



*LD-Note*  
State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1528/1  
RC/PK/RM/JTK/RN:/:.....

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CS

**2001 BILL**

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1 **AN ACT**...; relating to: the sale of the state's right to receive payments under the  
2 Attorneys General Master Tobacco Settlement Agreement of November 23,  
3 1998; authorizing the Wisconsin Health and Educational Facilities Authority  
4 to purchase the state's right to receive such payments and to issue bonds for the  
5 purchase; and making an appropriation.

***Analysis by the Legislative Reference Bureau***

On November 23, 1998, Wisconsin and other states agreed to a settlement of lawsuits brought against the major U.S. tobacco product manufacturers (the tobacco settlement agreement). Under the tobacco settlement agreement, the state is to receive annual payments from the U.S. tobacco product manufacturers in perpetuity. This bill authorizes the secretary of administration to sell the state's right to receive payments under the tobacco settlement agreement and provides that the proceeds from this sale are to be deposited in the permanent fund, a nonlapsible trust fund created in the bill.

Under the bill, *STET* ~~annually~~ the secretary of administration must transfer a certain amount of moneys in the permanent trust fund to the general fund according to a calculation made by the investment board. The amount available for transfer as calculated by the investment board, beginning in 2004, must equal the sum of the following:

1. An amount that equals 8.5% of the market value of the investments in the permanent fund on July 1 ~~of each year~~.

*in each year*

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2. All proceeds of, and investment earnings on, investments of the permanent fund made at the direction of the secretary of administration that are received in the preceding fiscal year.

3. All other amounts identified by the secretary of administration as payments of residual interests to the state from the sale of the state's right to receive moneys under tobacco settlement agreement that are received in the preceding fiscal year.

The bill provides that the investment board must invest the assets of the permanent fund in any investment that is an authorized investment for assets in the fixed retirement investment trust and the variable retirement trust. In addition, the bill requires the investment board to invest certain of the assets in the permanent fund according to the terms and conditions specified by the secretary of administration; the bill specifically provides that the investment board is not subject to its statutory standard of responsibility when it makes such an investment.

For 2002 and 2003, the amount that is required to be transferred from the permanent trust fund to the general fund is the amount that the state would have received as payments under the tobacco settlement agreement had the state's right to receive the payments not been sold.

The bill also provides that, in fiscal years 2001-02 and 2002-03, the first \$23,500,000 in payments from the tobacco settlement agreement are deposited in the tobacco control fund and are appropriated to the tobacco control board for distribution to specific smoking cessation and prevention programs and for grants for smoking cessation education, research, and enforcement programs. In the event, the payments under the tobacco settlement ~~are~~ sold before the first \$23,500,000 is received in fiscal years 2001-02, the bill requires that a necessary amount be transferred from the general fund to the tobacco control fund to make up any shortfall.

The bill also authorizes the secretary of administration to organize one or more nonstock corporations or limited liability companies for any purpose related to the sale of the state's right to receive payments under the tobacco settlement agreement.

This bill provides that, with certain exceptions, Article 9 of this state's version of the Uniform Commercial Code governs the sale, assignment, and transfer of payments under the tobacco settlement agreement and the granting and enforcing of interests in those payments. Article 9 generally governs similar transactions. Under the bill, if a person obtains, evidences, and provides notice of an interest in the tobacco settlement agreement payments under the procedure specified in the bill, that interest is enforceable against the debtor, any assignee or grantee, and all third parties, including creditors under any lien obtained by judicial proceedings. In addition, the interest is superior to all other liens against the tobacco settlement agreement payments that arise after the date on which the interest attaches to those payments.

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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. 16.519 of the statutes is created to read:

16.519 ~~Transfers from the permanent fund.~~ (1) In this section, "tobacco settlement agreement" means the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998.

(2) Annually, the secretary shall transfer from the permanent fund to the general fund an amount equal to the amount calculated by the investment board under s. 25.17 (16).

(3) If the state has not received in fiscal year 2001-02 at least \$23,500,000 under the tobacco settlement agreement, because the secretary, under s. 16.63, has sold the state's right to receive any of the payments under the tobacco settlement agreement, the secretary shall transfer from the general fund to the tobacco control fund an amount equal to \$23,500,000 less any payments received under the tobacco settlement agreement and deposited in the tobacco control fund in that fiscal year.

(4) If the state has not received in fiscal year 2002-03 at least \$23,500,000 under the tobacco settlement agreement, because the secretary, under s. 16.63, has sold the state's right to receive any of the payments under the tobacco settlement agreement, the secretary shall transfer from the general fund to the tobacco control fund an amount equal to \$23,500,000 less any payments received under the tobacco settlement agreement and deposited in the tobacco control fund in that fiscal year.

SECTION 2. 16.63 of the statutes is created to read:

(B) Fund transfers relating to tobacco settlement agreement

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**SECTION 2**

1           **16.63 Sale of state's rights to tobacco settlement agreement payments.**

2           (1) In this section:

3           (a) "Purchaser" means any person who has purchased the state's right to  
4 receive any of the payments under the tobacco settlement agreement.

5           (b) "Tobacco settlement agreement" means the Attorneys General Master  
6 Tobacco Settlement Agreement of November 23, 1998.

7           (c) "Tobacco settlement revenues" means all general intangibles consisting of  
8 the right to receive settlement payments arising from or pursuant to the tobacco  
9 settlement agreement and all direct or indirect proceeds of that agreement.

10          (2) The secretary may sell for cash or other consideration the state's right to  
11 receive any of the payments under the tobacco settlement agreement.

12          (3) The secretary may organize one or more nonstock corporations under ch.  
13 181 or limited liability companies under ch. 183 for any purpose related to the sale  
14 of the state's right to receive any of the payments under the tobacco settlement  
15 agreement and may take any action necessary to facilitate and complete the sale.

16          (4) (a) Tobacco settlement revenues may not be deemed proceeds of any  
17 property which is not tobacco settlement revenues.

18          (b) Except as otherwise provided in this subsection, the sale, transfer, and  
19 assignment of tobacco settlement revenues and the granting, perfection, and  
20 enforcement of ownership interests and security interests in tobacco settlement  
21 revenues are governed by ch. 409. Notwithstanding ch. 409, with regard to creating,  
22 perfecting, and enforcing a valid security interest in tobacco settlement revenues:

23           1. If this state or the Wisconsin health and educational facilities authority is  
24 the debtor in the transaction, the proper place to file the required financing  
25 statement to perfect the security interest is the department of financial institutions.

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1           2. The description of collateral in the required financing statement is sufficient  
2 if it describes the collateral as general intangibles consisting of the right to receive  
3 settlement payments arising from or pursuant to the tobacco settlement agreement  
4 and all proceeds of that agreement. ✓

5           3. A security interest perfected under this paragraph is enforceable against the  
6 debtor, any assignee or grantee, and all third parties, including creditors under any  
7 lien obtained by judicial proceedings, subject only to the rights of any third parties  
8 holding security interests in the tobacco settlement revenues previously perfected  
9 under this paragraph. Unless the applicable security agreement provides otherwise,  
10 a perfected security interest in the tobacco settlement revenues is a continuously  
11 perfected security interest in all tobacco settlement revenues existing on the date of  
12 the agreement or arising after the date of the agreement. A security interest  
13 perfected under this paragraph has priority over any other lien, including any lien  
14 obtained by judicial proceedings, which subsequently attaches to the tobacco  
15 settlement revenues.

16           4. The priority of a security interest created under this paragraph is not ✓  
17 affected by the commingling of proceeds arising from the tobacco settlement  
18 revenues with other amounts.

19           (c) 1. A sale, assignment, or other transfer of any tobacco settlement revenues  
20 is an absolute transfer of the seller's right, title, and interest in, to, and under the  
21 tobacco settlement revenues, if the documents governing the transaction expressly  
22 state that the transaction is a sale or other absolute transfer. After such a  
23 transaction, the tobacco settlement revenues are not subject to any claims of the  
24 seller or the seller's creditors.

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**SECTION 2**

1           2. The characterization of any transfer as an absolute transfer under subd. 1.  
2 may be considered in determining whether the transfer is deemed to be a sale for tax  
3 purposes.

4           3. The characterization of any transfer as an absolute transfer under subd. 1  
5 and the corresponding characterization of the purchaser's property interest is not  
6 affected by the commingling of proceeds arising with respect to the tobacco  
7 settlement revenues with other amounts; the retention by the seller of a partial or  
8 residual interest, including an equity interest, in the tobacco settlement revenues,  
9 whether direct or indirect, or whether subordinate or otherwise; the sale of only a  
10 portion of the tobacco settlement revenues or an undivided interest in the tobacco  
11 settlement revenues; any recourse that the purchaser or its assignees may have  
12 against the seller; whether the seller is responsible for collecting payments due  
13 under the tobacco settlement revenues or for otherwise enforcing any of the tobacco  
14 settlement revenues or retains legal title to the tobacco settlement revenues for the  
15 purpose of these collection activities; ~~and the~~ <sup>and the</sup> treatment of the transfer for tax  
16 purposes. A sale, assignment, or other transfer of tobacco settlement revenues shall  
17 be deemed perfected automatically as against third parties, including any judicial  
18 lien creditors, upon attachment.

19           (5) If the secretary sells the state's right to receive any of the payments under  
20 the tobacco settlement agreement, the state pledges to and agrees with any  
21 purchaser or subsequent transferee of the state's right to receive any of the payments  
22 under the tobacco settlement agreement that the state will not limit or alter its  
23 powers to fulfill the terms of the tobacco settlement agreement, nor will the state in  
24 any way impair the rights and remedies provided under the tobacco settlement  
25 agreement. The state also pledges to and agrees with any purchaser or subsequent

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1 transferee of the state's right to receive any of the payments under the tobacco  
 2 settlement agreement that the state will pay all costs and expenses in connection  
 3 with any action or proceeding brought by or on behalf of the purchaser or any  
 4 subsequent transferee related to the state's not fulfilling the terms of the tobacco  
 5 settlement agreement. The secretary may include this pledge and agreement of the  
 6 state in any contract that is entered into by the secretary under this section.

7 (6) If the secretary sells the state's right to receive any of the payments under  
 8 the tobacco settlement agreement, the state pledges to and agrees with any  
 9 purchaser or subsequent transferee of the state's right to receive any of the payments  
 10 under the tobacco settlement agreement that the state will not limit or alter the  
 11 powers of the secretary under this section until any contract that is entered into  
 12 under this section is fully performed, unless adequate provision is made by law for  
 13 the protection of the rights and remedies of the purchaser or any subsequent  
 14 transferee under the contract. The secretary may include this pledge and agreement  
 15 of the state in any contract that is entered into by the secretary under this section.

16 (8) This subsection shall govern all civil claims, suits, proceedings, and actions  
 17 against the state relating to the sale of the state's right to receive any of the payments  
 18 under the tobacco settlement agreement. If the state fails to comply with this section  
 19 or the terms of any agreement relating to the sale of the state's right to receive any  
 20 of the payments under the tobacco settlement agreement, an action to compel  
 21 compliance may be commenced against the state.

22 (9) Sections 16.007 and 775.01 do not apply to claims against the state under  
 23 sub. (8). If there is a final judgment against the state in such an action, the judgment  
 24 shall be paid as provided in s. 775.04 together with interest at the rate of 10% per

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**BILL****SECTION 2**

1 year from the date such payment was judged to have been due until the date of  
2 payment.

3 **SECTION 3.** 20.505 (1) (dm) of the statutes is created to read:

4 20.505 (1) (dm) *Sale of tobacco settlement payments.* A sum sufficient to pay  
5 the costs incurred by the secretary of administration in any sale of the state's right  
6 to receive any of the payments under the tobacco settlement agreement under s.  
7 16.63 (2) and in organizing any corporation or company under s. 16.63 (3).

8 **SECTION 4.** 20.876 of the statutes is created to read:

9 **20.876 Permanent fund.** (1) TRANSFERS FROM FUND. There is appropriated  
10 from the permanent fund to the general fund:

11 (a) *Permanent fund transfer to general fund.* A sum sufficient equal to the  
12 amount that is required to be transferred to the general fund under s. 16.519 (2).

13 **SECTION 5.** 25.14 (1) (a) 15. of the statutes is created to read:

14 25.14 (1) (a) 15. The permanent fund.

15 **SECTION 6.** 25.15 (2) (intro.) of the statutes is amended to read:

16 25.15 (2) STANDARD OF RESPONSIBILITY. (intro.) The Except as provided in s.  
17 25.17 (5m) (b), the standard of responsibility applied to the board when it invests  
18 money or property shall be all of the following:

19 History: 1983 a. 27; 1989 a. 31, 359; 1999 a. 83.

19 **SECTION 7.** 25.17 (1) (kr) of the statutes is created to read:

20 25.17 (1) (kr) Permanent fund (s. 25.69);

21 **SECTION 8.** 25.17 (5m) of the statutes is created to read:

22 25.17 (5m) (a) Invest any of the assets of the permanent fund in any investment  
23 that is an authorized investment for assets in the fixed retirement investment trust  
24 under sub. (4) or assets in the variable retirement investment trust under sub. (5).



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1 (b) 1. If directed by the secretary of administration, invest any of the assets in  
2 the permanent fund in any of the following:

3 a. Evidences of indebtedness, including subordinated obligations, that are  
4 secured by tobacco settlement revenues, as defined in s. 16.63 (1) (c), and that are  
5 issued by a corporation or company established under s. 16.63 (3) or 231.215 or by  
6 the Wisconsin health and educational facilities authority.

7 b. Certificates or other evidences of ownership interest in all or any portion of  
8 tobacco settlement revenues, as defined in s. 16.63 (1) (c).

9 2. If directed by the secretary of administration to make the investments under  
10 subd. 1., the board shall invest the assets under that subdivision subject to any terms  
11 and conditions specified by the secretary and shall not be subject to the standard of  
12 responsibility under s. 25.15 (2).

13 **SECTION 9.** 25.17 (16) of the statutes is created to read:

14 25.17 (16) (a) Annually, after July 1 but not later than December 31, calculate  
15 the amount of moneys that are available in the permanent fund for transfer to the  
16 general fund under s. 16.519. For the purpose of this calculation, moneys that are  
17 available in the permanent fund for transfer to the general fund shall equal the  
18 following:

19 1. In 2002, an amount equal to the tobacco settlement revenues, as specified  
20 in s. 20.005 (1) of the summary schedule of the biennial budget act or acts, less any  
21 payments under the Attorneys General Master Tobacco Settlement Agreement of  
22 November 23, 1998, that are received by the state in fiscal year 2001-02.

23 2. In 2003, an amount equal to the tobacco settlement revenues, as specified  
24 in s. 20.005 (1) of the summary schedule of the biennial budget act or acts, less any

**BILL**

**SECTION 9**

1 payments under the Attorneys General Master Tobacco Settlement Agreement of  
2 November 23, 1998, that are received by the state in fiscal year 2002-3.

3 3. In 2004, and each year thereafter, the sum of the following:

4 a. An amount that equals 8.5% of the market value of the investments in the  
5 permanent fund on July 1 of that year.

6 b. All proceeds of, and investment earnings on, investments of the permanent  
7 fund made at the direction of the secretary of administration under s. 25.17 (5m) (b)  
8 that are received in the preceding fiscal year.

9 c. All other amounts identified by the secretary of administration as payments  
10 of residual interests to the state from the sale of the state's right to receive moneys  
11 under the Attorneys General Master Tobacco Settlement Agreement of November  
12 23, 1998, that are received in the preceding fiscal year.

payments

13 (b) Annually, submit to the secretary of administration and to the chief clerk  
14 of each house, for distribution to the appropriate standing committees under s.  
15 13.172 (3), a report specifying the amount of moneys that are available in the  
16 permanent fund for transfer to the general fund under s. 16.519.

17 **SECTION 10.** 25.66 (1) of the statutes is amended to read:

18 25.66 (1) There is created a separate nonlapsible trust fund, known as the  
19 tobacco control fund, to consist of, in fiscal year ~~1999-2000~~ years 2001-02 and  
20 2002-03, the first \$23,500,000 of the moneys received under the Attorneys General  
21 Master Tobacco Settlement Agreement of November 23, 1998, in each of the fiscal  
22 years, except as provided in sub. (1m).

History: 1999 a. 9, 84.

23 **SECTION 11.** 25.66 (1m) of the statutes is created to read:

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1           25.66 (1m) If the state has not received in fiscal years 2001-02 and 2002-03  
 2 at least \$23,500,000 under the Attorneys General Master Tobacco Settlement  
 3 Agreement of November 23, 1998, because the secretary of administration, under s.  
 4 16.63, has sold the state's right to receive payments under the Agreement, the  
 5 tobacco control fund shall also consist of any moneys transferred to the tobacco  
 6 control fund from the general fund under 16.519 (3) and (4).

7           **SECTION 12.** 25.69 of the statutes is created to read:

8           **25.69 Permanent fund.** There is established a separate nonlapsible trust  
 9 fund designated as the permanent fund, consisting of all of the proceeds from the sale  
 10 of the state's right to receive ~~moneys~~ <sup>payments</sup> under the Attorneys General Master Tobacco  
 11 Settlement Agreement of November 23, 1998, and all investment earnings on the  
 12 proceeds. Moneys in the permanent fund shall be used only to make the transfers  
 13 required under s. 16.519 (2) and shall otherwise be preserved in perpetuity as a  
 14 permanent fund for the benefit of the people of this state.

Insert 11-14

15           **SECTION 13.** 231.01 (11) of the statutes is created to read:

16           231.01 (11) "Tobacco settlement agreement" has the meaning given in s. 16.63  
 17 (1) (b).

18           ~~**SECTION 14.** 231.03 (6) (g) of the statutes is created to read:~~

19           ~~231.03 (6) (g) Finance a purchase under sub. (20). Bonds issued under this~~  
 20 ~~paragraph shall be payable from, or secured by interests in, the state's right to~~  
 21 ~~receive payments under the tobacco settlement agreement and, notwithstanding s.~~  
 22 ~~231.08 (3), are not required to mature in 30 years or less from the date of issue.~~

23           **SECTION 15.** 231.03 (20) of the statutes is created to read:

24           231.03 (20) Purchase the state's right to receive any of the payments under the  
 25 tobacco settlement agreement, including the payment of any agreed-upon residual.

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SECTION 16. 231.09 of the statutes is amended to read:

2           **231.09 Bond security.** The authority may secure any bonds issued under this  
 3 chapter by a trust agreement, trust indenture, indenture of mortgage, or deed of  
 4 trust by and between the authority and one or more corporate trustees, which may  
 5 be any trust company or bank ~~in this state~~ having the powers of a trust company. The  
 6 bond resolution providing for the issuance of bonds so secured shall pledge the  
 7 revenues to be received by the authority as a result of the terms of the financing  
 8 referred to in the resolution, and may contain such provisions for protecting and  
 9 enforcing the rights and remedies of the bondholders as are reasonable and proper  
 10 and not in violation of law, including particularly such provisions as are specifically  
 11 authorized by this chapter to be included in any bond resolution of the authority, and  
 12 may restrict the individual right of action by bondholders. In addition, any bond  
 13 resolution may contain such other provisions as the authority deems reasonable and  
 14 proper for the security of the bondholders. All expenses incurred in carrying out the  
 15 provisions of the bond resolution may be treated as a part of the cost of the operation  
 16 of a project.

Insert 12-17

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History: 1973 c. 304; 1977 c. 29.

SECTION 17. 231.215 of the statutes is created to read:

**231.215 Incorporator for purpose related to sale of right to payments.**

18           The authority, or its executive director, may organize <sup>companies</sup> a nonstock corporation <sup>s</sup> under  
 19 ch. 181 or limited liability ~~company~~ <sup>companies</sup> under ch. 183 for any purpose related to the sale  
 20 of the state's right to receive any of the payments under the tobacco settlement  
 21 agreement and may take any action necessary to facilitate and complete the sale.

(B) purchase one or more

purchasing purchase

23

SECTION 18. 409.102 (1) (intro.) of the statutes is amended to read:

**BILL**

1            409.102 (1) (intro.) Except as otherwise provided in s. 409.104 on excluded  
 2            transactions and s. 16.63 (4) (b) and (c) on transactions involving tobacco settlement  
revenues, this chapter applies:

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FROM THE  
LEGISLATIVE REFERENCE BUREAU

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the Department of Administration

JTK Analysis Insert:

← Currently, (DOA) is required, subject to numerous exceptions, to make purchases by solicitation of bids or competitive sealed proposals preceded by public notice. DOA must prepare written justification of contractual service procurements and must comply with rules regarding conflicts of interest between contractors and DOA employees. DOA must also attempt to ensure that a specified portion of its procurement business is awarded to minority-owned businesses. This bill exempts contracts entered into by DOA to provide financial services in relation to this state's interest in the tobacco settlement agreement from compliance with these requirements.

Currently, with certain exceptions, no person may commence a legal action against the state unless the person presents a claim to the claims board for a recommendation and the legislature denies the claim. This bill exempts claims presented in relation to this state's interest in the tobacco settlement agreement from compliance with this requirement.

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(7) The secretary may enter into a contract with any firm or individual engaged in providing financial services for the performance of any of his or her functions under this section, using selection and procurement procedures established by the secretary. That contract is not subject to s. 16.705 or 16.75.

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PJK ANALYSIS INSERT

A ← Under current law, the Wisconsin Health and Educational Facilities Authority (WHEFA) may issue bonds to finance certain projects of health or educational facilities, such as the construction or remodeling of a health or educational facility or related structure, and to refinance outstanding debt of health or educational facilities. Under this bill, WHEFA is authorized to purchase the state's right to receive payments under the tobacco settlement agreement, to make a loan that is secured by the state's right to receive those payments, and to issue bonds to finance the purchase or to make the loan. Any bonds issued to finance the purchase or to make the loan must be payable from, or secured by interests in, the ~~revenues~~ <sup>payments</sup> under the tobacco settlement agreement. In addition, WHEFA is authorized to organize one or more nonstock corporations or limited liability companies for any purpose related to the purchase of the state's right to receive payments under the tobacco settlement agreement. ✓

(END OF PJK ANALYSIS INSERT)

INSERT ~~VA~~ 11-14

1 SECTION 1. 231.01 (9) of the statutes is amended to read:  
2 231.01 (9) "Revenues" means, with respect to any project, the rents, fees,  
3 charges, and other income or profit derived therefrom and, with respect to any bonds  
4 issued under s. 231.03 (6) (g), tobacco settlement revenues identified in the bond  
5 resolution.

History: 1973 c. 304; 1975 c. 413 s. 18; 1977 c. 29; 1979 c. 221; 1981 c. 298; 1981 c. 314 s. 144; 1983 a. 27, 189; 1985 a. 29; 1987 a. 27; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 27, 124, 438, 490, 491; 1995 a. 27 ss. 6296, 9126 (19); 1995 a. 332; 1997 a. 27.

(END OF INSERT ~~VA~~ 11-14)

INSERT ~~VA~~ 12-1

6 SECTION 2. 231.01 (12) of the statutes is created to read:  
7 231.01 (12) "Tobacco settlement revenues" has the meaning given in s. 16.63  
8 (1) (c).

9 SECTION 3. 231.03 (6) (g) of the statutes is created to read:

10 231.03 (6) (g) Finance a purchase, or make a loan, under sub. (20). Bonds issued  
11 under this paragraph shall be payable from, or secured by interests in, tobacco



*ens. PMS/contd 12-1*

1 settlement revenues and such other property pledged under the bond resolution and,  
2 notwithstanding s. 231.08 (3), are not required to mature in 30 years or less from the  
3 date of issue.

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4 **SECTION 4.** 231.03 (20) of the statutes is created to read:

5 231.03 (20) Purchase the state's right to receive any of the payments under the  
6 tobacco settlement agreement, or make a loan to be secured by the state's right to  
7 receive any of the payments under the tobacco settlement agreement, upon such  
8 terms and at such prices as the authority considers reasonable and <sup>→ as</sup> can be agreed  
9 upon between the authority and the other party to the transaction. The authority  
10 may issue certificates or other evidences of ownership interest in tobacco settlement  
11 revenues upon such terms and conditions as specified by the authority in the  
12 resolution under which the certificates or other evidences are issued or in a related  
13 trust agreement or trust indenture. ✓

(END OF INSERT <sup>12-1</sup> 7A15)

INSERT <sup>12-17</sup> 8A1

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

15 231.16 (1) The authority may issue bonds to refund any outstanding bond of  
16 the authority or indebtedness that a participating health institution, participating  
17 educational institution, or participating child care provider may have incurred for  
18 the construction or acquisition of a project prior to or after April 30, 1980, including  
19 the payment of any redemption premium on the outstanding bond or indebtedness  
20 and any interest accrued or to accrue to the earliest or any subsequent date of  
21 redemption, purchase, or maturity, or to pay all or any part of the cost of constructing  
22 and acquiring additions, improvements, extensions, or enlargements of a project or

*↓*



*Ins. 8-6/contd 12-17*

1 any portion of a project. ~~No~~ Except for bonds to refund bonds issued under s. 231.03  
 2 (6) (g), no bonds may be issued under this section unless the authority has first  
 3 entered into a new or amended agreement with a participating health institution,  
 4 participating educational institution, or participating child care provider to provide  
 5 sufficient revenues to pay the costs and other items described in s. 231.13.

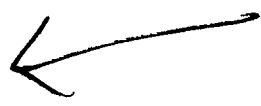
History: 1973 c. 304; 1979 c. 221; 1987 a. 27; 1993 a. 124.

(END OF INSERT ~~8-6~~)

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RC/PK/RM/JTK/RN:.....



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This bill affirms the state's participation in the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998. In addition, the bill states that the payments received under that agreement are the property of the state, to be used as the state decides by law. The bill provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim against any party that was released by the state under the agreement. The bill also provides that no political subdivision of the state, or officer or agent of a political subdivision, may maintain a claim against the state or any officer or agent of the state that seeks to avoid or limit the agreement.

insert 7-21:

(8m) If the recovery of a money judgment against the state is necessary to give the plaintiff in an action under sub. (7) complete relief, a claim for the money damages may be joined with the claim commenced under sub. (7).

insert 13-3:

SECTION 1. 895.11 of the statutes is created to read:

**895.11 Payments under the tobacco settlement agreement.** (1) In this section, "tobacco settlement agreement" means the Attorneys General Master Tobacco Settlement Agreement entered into on November 23, 1998 by this state and the leading U.S. tobacco product manufacturers.

(2) The state's participation in the tobacco settlement agreement is affirmed.

(3) All payments received and to be received under the tobacco settlement agreement are the property of the state, to be used as provided by law, including a sale of the payments under s. 16.63. No political subdivision of the state, and no

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1528/1dn  
RC/PK/RM/JTK/RN:.....

g's

Frank Hoadley:

1. I drafted your proposed language in s. 25.17 (16) for determining the amount of the money that is to be transferred from the permanent fund to the general fund. Please note that the 8.5% calculation in s. 25.17 (16) (a) 1. will be based on amounts that include the amounts identified in s. 25.17 (16) (a) 2. and 3.

\* 2. The investment board will be able to invest the assets in the permanent fund in investments authorized under s. 25.17 (3), pursuant to the language in s. 25.17 (3) (b) (intro.) and (4). Please note that I provided that the investment board is not subject to its statutory standard of responsibility under s. 25.15 (2) when making the investments determined by the secretary of administration. There is no need to state that ch. 881 does not apply to these investments, because the investments made by the investment board are not subject to ch. 881. See, s. 25.15 (3). Please note that even if the trustees of the investment board are not subject to the statutory standards of responsibility, they are still fiduciaries.

3. In s. 16.63, I provided that the secretary may sell the state's right to receive payments under the tobacco settlement agreement for "cash or other consideration". While the original language would most likely permit the sale for a non-cash asset, this language is more exact.

4. I created an appropriation to cover the costs incurred by the secretary of administration in selling the state's right to receive payments under the tobacco settlement agreement and in organizing the corporations or companies. I was unsure of what you meant by "seed money". Is the language I drafted sufficient for your purposes?

5. I do not believe that there is any theory under which the corporation or limited liability company will be considered a state agency. The secretary must create this corporation or company under general law and there is no provision in that law which provides that a corporation organized under ch. 181 or a limited liability company organized under ch. 183 is a state agency. I am hesitant to include in the statutes a statement that such a corporation or company is not a state agency, because of the potential collateral effects on other corporations that the state has created and that do not contain in their statutory governing provisions explicit mention that the corporation is not a state agency. An example would be the Wisconsin State Public

Building Corporation. Rather than clarify the situation, such language would create confusion over what exactly is a state agency.

6. Per your specific request, I have included the phrase in s. 25.69, "and otherwise shall be preserved in perpetuity as a permanent fund for the benefit of the people of the state". I am uncertain of the intent of this language. This fund can be abolished at will by any legislature and any moneys appropriated by the legislature must always be for a public purpose. Please note that this language may create confusion.

7. Please look at the timing of the transfers under s. 25.17 (16). Because these transfers are occurring after the end of the fiscal years, I had the first transfer requiring the 8.5% transfer first occur in 2004. This is because the first two transfers, which seek to hold the general fund harmless in the 2001-03 fiscal biennium occur in 2002 and 2003.

JTK D-Note Insert

Rick A. Champagne  
Senior Legislative Attorney  
Phone: (608) 266-9930  
E-mail: rick.champagne@legis.state.wi.us

that

i.e.

I reviewed the proposal related to suits against the state, section 16.63 (8) and (9) of the draft. I left most of the first sentence, saying this subsection governs all claims against the state relating to the sale of the state's right to payments under the tobacco settlement, although I do not think it is necessary because this is a very specific statute and specific statutes apply when considering general versus specific statutes. I took out the "notwithstanding" language. We do not include language that broad because it does not give direction or guidance. If another statute used the same language, which one would take precedence? If you have some particular statute that should be amended to take into account this proposal and remove any conflict, let me know and I will amend that statute.

agreement

Section 16.63 (8) does not say who has standing to bring an action. Do you want to specify who may bring an action under this subsection?

I took out the last two sentences of sub. (8) because they just said what is current law related to service and venue. They did not provide any additional direction or information. See s. 801.11 (3) regarding service on the attorney general and s. 801.50 regarding venue.

that

I made minor grammatical changes in sub. (9). Do you want to add a cross-reference to s. 893.82, saying that statute also does not apply to these actions, or is it clear that s. 893.82 would never apply to this type of case?

insert D-note rpn

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: robert.nelson@legis.state.wi.us

→ RJM D-Note Insert  
→ PJK D-Note Insert  
~~→ RPN D-Note Insert~~

1 officer or agent of any political subdivision of the state, shall have or seek to maintain  
2 any of the following:

3 (a) A claim against any party that was released by the state under the tobacco  
4 settlement agreement. from liability

5 (b) A claim against the state or any officer or agent of the state that seeks to  
6 avoid or limit the tobacco settlement agreement.

7

8 insert D-note rpn:

9 → The political subdivisions of the state, such as a county, are part of the state and  
10 do not have the right to sue the state unless a specific statute authorizes that suit.  
11 The language in section. 895.11 (3) (b) (created in this bill) seems to imply that a  
12 political subdivision does have a right to sue the state in an action related to the  
13 tobacco settlement. agreement That inference could be used to argue that the political  
14 subdivision does have the right to sue the state.

15 → Section 895.11 (created in this bill) <sup>parents</sup> refers to officers and agents of the state and  
16 of political subdivisions of the state, but does not mentioned employees. Was that a  
17 conscious decision to leave employees out of this provision? it

Convert  
to unnumbered  
d-note  
paragraphs  
(no indent, but space  
between one  
paragraph and  
the next)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1528/1dnJTK  
JTK.....

JTK  
Drafts D-note  
JTK

Concerning proposed s. 16.63 (9), relating to suits against the state, I think the reference should be to s. 16.007, stats, rather than 16.53, stats. Section 16.53 governs payment of invoices and vouchers in the normal course of business and generally does not relate to contested claims. However, s. 16.007, like s. 775.01, stats, requires legislative review of most claims and seems to contravene your intent that contested claims proceed directly to court.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

Insert D-note  
JTK

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1528/1dnRM

RJM:.....

Insert DNote RM

✘ It was unclear what the word "thereof" was intended to modify in proposed ss. 16.63 (1) (c) and (4) (b) 2. This draft attempts to clarify that ambiguity. Please review these provisions and let me know if you desire any changes. ✓

✘ I have restructured proposed s. 16.63 (4) to better reflect my understanding of your intent. The draft relies on Article 9 of the UCC (ch. 409, stats.), with certain exceptions. See proposed s. 16.63 (4) (b) (intro.). The draft amends the scope of Article 9 to refer to these exceptions. See proposed s. 409.102 (1) (intro.). Let me know if you desire exemptions from any specific portions of the UCC or any other specific statutes that may potentially govern the sale of and perfection of interests in streams of income. The broad "notwithstanding" language and references to the common law are deleted because they are overbroad. If there are particular aspects of the statutory or common law that you intend to specifically displace, please let me know. ✓

✘ It is unclear what is intended by the statement that tobacco settlement revenues may not be deemed the proceeds of any property which is not tobacco settlement revenues. See proposed s. 16.63 (4) (a). If this provision is intended to limit or clarify the definition of "tobacco settlement revenues," please let me know and I will include the clarification. ✓

✘ The draft uses the phrase "lien obtained by judicial proceedings" rather than "judicial lien," in order to maintain consistency with Article 9. ✓

✘ The draft uses the term "proceeds" or "amounts" rather than "funds" because funds can be misinterpreted to refer to things, like trust funds, rather than amounts of money. ✓

✘ Because the draft explicitly provides that, with limited exceptions, Article 9 applies to security interests under the draft, it was not necessary to include proposed s. 16.63 (4) (b) 4. from your instructions in this draft. ✓

✘ The language from your instructions was inconsistent with regard to the effect that the absolute transfer provisions may have on the characterization of a transfer for tax purposes. In one place, the language indicated that the tax treatment is determined by other applicable law "without regard to this s. 16.63 (4)." In another place, the language indicated that nothing in s. 16.63 (4) is intended to preclude consideration

of s. 16.63 (4) in determining the tax treatment. Please review proposed s. 16.63 (4) (c) 2. and let me know if you desire any changes. ✓

X. In the proposed language relating to the absolute sale of tobacco settlement revenues, I have incorporated the revised language that you communicated to me. See proposed s. 16.63 (4) (c). The draft does not include the language from your instructions stating "as in a true sale, and not as a pledge or other financing, of tobacco settlement revenues." This phrase introduces an example and a comparison, apparently for the purpose of further clarifying the characteristics of the sale. It is generally not advisable to include examples in the statutes. The operative language of the provision should adequately establish the legal characteristics of the transfer. If there is some aspect of the transfer that may be confused with "other financing", you can specifically provide that the transfer does not have that characteristic. Likewise, if there is some characteristic of a "true sale" that you want to ensure applies to the transfer, you can specifically give the transfer that characteristic. Let me know if you desire any changes.

X. It is unclear what the last sentence of proposed s. 16.63 (4) (c) 3. is intended to do. The language provides that a sale, assignment or other transfer of tobacco settlement revenues is perfected automatically as against third parties, including any judicial lien creditors, upon attachment. It seems unusual to refer to the perfection of a sale, assignment, or transfer rather than to the perfection of a security interest granted in the context of the transaction. If this provision is intended to preserve a security interest in tobacco settlement revenues after the sale, assignment, or transfer of those revenues, that result may already be accomplished by proposed s. 16.63 (4) (b) 3. If this provision is intended to alter a result that would arise under Article 9, the provision should be moved to proposed s. 16.63 (4) (b). Please let me know if you desire any changes with regard to this provision. ✓

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1528/P1dn  
RAC&PJK:.....

PJK D-note insert

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2. Do you want to amend s. 231.16 (3) in any respect, such as not requiring bonds issued under s. 231.16 to refund bonds issued under s. 231.03 (6) (g) to mature in 30 years or less?
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making

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us



LPS: this insert  
replaces original PJK  
D-note insert!

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1528/1dn  
RC/PK/RM/JTK/RN:cjs:pg

January 25, 2001

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Robert J. Marchant  
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## Champagne, Rick

---

**From:** Hoadley, Frank  
**Sent:** Friday, January 26, 2001 3:44 PM  
**To:** Champagne, Rick  
**Subject:** Tobacco Securitization

Rick -

Thanks to everyone for their hard work. Here is the next round of drafting instructions. I am confident we are getting very close to a good product.

Frank



January 26 2001 (#2)  
Suppleme...

**SUPPLEMENTAL DRAFTING INSTRUCTIONS FOR TOBACCO SETTLEMENT**  
**LEGISLATION**  
**1/26/01 Instructions #2**

These instructions respond to the January 25, 2001 Drafter's Note from the Legislative Reference Bureau to Frank Hoadley and the draft of legislation attached thereto. Items 1 through 10 provide suggested language changes to the draft bill and, in some minor cases, comments regarding changes. Items 11-15 respond to various comments of the LRB attorneys included in the drafter's note. No changes have been made to the 1/26/01 Instructions #1, except to add Item 16, which provides comments on the "Analysis by the Legislative Reference Bureau."

**1. Section 1 of the Bill**

a. In proposed s. 16.519 (2) [page 4, line 5], delete "Annually," and insert the following in lieu thereof: "Annually, on June 15 of each year,".

**2. Section 2 of the Bill**

a. In proposed s. 16.63 (1) (c) [page 5, lines 3-5]:

i. in line 3, delete the words "all general intangibles consisting of"

ii. in line 5, delete the words "of that agreement" and insert "thereof" (or, if LRB prefers, "of the foregoing") in lieu thereof

b. In proposed s. 16.63 (4) (b) [pages 5-6]:

i. on page 5 in lines 14-15, delete the words "sale, transfer, and assignment of tobacco settlement revenues and the granting," and insert "creation," in lieu thereof

ii. on page 5, line 16, delete the words "ownership interests and"

iii. on page 5, line 17, insert the following in lieu of "ch. 409.":

"ch. 409, as such chapter may be revised or amended from time to time (including any applicable transition provisions)."

iv. on page 5, lines 22-23, delete "is sufficient if it describes" and insert "shall describe" in lieu thereof

v. on page 5, line 25, delete the words "of that agreement" and insert "thereof" (or, if LRB prefers, "of the foregoing") in lieu thereof

vi. on page 5, line 25, insert the following new sentence to subd. 2:



“In addition to including the description of collateral required by the preceding sentence, the description of collateral in any financing statement filed pursuant to this paragraph may include an additional description of collateral which describes collateral by any other method for describing collateral in a legally sufficient manner permitted under the laws of the state.”

vii. on page 6, insert the following as a new subd. 3 in line 1 and renumber subds. “3” and “4” [lines 1 and 12] as “4” and “5”:

“3. The tobacco settlement revenues are general intangibles for purposes of ch. 409, as such chapter may be revised or amended from time to time (including any applicable transition provisions) and this subsection.”

c. In proposed s. 16.63 (4) (c) [pages 6-7]:

i. on page 6, in line 15 insert the following as a new first sentence of subd. 1:

“The sale, transfer and assignment of tobacco settlement revenues is governed by this subsection.”

ii. on page 6, in line 16 delete “absolute transfer of” and insert the following in lieu thereof:

“absolute transfer, and not a pledge or secured transaction, of”

iii. on page 6, in line 20 delete “the seller’s creditors.” And insert the following in lieu thereof:

“the seller’s creditors other than creditors holding a prior security interest in the tobacco settlement revenues previously perfected in the manner provided in this section.”

iv. on page 6, in line 22 delete “may” and insert “will not” in lieu thereof

v. on page 6, in line 24 delete “of transfer” and insert “of a transfer” in lieu thereof

vi. on page 7, in line 1 delete “proceeds” and insert “amounts” in lieu thereof

vii. on page 7, in line 11 delete “purposes.” and insert the following in lieu thereof:

“purposes; provided, however, that nothing in this s. 16.63 (4) is intended to preclude consideration of such provisions in determining whether such transfer is deemed to be a sale for tax purposes under other applicable law.”

viii. on page 7, in line 13 delete "attachment." and insert the following in lieu thereof:

"attachment under ch. 409 as such chapter may be revised or amended from time to time (including any applicable transition provisions)."

d. In proposed s. 16.63 (8) [page 8, line 16-21]:

i. in line 16, insert ", sub. (8m) and sub. (9)" after the word "subsection"

ii. in line 18, delete "agreement." and insert the following in lieu thereof:

"agreement notwithstanding any contrary provision of the statutes."

iii. in line 21, delete "state." and insert the following in lieu thereof:

"state in accordance with s. 801.02 without any prerequisite act. The plaintiff shall serve an authenticated copy of the summons and complaint on the attorney general by leaving the copies at the attorney general's office in the capitol with an assistant or clerk. The place of trial of such an action shall be as provided in s. 801.50."

e. In proposed s. 16.63 (8m) [page 8, lines 23 and 24]: delete "(7)" each time it appears in insert "(8)" in lieu thereof.

f. In proposed s. 16.63 (9) [page 9, lines 1-5]:

i. in line 1, insert ",16.53" after "16.007"

ii. in line 2, delete "(8)" and insert "(8m)" in lieu thereof

iii. in line 5, delete "payment" and insert "payment of such judgment"

### 3. **Section 9 of the Bill**

a. In proposed s. 25.17 (16) (a) [page 10-11]:

i. on page 10 in line 17, delete "July 1 but not later than December 31" and insert "June 1 but not later than June 15" in lieu thereof

ii. on page 11 in line 7, delete "July 1 of that year" and insert the following in lieu thereof: "June 1 of that year (excluding any investments and amounts described in subd. 3.b. and 3.c.)"

iii. on page 11 in lines 10 and 14, delete the words "in the preceding fiscal year" and insert the following in lieu thereof: "during the fiscal year ending June 30 of that year"

4. **Section 12 of the Bill**

a. In proposed s. 25.69 [page 12, lines 13-14], put a period after “s. 16.519 (2)” in line 13, and delete the remainder of the sentence.

5. **Section 13 of the Bill**

a. In proposed s. 231.01 (9) [page 12, line 18], delete the word “under” and insert “for the purpose described in” in lieu thereof.

i. *Comment:* WHEFA bonds are issued under s. 231.08 or 231.16 for purposes specified in s. 231.03 (6).

6. **Section 16 of the Bill**

a. In proposed s. 231.03 (6) (g) [page 13, line 3], delete the words “under this paragraph” and insert “for this purpose” in lieu thereof.

i. *Comment:* WHEFA bonds are issued under s. 231.08 or 231.16 for purposes specified in s. 231.03 (6).

7. **Section 19 of the Bill**

a. In proposed s. 231.16 (1) [page 14, line 17], delete the words “under” and insert “for the purpose described in” in lieu thereof.

i. *Comment:* WHEFA bonds are issued under s. 231.08 or 231.16 for purposes specified in s. 231.03 (6).

8. **Section 20 of the Bill**

a. In proposed s. 231.215 [pages 14-15], on page 15 in line 1 delete “purchasing” and insert “purchasing or selling” and in line 3 delete “purchase” and insert “purchase or sale” in lieu thereof

9. **Section 21 of the Bill**

a. In the proposed revision to s. 409.102 (1) [page 15, line 5-7], in line 6 delete “(b) and (c)”

10. **Section 22 of the Bill**

a. In proposed s. 895.11 (1) [page 15, line 9-12], in line 11 delete “entered into on” and insert “of” in lieu thereof and put a period after “1998” and delete the remainder of the sentence.

i. *Comment:* This wording is now consistent with other statutory references to this agreement and avoids noting that other states were parties to it.

- b. In proposed s. 895.11 (3) [page 15, line 14-22]:
  - i. in line 14, delete “received under” and insert “received by the state under”
  - ii. in line 16, insert “right to receive the” immediately before “payments”

**11. Responses to comments of Rick A. Champagne**

a. Item 1: The 8.5% calculation in s. 25.17 (16) (a) 3 [page 11] has been revised to exclude a. and b.

b. Item 4: **DOA is discussing** whether to ask you to revise proposed s. 20.505 (1) (dm) [page 9] by inserting in line 10 “and initially capitalizing” after the word “organizing”

c. Item 6: We now propose deleting this language

d. Item 7: Various revision have been made to reflect a June 1 valuation date for the 8.5% and June 15 transfer date from the permanent fund

**12. Responses to comments of Jeffery T. Kuesel**

a. Proposed s. 16.63 (9) is derived from s. 18.13 (3), and we believe the reference to s. 16.53 proper. The purpose is to exempt the payment of a money judgment against the state (which arguably will already have had a great deal of scrutiny) from the normal preaudit procedures for invoices and vouchers. Even if there is a mistake in a judgment against the state, DOA cannot correct it, so there is no point in requiring the judgment creditor to go through those steps. The state just has to pay the judgment. Although we believe there is no need to exempt the judgment from compliance with § 16.007 because, as Mr. Kuesel notes, the whole purpose of proposed § 16.63(9) is to send these claims directly to court (without the need for legislative consideration, to which § 16.007 is a normal prerequisite step which would be excluded by our revision to s. 16.63 (8) noted in 2.d. above), we are not opposed to specifically excluding 16.007 as Mr. Kuesel suggested.

**13. Responses to comments of Robert P. Nelson**

a. Although we agree with many of the points Mr. Nelson makes, we note that these subsections are derived from existing § 18.13, and all of his points are as apt comments on the existing law as they are on the proposed statute that copies the provisions of existing law. Thus, it may be unnecessary to say that a specific statute covers its specific situation because, under one of the canons of statutory construction, the specific usually trumps the general. But the language that he questions is drawn directly from § 18.13(1). So was the “notwithstanding” language that was deleted. We are concerned about deleting language when copying from an existing statute because a court may decide that there must have been some reason to delete the language other than

that "it does not give direction or guidance" (which, of course, it doesn't). Our preference is to copy the existing statutory language as closely as possible (which our suggested revisions herein will do). If the LRB wants to clean it up, do so in a Revisor's Bill that cleans up all similar language simultaneously, so that everyone understands that the purpose of the revisions is not to affect anything substantive.

b. We do not think we need to say anymore than the draft does about who has standing to sue under proposed § 16.63(8). It is implicit in the draft that only someone who has a legitimate interest in compelling compliance with a sale agreement would have standing to sue. If LRB believed it would be helpful, however, the words "an action to compel compliance may be commenced against the state" on page 8, lines 20-21 could be replaced by "the purchaser or any subsequent transferee of the state's right to receive any of the payments under the tobacco settlement agreement may commence an action to compel compliance against the state", with the remainder of the sentence being supplemented by our other revisions discussed above.

c. Although Mr. Nelson's comments about service and venue are correct, the language tracks the references in existing s. 18.13, and for the reasons stated in a. above, we would prefer including them.

d. Because we do not authorize an action against a state employee we do not believe a cross reference to s. 893.82 is required.

e. The comment about political subdivisions not being able to sue the state and the implication from barring such claims is, at one level, correct, but that hasn't stopped anyone from bringing such a suit. Maybe the answer is to insert language to the effect that no such inference is intended.

f. Finally, there is no reference in proposed § 895.11 (created in section 22 of the bill) to "employees" because "agents" subsumes "employees."

#### 14. Responses to comments of Robert J. Marchant

a. Although we understand a general resistance to using terms like "thereof" or "of the foregoing" in the statutes, we believe it is appropriate here. The reference to "of that agreement" is incorrect. The alternative would involve repeating much of what preceded the word "proceeds" in each case.

b. It is critical that the legislation governs the sale of tobacco settlement revenue to the exclusion of common law principles and the UCC. Until revised Article 9 is adopted, the common law governs the sale of general intangibles. In Wisconsin that common law requires that notice of a sale be given to the obligors and the order of priority vis-a-vis conflicting purchasers is resolved in favor of the first to notify. We do not want to go through this process. We need to be sure that the statute overrides that common law. The language we suggested, including the revision to be inserted in item 2.c.i. above [for page 6, line 15], is intended to provide this result. **We are currently discussing** whether to request that you include a further clarification that this section applies "notwithstanding the common law applicable to the sale of general intangibles".

c. Proposed s. 16.63 (4) (a) is not a limit or clarification on the definition of tobacco settlement revenues and should not be changed. Rather, it is a way to ensure that the revenues are not proceeds of something else. If the revenues could be proceeds of other collateral, then we cannot say absolutely that the licn holder of our revenues has a first security interest.

d. Because "proceeds" has a technical meaning under the UCC, we have changed certain references which had been to "funds" to "amounts" instead of "proceeds."

e. We do not believe that the language previously suggested was inconsistent and have suggested revisions to the draft to preserve those concepts.

f. We have suggested revisions in item 2.c.ii. above to address the issue that this would be a true sale and not a secured transaction, which is very important to the structuring of the proposed transactions.

g. With respect to the comment about the last sentence of proposed s. 16.63 (4) (c) (3), perfection is a concept that applies to sales as well as secured transactions. The language is intended to refer to a sale and should be retained without change except as we have noted in item 2.c.vii. With respect to your comment in the last sentence, we reiterate that (4) (c) is intended to apply to and govern the sale of tobacco settlement revenues notwithstanding anything to the contrary in the common law or the UCC. If there exists a question about that, we should discuss further changes.

#### **15. Responses to comments of Pamela J. Kahler**

a. Item 1: DOA will advise you if additional investments are requested for WHEFA

b. Item 2: it was intended that refunding bonds would be subject to the same exception to the 30 year rule as provided in proposed s. 231.03 (6) (g). If the references in s. 231.16 (3) are not clear on that, please make a clarifying change.

c. Item 3: WHEFA may purchase and then sell the rights to receive the payments. We have suggested revisions to proposed s. 231.215 in item 8 above to accommodate either situation.

d. Item 4. In connection with a purchase it is possible that, as part of the purchase arrangement, WHEFA would issue certificates or evidences of ownership to the seller or third parties. This option should not be removed.

#### **16. Comments of the Analysis by the Legislative Reference Bureau**

a. Revise the first paragraph on page 2 to reflect the suggested revisions in the timing of transfers from the permanent fund to the general fund and the amounts to be transferred (*i.e.*, July 1 to June1; item 1 calculation excludes items 2 and 3; and receipts based on that fiscal year).

b. In the second paragraph of page 2, clarify that the invest board “may” not “must” invest in those types of investments. It also may invest in other generally permitted investments.

c. The last paragraph on page 2 may need some revisions in light of the suggested changes in these instructions. As noted, the sale, assignment and transfer will be governed by this legislation rather than Article 9. The reference in the first sentence to “interests” should probably be to “security interests”.

d. In the third new paragraph on page 3 (generally discussing WHEFA), add “or sale” in the penultimate line after “the purchase”.

## Marchant, Robert

---

**From:** Reicher, David M. [dreicher@foleylaw.com]  
**Sent:** Monday, January 29, 2001 12:59 PM  
**To:** Marchant, Robert  
**Subject:** RE: Tobacco settlement revenues

Mr. Marchant:

I am looking over your comments and I have a question into Irish Lane as well. I may be back to you by e-mail shortly, however, a phone call may be helpful. Please e-mail to me your phone number or call my number and leave it on my voicemail. I am currently out of the office, but will get back to you quickly.

David M. Reicher

Foley & Lardner  
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(414) 297-5763 (phone)  
(414) 297-4900 (fax)  
dreicher@foleylaw.com

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> -----Original Message-----

> From: Marchant, Robert [SMTP:Robert.Marchant@legis.state.wi.us]  
> Sent: Monday, January 29, 2001 12:11 PM  
> To: 'dreicher@foleylaw.com'  
> Cc: Champagne, Rick  
> Subject: Tobacco settlement revenues

> Mr. Reicher--

> I am working on your revised instructions for the tobacco settlement  
> revenue  
> draft and have a few questions that I think can be quickly resolved by  
> email.

> 1. Regarding the use of the word "thereof" in proposed ss. 16.63 (1) (c)  
> and 16.63 (4) (b) 2., I apologize for inserting the incorrect phrase as a  
> substitute. However, this error underscores the need to use more precise  
> wording in these proposed statutes. Would "of that right" or "of these  
> payments" work better instead of "of that agreement?"

> 2. In two locations, you have asked to refer to "ch. 409, as such chapter  
> may be revised or amended from time to time (including any applicable  
> transition provisions)." In Wisconsin, every statutory reference is a

*OK per Dave Reicher*

*— OK*



> reference to the most current version of that statute, unless otherwise  
> provided. See s. 990.001 (5) (b), stats. As a result, the requested  
> language appears to be unnecessary. In addition, if the requested  
> language  
> is included, it would confuse the meaning of other references that do not  
> contain similar language but that rely instead on s. 990.001 (5) (b),  
> stats.  
>  
> 3. You have asked to insert language in proposed s. 16.63 (4) (c) 3.  
> stating that "nothing in s. 16.63 (4) is intended to preclude  
> consideration  
> of such provisions in determining whether such transfer is deemed to be a  
> sale for tax purposes under other applicable law." However, you have also  
> asked for language stating that the characterization of a transfer as an  
> absolute sale under s. 16.63 (4) (c) 1. may NOT be considered in  
> determining  
> whether the transfer is deemed to be a sale for tax purposes. These two  
> provisions appear to conflict. For example, s. 16.63 (4) (c) 3. seems to  
> allow the department of revenue to consider the treatment of a transfer  
> under s. 16.63 (4) (c) 1. in determining whether the transfer is a sale  
> for  
> tax purposes, whereas s. 16.63 (4) (c) 1. seems to prohibit that  
> consideration. Please let me know how you intend to clarify this apparent  
> conflict.  
>  
> Please let me know how you intend to proceed with regard to these issues.  
> If you have any questions please let me know. As always, feel free to  
> call  
> if you think a phone conference would be the most efficient manner of  
> resolving these issues.  
>  
> Robert J. Marchant  
> Legislative Attorney  
> State of Wisconsin Legislative Reference Bureau  
> robert.marchant@legis.state.wi.us



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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REFERENCE FAX: (608) 266-5648

Jan 30, 2001

## MEMORANDUM

**To:** David Reicher, Esq.

**From:** Robert J. Marchant, Legislative Attorney

**Subject:** Cross-references to ch. 409

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The proposed language for this draft included two references “ch. 409, as such chapter may be revised or amended from time to time (including any applicable transition provisions).” The draft itself contains references only to “ch. 409.” In Wisconsin, every reference to a decimal-numbered statute is a reference to the most current version of that statute, unless otherwise provided. See s. 990.001 (5) (b), stats. The reference to ch. 409 is a reference to a series of decimal-numbered statutes. It is another way of referring to ss. 409.101 to 409.507. Under s. 990.001 (5) (b), stats., these references are always to the most current version of those decimal-numbered statutes, unless otherwise provided.

The legislative history behind ch. 89, laws of 1979, the bill that created s. 90.001 (5) (b), stats., indicates that the legislature intended to include all cross-references to statutes within the rule of construction established in that statute. The prefatory note to the bill states, in part, as follows:

“To ensure that both the legislature and the courts construe legislation by reference similarly, this bill sets out a rule of statutory construction on which courts can rely and which conforms to current legislative practice . . . . The rule states that . . . [unless] specifically provided otherwise, all changes in the adopted statute are incorporated into the adopting statute.”

The presence of s. 990.001 (5) (b), stats., and the legislative history behind that statute make it extremely unlikely that a court would hold that a cross-reference to a specific statute refers to the most current version of that statute but that a cross-references to a chapter or series of statutes refers to the version of those statutes in effect upon enactment of the bill creating the cross-reference. In addition, this interpretation would produce absurd results. Within the same statute there may be some cross-references to single statutes and other cross-references to a chapter of statutes or to a series of statutes. It would be an absurd result if only the specific statutes and not the chapter or series were given current effect under s. 990.001 (5) (b). Also, if the requested language is included in the two proposed locations, it would undercut the legislature’s intent in enacting s. 990.001 (5) (b), stats., and would confuse the meaning of the vast number of other references that do not contain similar language but that rely instead on s. 990.001 (5) (b), stats.

I have inserted a copy of this memo into the drafting file in order to make the memo part of the legislative history of this draft. Please let me know if you have any further questions.

December 8, 1979

1979 Assembly Bill 457

Date published: December 8, 1979

CHAPTER 89, Laws of 1979

AN ACT to repeal Title I (title), Title II (title), Title III (title), Title IV (title), Title V (title), Title VI (title), Title VI-A (title), Title VI-B (title), Title VII (title), Title VIII (title), Title IX (title), Title X (title), Title XI (title), Title XII (title), Title XIII (title), Title XIV (title), Title XIV-A (title), Title XV (title), Title XVI (title), Title XVII (title), Title XVIII (title), Title XIX (title), Title XIX-A (title), Title XX (title), Title XXI (title), Title XXII (title), Title XXIII (title), Title XXVII (title), Title XXVII-A (title), Title XXVIII (title), Title XXXII (title), Title XXXV (title), Title XL (title), Title XL-A (title), Title XL-B (title), Title XLI (title), Title XLI-D (title), Title XLI-N (title), Title XLII-A (title), Title XLII-B (title), Title XLIII (title), Title XLIV (title), Title XLIV-A (title), Title XLV (title), Title XLVII (title), Title XLVIII (title) and Title L (title); to renumber 990.001 (5); to amend 1.026 (1) (a), 1.11 (1) and (3), chapter 5 (title), 5.01 (1) and (2), 5.02 (intro.), 5.05 (1) (intro.) and (6), 5.10, 5.25 (intro.), 6.22 (1) (intro.), 7.03, 7.08 (1) (a), 7.21 (1), 7.24, 7.30 (1), 7.50 (2) (intro.), chapter 10 (title), 10.04 (3), 12.01 (2), 12.03 (1), 12.13 (2) (a) and (b) 6 and 7 and (3) (g), 13.54 (3) (b) 4, 15.131 (intro.), 15.371 (intro.), 15.401 (intro.), 15.431 (intro.), 15.611 (intro.), 20.435 (1) (kk) (title), 20.923 (16) (a), 23.09 (title), (2) (h) and (11) (f), 30.32 (9), 46.02, 48.52 (3), 49.49 (2) (c) 1, 50.39 (3), 51.20 (2), 51.67 (title), 51.79, 57.13 (title), 59.03 (3) (d), 59.91 (1) and (13), 60.45 (20), 60.49 (4) and (10), 60.81 (9), 63.18, 63.19, 63.21, 63.22, 63.24, 63.25 (1) (intro.) and (b) and (2), 63.33, 63.36 (1), 63.39, 63.40 (2), 63.42, 63.43, 63.44, 63.45, 63.98, 66.01 (16), 66.024 (8), 66.191 (title), 66.40 (9) (q), 66.416 (2), 66.431 (title) and (12), 66.435 (title), 66.51 (4), 67.25 (title), 70.03, 70.04 (intro.) and (2), 70.41 (5), 70.42 (5), 70.421 (6), 71.11 (7) (a), 71.13 (5), 74.66, 74.76 (title), (3) (a) 1 and (b) and (7) (title), 75.13 (title), 75.521 (16) (title), 77.03, 77.61 (3), 83.17, 97.02 (14) (c), 97.46 (1), 100.18 (10) (b), 100.38 (3) (c), 101.61 (1), 101.71 (2), 102.01 (1), 102.18 (2), 102.38, 103.73 (3), 103.75 (1), 103.76, 107.02, subchapter I (title) of chapter 111, 111.02 (6), subchapter IV (title) of chapter 111, subchapter V (title) of chapter 111, 112.01 (13) (title), 115.01 (intro.), 116.08 (4), 118.12 (2) and (3), 118.23 (1), 120.15 (4), 134.33 (10), 134.38 (title), 139.34 (1) (c) 1, 139.37 (1) (c) 1, 140.67 (3) (intro.), (d) and (e), 140.70, 140.74, 140.76, 144.025 (1), 144.60 (title), 146.38 (3) (e), 146.80 (title), 161.01 (intro.), 175.05 (6), 176.23 (2), 176.62 (4), subchapter I of chapter 177 (title), 177.09, 185.983 (1) (intro.), 185.992 (intro.), 187.14 (4) (c) and (6), 187.16 (4), 193.22, chapter 194 (title), 195.35, 198.12 (3) (title), 198.17 (2a), 221.08 (4), 221.12, 221.13 (title), 223.055 (title), 227.014 (title), 227.031 (title), 230.047 (4) (c), 230.35 (1) (g) 1, 243.02, 243.02, 243.03, 243.05, 245.002 (3), 245.05, 289.80 (6), 299.02 (1), 299.04 (1) and (2), 299.12 (1), chapter 340 (title), 343.17 (3) (b), chapter 344 (title), chapter 345 (title), 345.43 (3) (a), 347.76 (1) (c), chapter 348 (title), chapter 349 (title), chapter 401 (title), the unnumbered subchapter title preceding 401.101, 401.102 (1), (2) (intro.), (3), (4) and (5) (intro.), 401.103, 401.104, 401.105 (title), (1) and (2) (intro.), 401.106, 401.108, 401.109, 401.110 (1) (intro.) and (b) 3 and (3) to (6), 401.201 (intro.), (3), (11), (17), (25a) and (29), 401.203, 401.204 (1), chapter 402 (title), the unnumbered subchapter title preceding 402.101, 402.207 (3), 402.401 (1), 402.719 (2), 402.725 (4), chapter 403 (title), the unnumbered subchapter title preceding 403.101, 403.104 (3), 403.408, 403.419 (3), chapter 404 (title), 404.108, chapter 405 (title), 405.102 (3), chapter 406 (title), chapter 407 (title), 407.202 (3), chapter 408 (title), the unnumbered subchapter title preceding 408.101, chapter

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December 8, 1979

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 421.104, 421.106  
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 302 (1) (c) and  
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 e), 425.106 (1)  
 25.307, 425.310,  
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 3.34 (1) (a) and  
 632.60, chapter  
 chapter 801 (ti-  
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 05 (title), chap-  
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 851 (title),  
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 50 (21) (title).  
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well-defined meaning because it is currently in effect and may already have been construed by courts, without the unnecessary repetition of a verbatim transcription. The adopting statute is thus more clear because of the incorporation by reference of the adopted statute.

The legislature and the courts, however, differ in the interpretation to be placed on incorporation by reference. Bills have always been drafted and the legislature has always considered that subsequent changes in the adopted statute also affect the adopting statute, unless a specific exception is provided. An example of an exception is when the adopting statute refers to "s. 113.05, 1973 stats.". In litigation, the courts have sometimes interpreted the adopting statute in the opposite manner. If the matter comes to the attention of a court, the court may assume that no subsequent change of the adopted statute affects the adopting statute. Thus, even if the statute adopted by reference is repealed, it would retain its vitality through the reference in the adopting statute. A court that interpreted the adopting statute would look at the language of the adopted statute at the time it was adopted and would not consider subsequent changes, or even repeal, unless the legislature specifically required that construction.

A court will presume that the 2 statutes should be treated separately unless legislative intent contrary to this presumption can be proven. Determination of legislative intent by a reviewing court is often difficult, which leads to conflicting court opinions on the interpretation of incorporation by reference. The rules of construction, developed for determining legislative intent in this area, hinge on whether the reference was general or specific, or in other states whether the reference was to substantive or procedural matters. These rules are vague and difficult to apply, and often collapse if the legislative intent is not clear. See Union Cemetery v. Milwaukee, 13 Wis. 2d 64 (1961); Gilson Bros. Co. v. Worden-Allen Co., 220 Wis. 347 (1936); George Williams College v. Williams Bay, 242 Wis. 311 (1943).

This issue of construing an adoption by reference frequently is not raised in court. Unless the court is advised of the potential problem, it may fail to consider whether subsequent changes to the adopted statute should be incorporated into the adopting statute and will simply read the statutes in their current form. This leads to the incorporation of all subsequent changes in a de facto manner, regardless of legislative intent.

To ensure that both the legislature and the courts construe legislation by reference similarly, this bill sets out a rule of statutory construction on which courts can rely and which conforms to current legislative practice. The rule will eliminate the present difficulty in correctly construing legislative intent when adopting decimal-numbered statutes by reference. The rule states that:

- (1) Unless specifically provided otherwise, all changes in the adopted statute are incorporated into the adopting statute.
- (2) If the adopting statute specifically refers to a statute from a named prior edition of the Wisconsin Statutes, such as "s. 113.05, 1973 stats.", the reference is limited to the wording of the adopted statute at that time, without including subsequent changes.

*Eliminating references to act*

In the statutes, a reference to "act" may be referring to one or more chapters or sections. For example, the Wisconsin consumer act consists of chapters 421 to 427, the worker's compensation act is chapter 102, the Milwaukee city civil service act is sections 63.18 to 63.53 and the hazardous substances labeling act is section 100.37. In several instances, the use of the reference "act" reflects statutory usage prior to the time the Wisconsin statutes were converted to the

Here are the redraft instructions. I have the draft in my In-Box. Thank for your help. Rick

**SUPPLEMENTAL DRAFTING INSTRUCTIONS FOR TOBACCO SETTLEMENT LEGISLATION**  
**1/26/01 Instructions #2**

These instructions respond to the January 25, 2001 Drafter's Note from the Legislative Reference Bureau to Frank Hoadley and the draft of legislation attached thereto. Items 1 through 10 provide suggested language changes to the draft bill and, in some minor cases, comments regarding changes. Items 11-15 respond to various comments of the LRB attorneys included in the drafter's note. No changes have been made to the 1/26/01 Instructions #1, except to add Item 16, which provides comments on the "Analysis by the Legislative Reference Bureau."

RAC

1. **Section 1 of the Bill**

a. In proposed s. 16.519 (2) [page 4, line 5], delete "Annually," and insert the following in lieu thereof: "Annually, on June 15 of each year."

2. **Section 2 of the Bill**

a. In proposed s. 16.63 (1) (c) [page 5, lines 3-5]:

~~i.~~ in line 3, delete the words "all general intangibles consisting of"

~~ii.~~ in line 5, delete the words "of that agreement" and insert "thereof" (or, if LRB prefers, "of the foregoing") in lieu thereof

b. In proposed s. 16.63 (4) (b) [pages 5-6]:

~~i.~~ on page 5 in lines 14-15, delete the words "sale, transfer, and assignment of tobacco settlement revenues and the granting," and insert "creation," in lieu thereof

~~ii.~~ on page 5, line 16, delete the words "ownership interests and"

~~iii.~~ on page 5, line 17, insert the following in lieu of "ch. 409.":  
"ch. 409, as such chapter may be revised or amended from time to time (including any applicable transition provisions)."

~~iv.~~ on page 5, lines 22-23, delete "is sufficient if it describes" and insert "shall describe" in lieu thereof

~~v.~~ on page 5, line 25, delete the words "of that agreement" and insert "thereof" (or, if LRB prefers, "of the foregoing") in lieu thereof

~~vi.~~ on page 5, line 25, insert the following new sentence to subd. 2:

LRJM  
No. Please tell me to what a King refers. How about "the 1950's"?

LRJM

DNOTE  
No need. Current version of ch. 409 will always apply unless agreement is permitted to me does say otherwise

See above

"In addition to including the description of collateral required by the preceding sentence, the description of collateral in any financing statement filed pursuant to this paragraph may include an additional description of collateral which describes collateral by any other method for describing collateral in a legally sufficient manner permitted under the laws of the state."

*DUBIE*

~~vii.~~ on page 6, insert the following as a new subd. 3 in line 1 and renumber subds. "3" and "4" [lines 1 and 12] as "4" and "5":

~~3.~~ The tobacco settlement revenues are general intangibles for purposes of ch. 409, as such chapter may be revised or amended from time to time (including any applicable transition provisions) and this subsection."

*RJM*

c. In proposed s. 16.63 (4) (c) [pages 6-7]:

~~i.~~ on page 6, in line 15 insert the following as a new first sentence of subd. 1:

"The sale, transfer and assignment of tobacco settlement revenues is governed by this subsection."

~~ii.~~ on page 6, in line 16 delete "absolute transfer of" and insert the following in lieu thereof:

"absolute transfer, and not a pledge or secured transaction, of"

*Not grammatically correct. See change*

~~iii.~~ on page 6, in line 20 delete "the seller's creditors." And insert the following in lieu thereof:

"the seller's creditors other than creditors holding a prior security interest in the tobacco settlement revenues previously perfected in the manner provided in this section."

~~iv.~~ on page 6, in line 22 delete "may" and insert "will not" in lieu thereof

~~v.~~ on page 6, in line 24 delete "of transfer" and insert "of a transfer" in lieu thereof

~~vi.~~ on page 7, in line 1 delete "proceeds" and insert "amounts" in lieu thereof

~~vii.~~ on page 7, in line 11 delete "purposes." and insert the following in lieu thereof:

"purposes; provided, however, that nothing in this s. 16.63 (4) is intended to preclude consideration of such provisions in determining whether such transfer is deemed to be a sale for tax purposes under other applicable law."

~~viii.~~ on page 7, in line 13 delete "attachment." and insert the following in lieu thereof:

"attachment under ch. 409 as such chapter may be revised or amended from time to time (including any applicable transition provisions)."

RPN

d. In proposed s. 16.63 (8) [page 8, line 16-21]:

i. in line 16, insert ", sub. (8m) and sub. (9)" after the word "subsection"

ii. in line 18, delete "agreement." and insert the following in lieu thereof:

"agreement notwithstanding any contrary provision of the statutes."

iii. in line 21, delete "state." and insert the following in lieu thereof:

"state in accordance with s. 801.02 without any prerequisite act. The plaintiff shall serve an authenticated copy of the summons and complaint on the attorney general by leaving the copies at the attorney general's office in the capitol with an assistant or clerk. The place of trial of such an action shall be as provided in s. 801.50."

JT Rules  
Folio! No!

Not referring  
to other procedures  
No!

RPN

e. In proposed s. 16.63 (8m) [page 8, lines 23 and 24]: delete "(7)" each time it appears in insert "(8)" in lieu thereof.

RPN/JTK

f. In proposed s. 16.63 (9) [page 9, lines 1-5]:

i. in line 1, insert ",16.53" after "16.007"

ii. in line 2, delete "(8)" and insert "(8m)" in lieu thereof

iii. in line 5, delete "payment" and insert "payment of such judgment"

No

3. **Section 9 of the Bill**

a. In proposed s. 25.17 (16) (a) [page 10-11]:

i. on page 10 in line 17, delete "July 1 but not later than December 31" and insert "June 1 but not later than June 15" in lieu thereof

ii. on page 11 in line 7, delete "July 1 of that year" and insert the following in lieu thereof: "June 1 of that year (excluding any investments and amounts described in subd. 3.b. and 3.c.)"

iii. on page 11 in lines 10 and 14, delete the words "in the preceding fiscal year" and insert the following in lieu thereof: "during the fiscal year ending June 30 of that year"

RAC

✓ RAC  
4. **Section 12 of the Bill**

a. In proposed s. 25.69 [page 12, lines 13-14], put a period after “s. 16.519 (2)” in line 13, and delete the remainder of the sentence.

PJK ✓  
5. **Section 13 of the Bill**

a. In proposed s. 231.01 (9) [page 12, line 18], delete the word “under” and insert “for the purpose described in” in lieu thereof.

i. *Comment:* WHEFA bonds are issued under s. 231.08 or 231.16 for purposes specified in s. 231.03 (6).

PJK ✓  
6. **Section 16 of the Bill**

a. In proposed s. 231.03 (6) (g) [page 13, line 3], delete the words “under this paragraph” and insert “for this purpose” in lieu thereof.

i. *Comment:* WHEFA bonds are issued under s. 231.08 or 231.16 for purposes specified in s. 231.03 (6).

PJK ✓  
7. **Section 19 of the Bill**

a. In proposed s. 231.16 (1) [page 14, line 17], delete the words “under” and insert “for the purpose described in” in lieu thereof.

i. *Comment:* WHEFA bonds are issued under s. 231.08 or 231.16 for purposes specified in s. 231.03 (6).

PJK ✓  
8. **Section 20 of the Bill**

a. In proposed s. 231.215 [pages 14-15], on page 15 in line 1 delete “purchasing” and insert “purchasing or selling” and in line 3 delete “purchase” and insert “purchase or sale” in lieu thereof

URJM ✓  
9. **Section 21 of the Bill**

a. In the proposed revision to s. 409.102 (1) [page 15, line 5-7], in line 6 delete “(b) and (c)”

RPN ✓  
10. **Section 22 of the Bill**

a. In proposed s. 895.11 (1) [page 15, line 9-12], in line 11 delete “entered into on” and insert “of” in lieu thereof and put a period after “1998” and delete the remainder of the sentence.

i. *Comment:* This wording is now consistent with other statutory references to this agreement and avoids noting that other states were parties to it.



RPN

b. In proposed s. 895.11 (3) [page 15, line 14-22]:

i. in line 14, delete "received under" and insert "received by the state under"

ii. in line 16, insert "right to receive the" immediately before "payments"

11. **Responses to comments of Rick A. Champagne**

a. Item 1: The 8.5% calculation in s. 25.17 (16) (a) 3 [page 11] has been revised to exclude a. and b.

b. Item 4: DOA is discussing whether to ask you to revise proposed s. 20.505 (1) (dm) [page 9] by inserting in line 10 "and initially capitalizing" after the word "organizing"

c. Item 6: We now propose deleting this language

d. Item 7: Various revision have been made to reflect a June 1 valuation date for the 8.5% and June 15 transfer date from the permanent fund

12. **Responses to comments of Jeffery T. Kuesel**

a. Proposed s. 16.63 (9) is derived from s. 18.13 (3), and we believe the reference to s. 16.53 proper. The purpose is to exempt the payment of a money judgment against the state (which arguably will already have had a great deal of scrutiny) from the normal preaudit procedures for invoices and vouchers. Even if there is a mistake in a judgment against the state, DOA cannot correct it, so there is no point in requiring the judgment creditor to go through those steps. The state just has to pay the judgment. Although we believe there is no need to exempt the judgment from compliance with § 16.007 because, as Mr. Kuesel notes, the whole purpose of proposed § 16.63(9) is to send these claims directly to court (without the need for legislative consideration, to which § 16.007 is a normal prerequisite step which would be excluded by our revision to s. 16.63 (8) noted in 2.d. above), we are not opposed to specifically excluding 16.007 as Mr. Kuesel suggested.

13. **Responses to comments of Robert P. Nelson**

a. Although we agree with many of the points Mr. Nelson makes, we note that these subsections are derived from existing § 18.13, and all of his points are as apt comments on the existing law as they are on the proposed statute that copies the provisions of existing law. Thus, it may be unnecessary to say that a specific statute covers its specific situation because, under one of the canons of statutory construction, the specific usually trumps the general. But the language that he questions is drawn directly from § 18.13(1). So was the "notwithstanding" language that was deleted. We are concerned about deleting language when copying from an existing statute because a court may decide that there must have been some reason to delete the language other than

No

No  
that "it does not give direction or guidance" (which, of course, it doesn't). Our preference is to copy the existing statutory language as closely as possible (which our suggested revisions herein will do). If the LRB wants to clean it up, do so in a Revisor's Bill that cleans up all similar language simultaneously, so that everyone understands that the purpose of the revisions is not to affect anything substantive.

OK  
b. We do not think we need to say anymore than the draft docs about who has standing to sue under proposed § 16.63(8). It is implicit in the draft that only someone who has a legitimate interest in compelling compliance with a sale agreement would have standing to sue. If LRB believed it would be helpful, however, the words "an action to compel compliance may be commenced against the state" on page 8, lines 20-21 could be replaced by "the purchaser or any subsequent transferee of the state's right to receive any of the payments under the tobacco settlement agreement may commence an action to compel compliance against the state", with the remainder of the sentence being supplemented by our other revisions discussed above.

No!  
c. Although Mr. Nelson's comments about service and venue are correct, the language tracks the references in existing s. 18.13, and for the reasons stated in a. above, we would prefer including them.

✓  
d. Because we do not authorize an action against a state employee we do not believe a cross reference to s. 893.82 is required.

e. The comment about political subdivisions not being able to sue the state and the implication from barring such claims is, at one level, correct, but that hasn't stopped anyone from bringing such a suit. Maybe the answer is to insert language to the effect that no such inference is intended.

OK-?  
f. Finally, there is no reference in proposed § 895.11 (created in section 22 of the bill) to "employees" because "agents" subsumes "employees."

14. **Responses to comments of Robert J. Marchant**

a. Although we understand a general resistance to using terms like "thereof" or "of the foregoing" in the statutes, we believe it is appropriate here. The reference to "of that agreement" is incorrect. The alternative would involve repeating much of what preceded the word "proceeds" in each case.

b. It is critical that the legislation governs the sale of tobacco settlement revenue to the exclusion of common law principles and the UCC. Until revised Article 9 is adopted, the common law governs the sale of general intangibles. In Wisconsin that common law requires that notice of a sale be given to the obligors and the order of priority vis-a-vis conflicting purchasers is resolved in favor of the first to notify. We do not want to go through this process. We need to be sure that the statute overrides that common law. The language we suggested, including the revision to be inserted in item 2.c.i. above [for page 6, line 15], is intended to provide this result. **We are currently discussing** whether to request that you include a further clarification that this section applies "notwithstanding the common law applicable to the sale of general intangibles".

c. Proposed s. 16.63 (4) (a) is not a limit or clarification on the definition of tobacco settlement revenues and should not be changed. Rather, it is a way to ensure that the revenues are not proceeds of something else. If the revenues could be proceeds of other collateral, then we cannot say absolutely that the lien holder of our revenues has a first security interest.

d. Because "proceeds" has a technical meaning under the UCC, we have changed certain references which had been to "funds" to "amounts" instead of "proceeds."

e. We do not believe that the language previously suggested was inconsistent and have suggested revisions to the draft to preserve those concepts.

f. We have suggested revisions in item 2.c.ii. above to address the issue that this would be a true sale and not a secured transaction, which is very important to the structuring of the proposed transactions.

g. With respect to the comment about the last sentence of proposed s. 16.63 (4) (c) (3), perfection is a concept that applies to sales as well as secured transactions. The language is intended to refer to a sale and should be retained without change except as we have noted in item 2.c.vii. With respect to your comment in the last sentence, we reiterate that (4) (c) is intended to apply to and govern the sale of tobacco settlement revenues notwithstanding anything to the contrary in the common law or the UCC. If there exists a question about that, we should discuss further changes.

✓ 15. **Responses to comments of Pamela J. Kahler**

✓ a. Item 1: DOA will advise you if additional investments are requested for WHEFA

✓ b. Item 2: it was intended that refunding bonds would be subject to the same exception to the 30 year rule as provided in proposed s. 231.03 (6) (g). If the references in s. 231.16 (3) are not clear on that, please make a clarifying change.

✓ c. Item 3: WHEFA may purchase and then sell the rights to receive the payments. We have suggested revisions to proposed s. 231.215 in item 8 above to accommodate either situation.

✓ d. Item 4. In connection with a purchase it is possible that, as part of the purchase arrangement, WHEFA would issue certificates or evidences of ownership to the seller or third parties. This option should not be removed.

16. **Comments of the Analysis by the Legislative Reference Bureau**

a. Revise the first paragraph on page 2 to reflect the suggested revisions in the timing of transfers from the permanent fund to the general fund and the amounts to be transferred (*i.e.*, July 1 to June 1; item 1 calculation excludes items 2 and 3; and receipts based on that fiscal year).

b. In the second paragraph of page 2, clarify that the invest board "may" not "must" invest in those types of investments. It also may invest in other generally permitted investments.

~~c.~~ The last paragraph on page 2 may need some revisions in light of the suggested changes in these instructions. As noted, the sale, assignment and transfer will be governed by this legislation rather than Article 9. The reference in the first sentence to "interests" should probably be to "security interests".

d. In the third new paragraph on page 3 (generally discussing WHEFA), add "or sale" in the penultimate line after "the purchase".