based upon the experience of operation or
3 upon the basis of further financing.

4 (4) ~~THE~~ REPLACEMENT AND RESERVE FUND. The proportion set aside to the
5 replacement and reserve fund shall be available and shall be used, whenever
6 necessary, to restore any deficiency in the redemption fund for the payment of the
7 principal and interest due on enterprise obligation bonds and for the creation and
8 maintenance of any reserves established by the authorizing resolution to secure such
9 payments. At any time when the redemption fund is sufficient for said purposes,
10 moneys in the replacement and reserve fund may, subject to available
11 appropriations, be expended either in the revenue-producing enterprise or program
12 or in new constructions, extensions or additions. Any accumulations of the
13 replacement and reserve fund may be invested as provided in this subchapter, and
14 if invested, the income from the investment shall be carried in the replacement and
15 reserve fund.

16 (5) ~~THE~~ REDEMPTION FUND. The proportion which shall be set aside for the
17 payment of the principal and interest of such on the enterprise obligation bonds
18 shall from month to month as they accrue and are received, be set apart and paid into
19 a separate fund in the treasury or in an account maintained by a trustee under sub.
20 (9) (j) to be identified as "the ... redemption fund". Each redemption fund shall be
21 expended, and all moneys from time to time on hand therein are irrevocably
22 appropriated, in sums sufficient, only for the payment of principal and interest on
23 the revenue enterprise obligations giving rise to it and premium, if any, due upon
24 refunding of any such obligations. Moneys in the redemption funds may be
25 commingled only for the purpose of investment with other public funds, but they

SECTION 13

1 shall be invested only in investment instruments permitted in s. 25.17 (3) (dr). All
2 such investments shall be the exclusive property of the fund and all earnings on or
3 income from such investments shall be credited to the fund.

4 (6) ~~Article~~ REDEMPTION FUND SURPLUS. If any surplus is accumulated in any of
5 the redemption funds, subject to any contract rights vested in holders of ~~revenue~~
6 enterprise obligations secured thereby, it shall be paid over to the treasury.

7 SECTION 14. 18.56 (7) and (8) of the statutes are renumbered 18.561 (7) and (8).

8 SECTION 15. 18.56 (9) (intro.) of the statutes is renumbered 18.561 (9) (intro.)
9 and amended to read:

10 18.561 (9) ~~Article~~ AUTHORIZING RESOLUTION. (intro.) The commission may
11 provide in the authorizing resolution for enterprise obligation bonds or by
12 subsequent action all things necessary to carry into effect this section. Any S
13 authorizing resolution shall constitute a contract with the holder of any bonds issued
14 pursuant to such resolution. Any authorizing resolution may contain such
15 provisions or covenants, without limiting the generality of the power to adopt the
16 resolution, as is deemed necessary or desirable for the security of bondholders or the
17 marketability of the enterprise obligation bonds, including but not limited to
18 provisions as to: S

19 SECTION 16. 18.56 (9) (a) to (j) of the statutes are renumbered 18.561 (9) (a) to
20 (j). obligations
the holders of

21 SECTION 17. 18.56 (10) of the statutes is renumbered 18.561 (10) and amended
22 to read: obligations

23 18.561 (10) ~~Article~~ SINKING FUND. The authorizing resolution may set apart
24 enterprise obligation bonds the par value of which are equal to the principal amount
25 of any secured obligation or charge subject to which a revenue-producing enterprise S

1 or program is to be purchased or acquired, and shall set aside in a sinking fund from
2 the income of the revenue-producing enterprise or program, a sum sufficient to
3 comply with the requirements of the instrument creating the security, ~~or if.~~ If the
4 instrument does not make any provision ~~therefor~~ for a sinking fund, the resolution
5 shall fix and determine the amount ~~which~~ that shall be set aside into ~~such~~ the sinking
6 fund from month to month for interest on the secured obligation or charge, and a
7 fixed amount or proportion not exceeding a stated sum, which shall be not less than
8 one percent of the principal, to be set aside into the fund to pay the principal of the
9 secured obligation or charge. Any balance in the fund after satisfying the secured
10 obligations or charge, shall be transferred to the redemption fund. ~~Bonds~~
11 ~~Enterprise obligation bonds~~ set aside for the secured obligation or charge may, from
12 time to time, be issued to an amount sufficient with the amount then in the sinking
13 fund, to pay and retire the secured obligation or charge or any portion thereof. The
14 ~~enterprise obligation bonds~~ may be issued in exchange for or satisfaction of the
15 secured obligation or charge, or may be sold in the manner provided in this
16 subchapter, and the proceeds applied in payment of the same at maturity or before
17 maturity by agreement with the holder. The commission and the owners of any
18 revenue-producing enterprise or program acquired or purchased may, upon such
19 terms and conditions as are satisfactory, contract that ~~bonds~~ to provide for the
20 discharge of the secured obligation or charge, or for the whole purchase price shall
21 be deposited with a trustee or depository and released from the deposit from time to
22 time on such terms and conditions as are necessary to secure the payment of the
23 secured obligation or charge.

24 **SECTION 18.** 18.561 (title) of the statutes is created to read:

25 **18.561 (title) Enterprise obligations.**

SECTION 19

1 **SECTION 19.** 18.561 (1) of the statutes is created to read:

2 18.561 (1) **PAYMENT WITH REVENUE OBLIGATIONS.** The state and a contracting
3 party may provide, in any contract for purchasing or acquiring a revenue-producing
4 enterprise or program, that payment shall be made in revenue obligations.

5 **SECTION 20.** 18.561 (7) (title) of the statutes is created to read:

6 18.561 (7) (title) **PAYMENT FOR SERVICES.**

7 **SECTION 21.** 18.561 (8) (title) of the statutes is created to read:

8 18.561 (8) (title) **RATES FOR SERVICES.**

9 **SECTION 22.** 18.562 of the statutes is created to read:

10 **18.562 Special fund obligations. (1) SECURITY INTEREST IN SPECIAL FUND.** A
11 holder of special fund obligations shall have a security interest in the special fund
12 out of which the special fund obligations will be repaid. No physical delivery,
13 recordation or other action is required to perfect the security interest. A holder of
14 special fund obligations may either at law or in equity protect and enforce the
15 security interest and compel performance of all duties required by this section.

16 **(2) REDEMPTION FUND.** The authorizing resolution shall specify the proportion
17 of special fund program revenues which are to be deposited in the special fund that
18 is set aside for the payment of the principal and interest of the special fund
19 obligations. These revenues shall be paid into a separate fund in the treasury or in
20 an account maintained by a trustee to be identified as “the ... redemption fund”. Each
21 redemption fund shall be expended, and all moneys from time to time on hand
22 therein are irrevocably appropriated, in sums sufficient, only for the payment of
23 principal and interest on the special fund obligations giving rise to it and premium,
24 if any, due upon refunding of any such obligations. Moneys in the redemption funds
25 may be commingled only for the purpose of investment with other public funds, but

1 they shall be invested only in investment instruments permitted in s. 25.17 (3) (dr).
2 All such investments shall be the exclusive property of the fund and all earnings on
3 or income from such investments shall be credited to the fund.

4 (3) AUTHORIZING RESOLUTION. The commission may provide in the authorizing
5 resolution for special fund obligations or by subsequent action all things necessary
6 to carry into effect this section. Any authorizing resolution shall constitute a
7 contract with the holder of any special fund obligation ^{or} bonds issued pursuant to
8 such resolution. ^{or} authorizing resolution may contain such provisions or
9 covenants, without limiting the generality of the power to adopt the resolution, as
10 are deemed necessary or desirable for the security of bondholders or the
11 marketability of the bonds. special fund obligations of the obligations

12 SECTION 23. 18.57 (title) of the statutes is repealed and recreated to read:

13 18.57 (title) **Funds established for revenue obligations.**

14 SECTION 24. 18.57 (1) of the statutes is amended to read:

15 18.57 (1) A separate and distinct fund shall be established in the state treasury
16 or in an account maintained by a trustee under s. ~~18.56~~ 18.561 (9) (j) with respect to
17 each revenue-producing enterprise or program the income from which is to be
18 applied to the payment of any revenue enterprise obligation. A separate and distinct
19 fund shall be established in the state treasury or in an account maintained by a
20 trustee under s. 18.562 (2) with respect to each special fund. All moneys resulting
21 from the issuance of evidences of revenue obligation shall be credited to the
22 appropriate fund or applied for refunding or note renewal purposes, except that
23 moneys which represent premium or accrued interest received on the issuance of
24 evidences shall be credited to the appropriate redemption fund.

with respect to

X or any special fund that is created by the imposition
of fees, penalties or excise taxes and is applied to
the payment of special fund obligations

1 **SECTION 25.** 18.57 (4) of the statutes is renumbered 18.57 (4) (intro.) and
2 amended to read:

3 18.57 (4) (intro.) If, after all outstanding related revenue obligations have been
4 paid or payment provided for, moneys remain in ~~any such a fund, they created under~~
5 sub. (1), all of the following shall occur:

6 (a) If the fund created under sub. (1) is in an account maintained by a trustee
7 under s. 18.561 (9) (j) or 18.562 (2), the moneys shall be paid over to the treasury and
8 the

9 (c) The fund created under sub. (1) shall be closed.

10 **SECTION 26.** 18.58 (1) of the statutes is amended to read:

11 18.58 (1) MANAGEMENT OF FUNDS AND RECORDS. All funds established under this
12 subchapter which are deposited in the state treasury shall be managed as provided
13 by law for other state funds, subject to any contract rights vested in holders of
14 evidences of revenue obligation secured by such fund. The department of
15 administration shall maintain full and correct records of each fund. The legislative
16 audit bureau shall audit each fund as of January 1 of each year reconciling all
17 transactions and showing the fair market value of all property on hand. All records
18 and audits shall be public documents. All funds established under this subchapter
19 which are deposited with a trustee under s. ~~18.56~~ 18.561 (9) (j) or 18.562 (2) shall be
20 managed in accordance with resolutions authorizing the issuance of revenue
21 obligations, agreements between the commission and the trustee and any contract
22 rights vested in holders of evidence of revenue obligations secured by such fund.

23 **SECTION 27.** 18.60 (5) of the statutes is renumbered 18.60 (5) (intro.) and
24 amended to read:

1 18.60 (5) (intro.) All of the following provisions of ~~s. 18.56~~ that are not
2 inconsistent with the express provisions of this section shall apply to refunding
3 bonds, except that the maximum permissible term shall be 50 years from the date
4 of original issue of the oldest note or bond issue being refunded.:

5 **SECTION 28.** 18.60 (5) (a) to (c) of the statutes are created to read:

6 18.60 (5) (a) Section 18.56.

7 (b) In the case of enterprise obligations, s. 18.561.

8 (c) In the case of special fund obligations, s. 18.562.

(end insert
2-1)

9 **SECTION 29.** 20.505 (2) (q) of the statutes is created to read:

10 20.505 (2) (q) *Extraordinary judgment payment fund.* From the extraordinary
11 judgment payment fund, all moneys received from the proceeds of revenue
12 obligations issued under subch. II or IV of ch. 18, as authorized under s. 775.045 (5),
13 to provide for expenses of issuance and management of the revenue obligations and
14 to pay amounts meeting the requirements of s. 775.045 (4). Estimated
15 disbursements under this paragraph shall not be included in the schedule under s.
16 20.005.

17 **SECTION 30.** 20.505 (2) (u) of the statutes is created to read:

18 20.505 (2) (u) *Principal repayment and interest — extraordinary judgment*
19 *payment program revenue obligation repayment.* From the fund in the state treasury
20 created under s. 18.57 (1) for the extraordinary judgment payment program under
21 s. 775.045, all moneys received from the surtaxes under ss. 77.52 (1g) and (2) (b) and
22 77.53 (1g) and all moneys deposited in the fund under s. 775.045 (5) (b), for the
23 purpose of the retirement of revenue obligations, for providing for reserves and for
24 operations relating to the management and retirement of revenue obligations issued
25 under subch. II or IV of ch. 18, as authorized under s. 775.045 (5). All moneys

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1432/1dn
KSH:kmg:jf

January 24, 1999

Please review the draft carefully to ensure that it is consistent with your intent. In particular, please consider the following:

1. I based the ch. 18 changes on the special fund obligation draft that I did for you last session. This uses much the same language as Reed, but puts the draft in proper drafting form and fixes the necessary cross-references. There is one significant substantive difference between Reed's language and the special fund obligation draft from last session. The special fund language in s. 18.562 in last session's draft differs from the language Reed provided. I went with the language from last session, rather than Reed's suggested language, because Reed's language seemed to assume some things that weren't necessarily stated. For example, s. 18.562 (2) talks about obligations secured by the redemption fund, but doesn't appear to have language creating the security interest in the fund. (Even if this will be done in the authorizing resolution, the authorizing resolution is not required by statute to grant a security interest, and the statutes should not assume something that may not be the case.) For this reason, at least for purposes of this draft, I left in the language that was in s. 18.562 last session. If any part of this language is inconsistent with your intent, please let me know.

2. With respect to the legislative pledge, I tried to track existing moral obligation language. If the language in s. 101.143 (9m) is inconsistent with your intent, please let me know.

3. With respect to Reed's first comment: Do existing appropriations of the petroleum inspection fund have to be modified? Although I understand the concern, I don't know that amendments are needed. For example, there are numerous sum sufficient appropriations from the general fund for bond principal and interest repayment; the other appropriations from the general fund don't each provide that they may be used only to the extent that there are sufficient funds in the general fund to pay off the general obligation bonds. I believe the situation is similar with the transportation fund. If you want to create some sort of priority language, you will need to address the issue of exactly when the other appropriation could be drawn upon; i.e., would you wait until the end of each calendar quarter to see how much is left over after paying principal and interest to determine what could be spent from the other appropriations? Let me know what you think.

4. With respect to Reed's second comment: Should we repeal and reenact the petroleum inspection fee to create a closer nexus between the fee and PECFA? This

is, I suppose, a possibility. I am unsure how much this would matter to a court. If it is simply a matter of repealing and recreating the existing arrangement, I'm not sure that such an action would be given much weight. To do so would seem to elevate form over substance. The safest way create more of a nexus between the fee and the PECFA program would seem to be to "split" the existing petroleum inspection fee into a PECFA fee (which would go only to PECFA) and a petroleum inspection fee (which would go to the other programs funded by the inspection fee). If you want to go this route, let me know how the fee should be split.

5. With respect to Reed's third comment: The petroleum inspection fee may be recharacterized as an excise tax. I think the fee is an excise tax, regardless of it being called a fee. I haven't done a whole lot of PECFA drafting (Becky Tradewell does these drafts), but it is my understanding the the fee has long since ceased to only cover the costs of petroleum inspections.

As you may know, I am transitioning my drafting responsibilities in the area of state finance to another attorney in the office, Rick Champagne. I will be in the office on Monday and Tuesday of next week (1/25 and 1/26), but hope to be able to be out of the office on Wednesday (1/27) at a conference and hope to be able to be out of town from Thursday afternoon (1/28) until Sunday morning (1/31). I have gone over the draft with Rick; please feel free to contact him at 266-9930 in my absence. Thank you.

K. Scott Hubli
Administrative Services Manager
266-0135