

2003 DRAFTING REQUEST

Bill

Received: **06/02/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - misc.
Munis - miscellaneous**

Extra Copies: **MES**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us
robert.marchant@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Public Service Commission oversight of municipal storm water runoff utilities

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/P1	mkunkel 09/11/2003	csicilia 09/11/2003	rschluet 09/11/2003	_____	Inorthro 09/11/2003		S&L
/1	mkunkel	csicilia	jfrantze	_____	lemery		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/05/2003	10/05/2003	10/06/2003 _____		10/06/2003		
/2	mkunkel 10/06/2003	csicilia 10/06/2003	rschluet 10/06/2003 _____		lemery 10/06/2003	lnorthro 10/27/2003	

FE Sent For:

<END>

At
Intro.

2003 DRAFTING REQUEST

Bill

Received: 06/02/2003

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - misc.
Munis - miscellaneous**

Extra Copies: **MES**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us
robert.marchant@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Public Service Commission oversight of municipal storm water runoff utilities

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			
/P1	mkunkel 09/11/2003	csicilia 09/11/2003	rschluet 09/11/2003	_____	Inorthro 09/11/2003		S&L S&L
/1	mkunkel	csicilia	jfrantze	_____	lemery		S&L

*For Assembly
per MKK*

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/05/2003	10/05/2003	10/06/2003	_____	10/06/2003		
/2	mkunkel	csicilia	rschluet	_____	lemery		
	10/06/2003	10/06/2003	10/06/2003	_____	10/06/2003		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 06/02/2003

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Gregg Underheim (608) 266-2254

By/Representing: Randy Thorson

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters:

Subject: **Public Util. - misc.**
Munis - miscellaneous

Extra Copies: **MES**

Submit via email: YES

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**
robert.marchant@legis.state.wi.us

PA: also copy Joe Kreye

Pre Topic:

No specific pre topic given

Topic:

Public Service Commission oversight of municipal storm water runoff utilities

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							S&L
/P1	mkunkel 09/11/2003	csicilia 09/11/2003	rschluet 09/11/2003		Inorthro 09/11/2003		S&L
/1	mkunkel	csicilia	jfrantze		lemery		

1/2 cjs 10/16/03
[Signature]
10-16-03
CA

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/05/2003	10/05/2003	10/06/2003	_____	10/06/2003		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 06/02/2003

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Gregg Underheim (608) 266-2254

By/Representing: Randy Thorson

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters:

Subject: Public Util. - misc.
Munis - miscellaneous

Extra Copies: MES
JK

Submit via email: YES

Requester's email: Rep.Underheim@legis.state.wi.us

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us
robert.marchant@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Public Service Commission oversight of municipal storm water runoff utilities

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							S&L
/P1	mkunkel 09/11/2003	csicilia 09/11/2003	rschluet 09/11/2003		lnorthro 09/11/2003		

1 q's 10/5/03 Jb 10/6 10/6 [Signature]

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **06/02/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - misc.
Munis - miscellaneous**

Extra Copies: **MES, J. Kreye, RJM**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

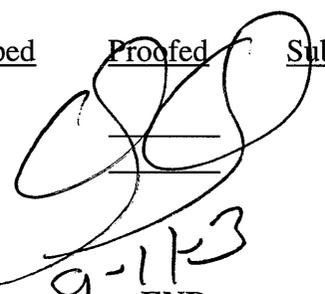
Topic:

Public Service Commission oversight of municipal storm water runoff utilities

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel	RP1 gjs	9/11 03				S&L

FE Sent For:
 9-11-03
 <END>

Mark -

Here are my notes, the Chamber position paper and some Talking points. If you have further questions call (I am sure you will.)

Thank you for your time and I will talk to you soon.

Randy Thorson
Legislative Aide to
Gregg Underheim
State Representative
54th Assembly District
266-2254

Establish PSC oversight of municipalities developing stormwater run-off utilities.

- Use accepted accounting guidelines for establishing costs (administrative, etc.).
- PSC establishes what services can be put in the utility.
- The cost of inclusion in the stormwater utility has to be attributable to a ^{legitimate} environmental benefit.
- PSC regulates rates over a period of time (municipality can't hike or lower rates)
- Reasonableness of imposition of new tax - (has to be some sort of appeals process)
- Moving a current service from property tax rolls to the new utility has to incorporate a commensurate reduction of tax from the property tax rolls.

Regulate and audit the utility to ensure that its structure is "fair and reasonable" and its charges are indeed based on "services directly received" by ^{individual} customers.

Talking Points
Proposed Legislation
PSC Oversight of
Stormwater Utilities

Consistency and Fairness of Accounting:

- Streets are not included as impervious surfaces (city parking lots and parks unknown)
- Interest on bonding included in operating cost not a reduction of capital
- Street Sweeping and leaf & brush pickup included
- No definition of FTE and how allocated
- Permitting duties included in Utility, will city double charge?
- There should be no allocations from non direct functional departments
- Utility fee to be placed on the Water bill, should be placed on the property tax bill
- Revenue and expenses of Utility should be consolidated into the city budget when calculating state revenue sharing formulas

Consistency and Fairness of Offset Credits

- Only direct entry into Lakes Winnebago, Butte des Morts, and the Fox River are allowed. All streams are conveyances of the city.
- No credit given for those who have worked on stormwater volume and quality on their property. Equal charge based on impervious surfaces even though one has put in retention ponds and stormwater control landscaping.
- Appeal of credit goes through DPW, City Manager, Council
- \$200 application fee for credit
- Credit can only be applied for after survey by approved hydrologist

Adopted: March 14, 2003

Oshkosh Chamber of Commerce Position Paper
on
The City of Oshkosh's Storm Water Utility

Introduction

The City of Oshkosh ("City") has recently approved the establishment of a Storm Water Utility ("Utility") that will have the authority to charge property owners fees purportedly to cover the City's expenses related to stormwater management. The development of the Utility was facilitated by Earth Tech, the City's consultant, and approved by the City's Common Council under the pretense of being the most "fair and equitable" way " ... to allocate the cost of stormwater management based on the relative cost of services received". See, Earth Tech's report dated September 2002. To date, property owners have had little, or no, input on the development of the Stormwater Utility and its fee structure. Currently, the City does not plan to develop a Utility Governing Board to oversee and approve the cost transferred from the general tax levy to the Stormwater Utility.

based on
66.0821
(4)(b)
§(c)?

Under the proposed Utility's structure, it is estimated that many of our local businesses would be assessed thousands of dollars on a yearly basis for these so-called services. Additionally, according to the City, the proposed Equivalent Runoff Unit ("ERU") fees are estimated to increase by 59.2% from the 2003 base year to 2006. Under the circumstances, the Chamber felt it was necessary to examine the details of how the proposed fee structure was developed by Earth Tech, in order to determine if it indeed was developed in a "fair and equitable" fashion. The evaluation identified the following issues as not being "fair and equitable" based on the cost of services received by the Chamber's Members.

Issue #1: Transfer of Various Costs to the Utility

According to Earth Tech's report, the City plans to transfer various costs from the general tax fund to the Utility. The transfer of the costs outlined below is questionable as "fair and equitable":

Appendix A-2: Engineering and Planning Costs. (2002 costs to be transferred: \$180,754).

Comment: Some of these costs (i.e., grade staking for structure, lawn, and driveway, etc.) are direct costs which should be borne by the developer and/or industrial property owner through permit fees and not charged to the Utility.

Appendix A-3: Construction & Erosion Control Inspection Cost. (2002 Utility costs: \$ 22,770).

Comment: Clearly these are direct costs that should be borne by the developing property owner, and not charged to the Utility (and thereby shifted to property owners not receiving the services).

Appendix A-4: Operation and Maintenance Cost (2002 costs to be transferred: \$1,670,779).

Comment: The Chamber believes that more than \$1,000,000 of the \$1,670,779 is inappropriately included in the Utility's cost structure. These costs include street sweeping and fuel (\$288,484), brush and leaf pick-up (\$631,276), weed mowing (\$18,467) and equipment repairs (\$91,447). While some of these services are considered a Best Management Practice (BMP) under the stormwater pollution prevention guidelines, they are at their core essential municipal services that the City has been providing for decades, long before there ever was a focus on stormwater pollution prevention. Furthermore, it is the Chamber's view that the City would have to continue to provide these services just as they have in the past should they not be considered a BMP. In addition, the vast majority of business does not have City leaf and brush pick-up and do not receive direct benefits for such services. It is our understanding that such cost is **not** part of a typical Stormwater Utility fee structure.

Appendix A-5: Capital Improvement Cost. (2002 - 2006 costs to be transferred: \$11,905,500).

Comments: Almost \$12,000,000 in capital expenditures is to be transferred from the general tax fund to the Stormwater Utility. A figure believed to be substantially higher than that of other Fox Valley communities that have established Stormwater Utilities. It is the Chamber's strong opinion that fairness and equity require that many of these costs belong either in the general tax levy or should be included in a special assessment to the property owners who directly "receive the benefits" of the capital improvements. The expenditures listed below are proposed to be transferred to the Utility and clearly need to be evaluated in greater detail before such a shift can be considered "fair and equitable":

1. The planned \$2,000,000 Anchorage Basin Relief Channel. This project should either be paid for by the property owners in the watershed that the Basin services or through the usual City general tax levy and not by the all property owners with ERUs throughout the city, since the majority of property owners will not receive direct service

benefits from this capital improvement.

2. 2002 Storm Sewer Construction (non-TIF Projects) totals \$1,418,000. Of this amount, only a small percentage (5.6%) or \$80,500 is being directly assessed to adjoining property owners. While this may be the City's standard storm sewer assessment policy, the bulk of the cost is being allocated to the Utility and, disproportionately, on to property owners that do not directly benefit from this capital improvement.
3. The \$390,000 cost for the purchasing of new street sweepers (see comments above regarding Appendix A-4 cost).
4. More information is needed on the \$4,266,000 expenditure titled "*Annual Storm Water Improvements*" and the \$900,000 for "*Storm Water Quality Improvements*" and "*Petition/Local Program Streets*".

Issue #2: The Interrelationship between the Stormwater Utility and WDNR's NR216

Given the intense focus the City has put on this issue, it should be pointed out that the creation of a Stormwater Utility is NOT required under any WDNR or EPA regulation. Furthermore, the regulation should not be used as an excuse for the creation of the Utility. In fact, only a handful of municipalities have created a Utility, while the vast majority of Wisconsin municipalities have chosen not to create a Stormwater Utility. At this time it is not clear what additional cost the City will incur as part of the NR216 compliance as many of the requirements of the permit are already in place.

Additionally, industry has been subject to the NR216 requirements for years and has already addressed their responsibilities under this regulation. To clarify the City's position, the City should identify all cost as either being a requirement of NR216 (including the appropriate citation) or as not being a requirement of NR216.

In the past, the City has emphasized that educating property owners on stormwater pollution prevention is a requirement of NR216. While we agree, we also believe that this should not be a significant cost if the City works with the WDNR and the UW-Extension who already have an educational program in place. Additionally, it is not "fair and equitable" to charge property owners for this expense based on the number of their ERU's because it does not cost any more to educate a representative of a property owner who has 500 ERUs, than it does to educate a residential property owner with 1 ERU. Moreover, most industrial property owner representatives have already received this type of training as part of their NR216 permit requirements.

Issue #3: The Establishment of an Off-set Credit Program

Because of the City's haste to approve the creation of the Utility, with little to no

involvement of property owners, the Utility was approved before finalizing an Off-set Credit program. An Off-set program needs to be established, with direct input from property owners that, (1) discharge their stormwater directly to a creek, the Fox River, Lake Winnebago, or other "waters of the State" (2) have existing or future stormwater detention basins on their property, and (3) have already implemented stormwater pollution prevention activities as a requirement of their WDNR NR216 stormwater discharge permit.

Based on a presentation given by City officials and Earth Tech, it appears the City will be reluctant to issue credits under any of the above situations. Furthermore, it appears the City has taken the position that "dry" type stormwater basins do not help reduce stormwater pollutants and therefore no off-set credits will be given for them. Discussions with a professional engineer at Foth & Van Dyke, of Green Bay, WI, have revealed that "dry" type basins, if properly designed, do help to reduce stormwater pollution and credits should be given appropriately as is the case with most other stormwater utilities. In addition, the cost borne by property owners and their neighbors, who have or will install private stormwater retention basins on their properties either minimizes or completely eliminates the necessity of the City having to construct a regional basin and other storm water management structures, such as the proposed public \$2,000,000 Anchorage Basin which the City plans to pay for with funds from the Utility. The question "what is fair and equitable about this?" begs to be asked. Creating the Utility before developing the specifics of the program amounts to "putting the cart in front of the horse".

Issue #4: The Interrelationship between the Utility's Fees and an Increase in City Property Taxes

Under the proposed storm water user fee system, the cost of storm water management activities will be disproportionately shifted to non-residential property owners. The City's consultant, Earth Tech, maintains this cost-shift more accurately reflects this class of properties' contribution to the cost of storm water management. It is proposed that residential property owners will be allocated 27% of the City's storm water management costs, while non-residential property owners will bear the lion-share of the cost or 73%. This reallocation will occur regardless of whether that property owner realizes any direct benefit or service. The proposed ERU rate approach does not accurately reflect the service received relative to the type of use to which the property is put. The Storm Water Utility is nothing more than a tax-shifting scheme designed to create the illusion that the City's general property tax rate increase was marginally flat, when in fact, it was significantly increased for non-residential property owners. The proposed ERU rate is not a service or user fee, but in reality is a tax on all property owners, regardless of the degree of service received. Furthermore, the Utility approach provides no quid pro quo for taxpayers in terms of the property tax levy. While the Storm Water Utility enables the City to assess charges to all classes of properties, there has been no corresponding decrease in the City's general tax levy. If the City is substituting the Storm Water Utility fees to pay for storm water management activities, there should be a concomitant or

offsetting decrease in the general tax levy since the City will not have to assess for those activities. Furthermore, the Utility creates an 'unbridled' approach to pay for storm water management that is outside of the State-imposed spending restraint formula. The Utility is imposing a tax on all properties, and disproportionately on non-residential properties, which is disguised as a user fee. Over the course of five years (2002 - 2006), approximately \$22 million of storm water program cost, both operation and capital, will be shifted into the Storm Water Utility. This is occurring without any oversight of a governing board or City-imposed spending caps.

Issue #5: The Haste to Establish the Utility by the City without Stakeholders Participation

The establishment of a "fair and equitable" Utility would have included the direct participation of the various Stakeholders affected by the Utility. This clearly was not the case. If the Utility is to remain in place, and be "fair and equitable", direct participation from the Stakeholders is required. As such, if the Utility is to remain in place, the Chamber strongly recommends that a Utility Board be established. The Utility Board membership should be established on a proportionate ERUs basis. The Chamber suggests an 11-member Board with one member each representing the public school board, UW-Oshkosh, nonprofit organizations, City Council, two members representing the city residents at large, and five members selected by the Chamber to represent commerce and industry. City staff members would act in an advisory capacity only for the Board. The Board would have the authority to establish rates, implement an offset credit program, and provide oversight over the Utility.

Conclusion

Chamber members are not opposed to paying their fair and equitable share of storm water costs. They believe that they have historically paid more than their fair share through the general property tax levy. Given the current slump in the economy, any additional cost of doing business has a negative impact on an organization's existence.

Furthermore, the Chamber believes such creation of the Storm Water Utility represents nothing more than a mechanism for the City to facilitate an tax shift of approximately \$22 million over a five-year period, with no oversight or cap, while providing little to no additional services from what is already being provided under the current tax levy structure. As such the Utility removes the "competition for funds" (see Earth Tech's report). In these times of growing deficits, "competition for funds" is an absolute necessity in controlling costs of all branches of Government, including local units.

While the City will have some additional cost associated with the City's WDNR Phase II Storm Water permit, we believe these additional costs make up a very small portion of the approximate \$22 million tax shift. Contrary to the emphasis the City has on this issue, it should be made clear to all Stakeholders that the creation of a Storm Water Utility is NOT required under any WDNR or EPA regulation. In addition, many

Chamber members have had storm water permits for an extensive period, and as such, are already regulated by the WDNR and have implement their own BMP's at their own expense.

The lack of an off-set credit program prior to the approval of the creation of the Utility and the "dual standard" the City is proposing to use with respects to the off-set credits for privately owned detention ponds is disturbing. A "fair and equitable" process would have included Stakeholder involvement in the establishment of a program before the Utility itself was approved.

Therefore, because little to no additional services will be provided as part of the Utility, and questionable costs are being proposed to be shifted to the Utility, the Chamber is strongly advocating the City abolish the Utility and put the cost back in the general tax levy. As an alternative to the abolishment of the Utility, the Chamber strongly encourages and feels (see Issue #5) it is important to establish a Utility Board with authority to regulate and audit the Utility to assure its structure is "fair and equitable" and its charges are indeed based on "services directly received" by property owners. The Chamber suggests an 11-member Board with one member each representing the public school board, UW-Oshkosh, nonprofit organizations, City Council, two members representing the city residents at large, and five members to represent commerce and industry. City staff members would act in an advisory capacity only for the Board. The Board would have the authority to establish rates, implement an offset credit program, and provide oversight over the Utility.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2794/P1

MDK:j:....

D-NOTE

js

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today
- 1:30 PM

SA ✓
new chs ✓
x-refs

D-note

Gen. cont.

1 AN ACT ~~...~~; relating to: requiring the public service commission to regulate
2 municipal storm water utilities.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of the draft.

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

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

3 SECTION 1. 66.0801 (1) (am) of the statutes is created to read:

4 66.0801 (1) (am) "Municipal storm water utility" has the meaning given in s.
5 196.01 (3). ~~(3)~~ (3r)

6 SECTION 2. 66.0809 (1) of the statutes is amended to read:

7 66.0809 (1) Except as provided in sub. (2) and s. 66.0822, the governing body
8 of a town, village or city operating a public utility may, by ordinance, fix the initial

1 rates and shall provide for this collection monthly, bimonthly or quarterly in advance
2 or otherwise. The rates shall be uniform for like service in all parts of the
3 municipality and shall include the cost of fluorinating the water. The rates may
4 include standby charges to property not connected but for which public utility
5 facilities have been made available. The charges shall be collected by the treasurer
6 or other officer or employee designated by the city, village or town.

History: 1999 a. 150 ss. 184, 186.

7 **SECTION 3.** 66.0815 (1) (a) of the statutes is amended to read:

8 66.0815 (1) (a) A city, village or town may ~~grant~~ to any person the right to
9 construct and operate a public utility, ~~except a municipal storm water utility,~~ in the
10 city, village or town, subject to reasonable rules and regulations prescribed by
11 ordinance.

History: 1977 c. 29; 1981 c. 347 s. 80 (2); 1981 c. 390 s. 252; 1991 a. 316; 1993 a. 16, 246; 1995 a. 378; 1999 a. 150 s. 169; Stats. 1999 s. 66.0815; 1999 a. 182 s. 204d; 2001 a. 30.

12 **SECTION 4.** 66.0821 (2) (b) of the statutes is amended to read:

13 66.0821 (2) (b) ~~The~~ Except as provided in s. 66.0822, the governing body of a
14 municipality, and the officials in charge of the management of the sewerage system
15 as well as other officers of the municipality, are governed in the discharge of their
16 powers and duties under this section by ss. 66.0809 to 66.0813 or 62.69 (2) (f), to the
17 extent consistent with this section, or, in the case of a metropolitan sewerage district
18 created under ss. 200.21 to 200.65, by ss. 200.55 and 200.59.

History: 1971 c. 276; 1975 c. 414 s. 28; 1977 c. 29; 1981 c. 282, 314; 1983 a. 207; 1989 a. 322; 1991 a. 316; 1995 a. 27 s. 9126 (19); 1997 a. 53, 213; 1999 a. 32; 1999 a. 150 ss. 215 to 229, 242 to 249; Stats. 1999 s. 66.0821; 1999 a. 186 ss. 46, 47; 2001 a. 30.

19 **SECTION 5.** 66.0821 (4) (a) of the statutes is amended to read:

20 66.0821 (4) (a) ~~The~~ Except as provided in s. 66.0822, the governing body of the
21 municipality may establish sewerage service charges in an amount to meet all or part
22 of the requirements for the construction, reconstruction, improvement, extension,
23 operation, maintenance, repair and depreciation of the sewerage system, and for the

1 payment of all or part of the principal and interest of any indebtedness incurred for
 2 those purposes, including the replacement of funds advanced by or paid from the
 3 general fund of the municipality. Service charges made by a metropolitan sewerage
 4 district to any town, village or city shall be levied by the town, village or city against
 5 the individual sewer system users within the corporate limits of the municipality,
 6 and the municipality shall collect the charges and promptly remit them to the
 7 metropolitan sewerage district. Delinquent charges shall be collected in accordance
 8 with sub. (4) ~~(c)~~ (d).

NOTE: NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending. NOTE:

History: 1971 c. 276; 1975 c. 414 s. 28; 1977 c. 29; 1981 c. 282, 314; 1983 a. 207; 1989 a. 322; 1991 a. 316; 1995 a. 27 s. 9126 (19); 1997 a. 53, 213; 1999 a. 32; 1999 a. 150 ss. 215 to 229, 242 to 249; Stats. 1999 s. 66.0821; 1999 a. 186 ss. 46, 47; 2001 a. 30.

9 **SECTION 6.** 66.0821 (4) (c) of the statutes is renumbered 196.03 (7) (a) and

10 amended to read:

11 196.03 (7) (a) ~~For the purpose of making equitable charges for all services~~
 12 ~~rendered by a storm water and surface water sewerage system to users~~ In
 13 determining rates for a municipal storm water utility, the property served by the
 14 utility may be classified, taking into consideration the volume or peaking of storm
 15 water or surface water discharge that is caused by the area of impervious surfaces,
 16 topography, impervious surfaces and other surface characteristics, ~~extent and~~
 17 ~~reliability of mitigation or treatment measures available to service the property,~~
 18 ~~apart from measures provided by the storm water and surface water sewerage~~
 19 ~~system,~~ and any other considerations that are reasonably relevant to a use made of
 20 the municipal storm water and surface water sewerage utility's system. The charges
 21 rates may also include standby charges to property not yet developed with significant
 22 impervious surfaces for which capacity has been made available in the municipal
 23 storm water and surface water sewerage utility's system.

History: 1971 c. 276; 1975 c. 414 s. 28; 1977 c. 29; 1981 c. 282, 314; 1983 a. 207; 1989 a. 322; 1991 a. 316; 1995 a. 27 s. 9126 (19); 1997 a. 53, 213; 1999 a. 32; 1999 a. 150 ss. 215 to 229, 242 to 249; Stats. 1999 s. 66.0821; 1999 a. 186 ss. 46, 47; 2001 a. 30.

1 **SECTION 7.** 66.0821 (5) (a) of the statutes is amended to read:

2 66.0821 (5) (a) If a user of a service complains to the public service commission
3 that rates, rules and practices are unreasonable or unjustly discriminatory, or if a
4 holder of a mortgage or revenue bond or mortgage certificate or other evidence of
5 debt, secured by a mortgage on the sewerage system or any part of the system or
6 pledge of the income of sewerage service charges, complains that rates are
7 inadequate, the public service commission shall investigate the complaint. If there
8 appears to be sufficient cause for the complaint, the commission shall set the matter
9 for a public hearing upon 10 days' notice to the complainant and the town, village or
10 city. After the hearing, if the public service commission determines that the rates,
11 rules or practices complained of are unreasonable or unjustly discriminatory, it shall
12 determine and by order fix reasonable rates, rules and practices and may make any
13 other order respecting the complaint that is just and reasonable, ~~including, in the~~
14 ~~case of standby charges imposed under sub. (4) (c), an order that a municipality~~
15 ~~refund to the user any amount of the standby charges that have been collected if the~~
16 ~~user has filed a complaint with the public service commission not later than 60 days~~
17 ~~after receiving the original notice of charge or after receiving a notice of charge that~~
18 ~~relates to an increased standby charge.~~ The proceedings under this paragraph are
19 governed, to the extent applicable, by ss. 196.26 to 196.40. The commission shall bill
20 any expense of the commission attributable to a proceeding under this paragraph to
21 the town, village or city under s. 196.85 (1).

History: 1971 c. 276; 1975 c. 414 s. 28; 1977 c. 29; 1981 c. 282, 316; 1983 s. 207; 1989 a. 322; 1991 a. 316; 1995 a. 27 s. 9126 (19); 1997 a. 53, 213; 1999 a. 32; 1999 a. 150 ss. 215 to 229, 242 to 249; Stats. 1999 s. 66.0821; 1999 a. 186 ss. 46, 47; 2001 a. 30.

22 **SECTION 8.** 66.0821 (5) (c) of the statutes is created to read:

23 66.0821 (5) (c) The subsection does not apply to rates, rules, and practices of
24 a municipal storm water utility.

SECTION 9. 66.0822 of the statutes is created to read:

66.0822 **Municipal storm water utilities.** The rates, rules, and practices of a municipal storm water utility are subject to the authority of the public service commission under ch. 196.

SECTION 10. 196.01 (5) (a) 1. of the statutes is amended to read:

196.01 (5) (a) 1. Any person engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains and any person, except a governmental unit, who furnishes services by means of a sewerage system either directly or indirectly to or for the public.

PLAIN

PLAIN

History: 1977 c. 29, 418; 1981 c. 390; 1983 a. 27, 53, 76, 192, 425, 538; 1985 a. 79, 1985 a. 297 ss. 14 to 22, 39; 1987 a. 27; 1989 a. 344; 1993 a. 121, 496; 1995 a. 46, 409; 1997 a. 184, 218, 229; 1999 a. 9, 32, 53; 1999 a. 150 s. 672; 2001 a. 16.

SECTION 11. 196.01 (5) (a) 3. of the statutes is created to read:

196.01 (5) (a) 3. A municipal storm water utility.

SECTION 12. 196.01 (5) (b) 7. of the statutes is created to read:

196.01 (5) (b) 7. A governmental unit, other than a municipal storm water utility, that furnishes services by means of a sewerage system either directly or indirectly to or for the public.

3r

SECTION 13. 196.01 (5) of the statutes is created to read:

196.01 (5) "Municipal storm water utility" means a municipality that owns, operates, manages, or controls all or any part of ^a plant or equipment for the conveyance and disposal of storm water and that requires the public to pay rates for use of such plant or equipment, but does not include a metropolitan sewerage district commission that operates a sewerage system under s. 200.11 (2) or 200.31 (1).

city, village, or town

SECTION 14. 196.03 (1) of the statutes is amended to read:

196.03 (1) Subject to s. 196.63, a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility for any heat,

move

1 light, water, telecommunications service or power produced, transmitted, delivered
2 or furnished, for any conveyance or disposal of storm water, or for any service
3 rendered or to be rendered in connection therewith shall be reasonable and just and
4 every unjust or unreasonable charge for such service is prohibited and declared
5 unlawful.

6 History: 1981 c. 20, 342; 1983 a. 53; 1985 a. 297; 1987 a. 399; 1991 a. 294; 1993 a. 496; 1995 a. 27; 1997 a. 204.

SECTION 15. 196.03 (7) (b) of the statutes is created to read:

7 196.03 (7) (b) Notwithstanding ss. 196.60, 196.604, and 196.61, the rates under
8 par. (a) shall take into consideration the extent and reliability of mitigation or
9 treatment measures that a ratepayer provides for a property that are apart from the
10 measures provided by the municipal storm water utility and the rates shall provide
11 credits to a rate payer to account for such measures provided by a ratepayer. ✓

12 **SECTION 16.** 196.06 (2) of the statutes is amended to read:

13 196.06 (2) The commission may require any public utility engaged directly or
14 indirectly in any business other than that of the production, transmission or
15 furnishing of heat, light, water, telecommunications service or power or the
16 conveyance or disposal of storm water, to keep and render separately to the
17 commission in like manner and form the accounts of all such other business. This
18 chapter applies to the books, accounts, papers and records of such other business if
19 the commission requires the keeping and rendering separately of the accounts under
20 this subsection.

21 History: 1977 c. 418; 1983 a. 53; 1985 a. 297.

SECTION 17. 196.193 (5) of the statutes is created to read:

22 196.193 (5) APPLICABILITY. This section does not apply to rates for the
23 conveyance or disposal of storm water.

24 **SECTION 18.** 196.26 (1) (a) of the statutes is amended to read:

1 196.26 (1) (a) A complaint filed with the commission that any rate, toll, charge,
2 or schedule, joint rate, regulation, measurement, act, or practice relating to the
3 provision of heat, light, water, power, or telecommunications service or to the
4 conveyance or disposal of storm water is unreasonable, inadequate, unjustly
5 discriminatory, or cannot be obtained. ✓

History: 1981 c. 148; 1983 a. 53; 1985 a. 297; 1989 a. 344; 1993 a. 496; 1995 a. 409; 1997 a. 218, 229; 1999 a. 32, 53, 186; 2001 a. 16.

6 **SECTION 19.** 196.60 (1) (a) of the statutes is amended to read:

7 196.60 (1) (a) Except as provided under sub. (2), no public utility and no agent,
8 as defined in s. 196.66 (3) (a), or officer of a public utility, directly or indirectly, may
9 charge, demand, collect or receive from any person more or less compensation for any
10 service rendered or to be rendered by it in or affecting or relating to the production,
11 transmission, ^{or} ~~delivery~~ for the conveyance or disposal of storm water, or furnishing
12 of heat, light, water, telecommunications service or power ^{or} for any service in
13 connection therewith, than that prescribed in the published schedules or tariffs then
14 in force, or established under this chapter, or than it charges, demands, collects or
15 receives from any other person for a like contemporaneous service.

History: 1977 c. 418; 1983 a. 53 ss. 77, 78, 82; 1985 a. 297; 1989 a. 49.

16 **SECTION 20.** 196.604 of the statutes is amended to read:

17 **196.604 Rebates, concessions and discriminations unlawful.** No person
18 may knowingly solicit, accept or receive any rebate, concession or discrimination
19 from a public utility for any service in or affecting or relating to the production,
20 transmission, delivery or furnishing of heat, light, water or power, the conveying or
21 disposal of storm water, or the conveying of telecommunications messages within
22 this state or for any connected service whereby the service is rendered or is to be
23 rendered free or at a rate less than the rate named in the schedules and tariffs in

1 force, or whereby any other service or advantage is received. Any person violating
2 this section shall be fined not less than \$50 nor more than \$5,000 for each offense.

3 *History:* 1983 a. 53 s. 84; 1989 a. 49; 1995 a. 409.

3 **SECTION 21.** 196.61 of the statutes is amended to read:

4 **196.61 Facilities in exchange for compensation prohibited.** A public
5 utility may not demand, charge, collect or receive from any person less compensation
6 for any service rendered or to be rendered by the public utility in return for the
7 furnishing by that person of any part of the facilities incident to the service. This
8 section may not be construed to prohibit any public utility from renting any facility
9 relating to the production, transmission, delivery or furnishing of heat, light, water,
10 telecommunications service or power or to the conveyance or disposal of storm water
11 and from paying a reasonable rental for the facility. This section may not be
12 construed to require any public utility to furnish any part of any appliance which is
13 at the premises of any consumer, except meters and appliances for measurements of
14 any product or service, unless the commission orders otherwise.

15 *History:* 1983 a. 53; 1985 a. 297; 1993 a. 496.

15 **SECTION 22.** 196.796 (1) (b) 2. a. of the statutes is amended to read:

16 196.796 (1) (b) 2. a. Any repair, maintenance, installation or construction of a
17 structure owned or used by or for a public utility, or for a customer of a public utility,
18 if the repair, maintenance, installation or construction is related to furnishing heat,
19 light, water or power to the customer or is related to the conveyance or disposal of
20 storm water.

STET:
leave as
typed

21 *History:* 1999 a. 9.

21 **SECTION 23.** 196.796 (1) (f) of the statutes is amended to read:

22 196.796 (1) (f) "Improvements" means any valuable addition made to land,
23 including excavations, gradings, foundations, structures, buildings, streets, parking
24 lots, sidewalks, sewers, septic systems and drainage facilities. "Improvements" does

1 not include any repair, maintenance, installation or construction of structures or
2 facilities owned or used by or for a public utility, or by or for a customer of a public
3 utility, if the repair, maintenance, installation or construction is related to furnishing
4 heat, light, water or power to the customer or is related to the conveyance or disposal
5 of storm water.

6 **History:** 1999 a. 9.

SECTION 24. 196.796 (3) (a) 1. of the statutes is amended to read:

7 196.796 (3) (a) 1. Repairing, maintaining, installing or constructing a structure
8 that is owned or used by or for a public utility or nonutility affiliate, or for a customer
9 of a public utility if the repair, maintenance, installation or construction is related
10 to furnishing heat, light, water or power to the customer or is related to the
11 conveyance or disposal of storm water.

12 **History:** 1999 a. 9.

SECTION 25. Effective date.

13 (1) This act takes effect on the first day of the 13th month beginning after
14 publication.

15 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2794/P1dn

MDK:.....

ejs

Rep. Underheim:

This preliminary draft requires the PSC to regulate municipal storm water utilities (MSWUs.). Note that a municipality that provides for the conveyance and disposal of storm water is subject to PSC regulation only if the municipality charges rates to property owners for these services. A municipality that funds these services through property taxes, rather than rates, is not affected by the bill.

In addition, please note the following about the bill:

1. The instructions require a municipality to reduce property taxes if the municipality uses a MSWU to charge rates for services that were previously funded by property taxes. As discussed with Randy Thorson, this requirement is not included in this draft because it may adversely affect a municipality's bond rating. This situation could result if a municipality has issued debt for sewerage-related purposes, as authorized under s. 66.0821 (3) (a), stats., and the property tax generated revenue stream that is dedicated to paying off this debt must be reduced because a MSWU now charges rates for something that was previously funded by property tax revenues. ✓

2. Another reason for not including the instruction described above is that there might not be a direct relationship between MSWU rates and property taxes. Even if the costs related to the MSWU are no longer included in the property tax levy, the tax revenues might be used for a different purpose. For example, a municipality that has delayed park maintenance due to lack of funds might use the revenues for park maintenance.

3. Because MSWUs are defined to be "public utilities" that are subject to PSC regulation, their rates are subject to the same requirements that apply to other types of rates that are subject to PSC regulation. As a result, MSWU rates must be just and reasonable, MSWUs must file rate schedules that are subject to PSC approval, and MSWUs must comply with accounting requirements prescribed by the PSC. In addition, although not explicitly stated in the draft, the PSC has the authority to ensure that rates are charged only for expenses that are legitimately related to the conveyance and disposal of storm water. This authority results from the requirement that rates must be just and reasonable. ✓

4. A metropolitan sewerage district is not subject to the bill. Because such districts are subject to regulation under current law, I assume that you don't want the draft to apply to them. Let me know if this is okay. ✓

5. The draft addresses your concerns regarding "offsets" in proposed s. 196.03 (7) (b), which requires the rates to include credits for property owners who provide their own mitigation measures. ✓

6. I delayed the effective date of the bill by one year in order to give the PSC time to begin to regulate municipal storm water utilities. ✓

After you have an opportunity to review this draft, I will prepare a version that includes an analysis ~~that~~ may be introduced. ✓

and

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2794/P1dn
MDK:cjs:rs

September 11, 2003

Rep. Underheim:

This preliminary draft requires the PSC to regulate municipal storm water utilities (MSWUs.). Note that a municipality that provides for the conveyance and disposal of storm water is subject to PSC regulation only if the municipality charges rates to property owners for these services. A municipality that funds these services through property taxes, rather than rates, is not affected by the bill.

In addition, please note the following about the bill:

1. The instructions require a municipality to reduce property taxes if the municipality uses a MSWU to charge rates for services that were previously funded by property taxes. As discussed with Randy Thorson, this requirement is not included in this draft because it may adversely affect a municipality's bond rating. This situation could result if a municipality has issued debt for sewerage-related purposes, as authorized under s. 66.0821 (3) (a), stats., and the property tax generated revenue stream that is dedicated to paying off this debt must be reduced because a MSWU now charges rates for something that was previously funded by property tax revenues.
2. Another reason for not including the instruction described above is that there might not be a direct relationship between MSWU rates and property taxes. Even if the costs related to the MSWU are no longer included in the property tax levy, the tax revenues might be used for a different purpose. For example, a municipality that has delayed park maintenance due to lack of funds might use the revenues for park maintenance.
3. Because MSWUs are defined to be "public utilities" that are subject to PSC regulation, their rates are subject to the same requirements that apply to other types of rates that are subject to PSC regulation. As a result, MSWU rates must be just and reasonable, MSWUs must file rate schedules that are subject to PSC approval, and MSWUs must comply with accounting requirements prescribed by the PSC. In addition, although not explicitly stated in the draft, the PSC has the authority to ensure that rates are charged only for expenses that are legitimately related to the conveyance and disposal of storm water. This authority results from the requirement that rates must be just and reasonable.
4. A metropolitan sewerage district is not subject to the bill. Because such districts are subject to regulation under current law, I assume that you don't want the draft to apply to them. Let me know if this is okay.

5. The draft addresses your concerns regarding "offsets" in proposed s. 196.03 (7) (b), which requires the rates to include credits for property owners who provide their own mitigation measures.

6. I delayed the effective date of the bill by one year in order to give the PSC time to begin to regulate municipal storm water utilities.

After you have an opportunity to review this draft, I will prepare a version that includes an analysis and may be introduced.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

7

MONDAY
65 NOON

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RM
HAS
BEEN
RUN

SA ✓
new CRV
7-10-04 ✓

gen cat

1 AN ACT *to renumber and amend* 66.0821 (4) (c); *to amend* 66.0809 (1), 66.0821
2 (2) (b), 66.0821 (4) (a), 66.0821 (5) (a), 196.01 (5) (a) 1., 196.03 (1), 196.06 (2),
3 196.26 (1) (a), 196.60 (1) (a), 196.604, 196.61, 196.796 (1) (b) 2. a., 196.796 (1)
4 (f) and 196.796 (3) (a) 1.; and *to create* 66.0801 (1) (am), 66.0821 (5) (c), 66.0822,
5 196.01 (3r), 196.01 (5) (a) 3., 196.01 (5) (b) 7., 196.03 (7) (b) and 196.193 (5) of

6 the statutes; **relating to:** ~~requiring the public service commission to regulate~~ *ing*
7 *service charges of* municipal storm water utilities.

INSERT
1A

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of the draft.

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

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

8 SECTION 1. 66.0801 (1) (am) of the statutes is created to read:

INSERT 1-8

1 66.0801 (1) (am) “Municipal storm water utility” has the meaning given in s.
2 196.01 (3k).

3 **SECTION 2.** 66.0809 (1) of the statutes is amended to read:

4 66.0809 (1) Except as provided in sub. (2) and s. 66.0822, the governing body
5 of a town, village or city operating a public utility may, by ordinance, fix the initial
6 rates and shall provide for this collection monthly, bimonthly or quarterly in advance
7 or otherwise. The rates shall be uniform for like service in all parts of the
8 municipality and shall include the cost of fluorinating the water. The rates may
9 include standby charges to property not connected but for which public utility
10 facilities have been made available. The charges shall be collected by the treasurer
11 or other officer or employee designated by the city, village or town.

12 **SECTION 3.** 66.0821 (2) (b) of the statutes is amended to read:

13 66.0821 (2) (b) The Except as provided in s. 66.0822, the governing body of a
14 municipality, and the officials in charge of the management of the sewerage system
15 as well as other officers of the municipality, are governed in the discharge of their
16 powers and duties under this section by ss. 66.0809 to 66.0813 or 62.69 (2) (f), to the
17 extent consistent with this section, or, in the case of a metropolitan sewerage district
18 created under ss. 200.21 to 200.65, by ss. 200.55 and 200.59.

19 **SECTION 4.** 66.0821 (4) (a) of the statutes is amended to read:

20 66.0821 (4) (a) The Except as provided in s. 66.0822, the governing body of the
21 municipality may establish sewerage service charges in an amount to meet all or part
22 of the requirements for the construction, reconstruction, improvement, extension,
23 operation, maintenance, repair and depreciation of the sewerage system, and for the
24 payment of all or part of the principal and interest of any indebtedness incurred for
25 those purposes, including the replacement of funds advanced by or paid from the

1 general fund of the municipality. Service charges made by a metropolitan sewerage
2 district to any town, village or city shall be levied by the town, village or city against
3 the individual sewer system users within the corporate limits of the municipality,
4 and the municipality shall collect the charges and promptly remit them to the
5 metropolitan sewerage district. Delinquent charges shall be collected in accordance
6 with sub. (4) ~~(e)~~ (d).

7 **SECTION 5.** 66.0821 (4) (c) of the statutes is renumbered 196.03 (7) (a) and
8 amended to read:

9 196.03 (7) (a) ~~For the purpose of making equitable charges for all services~~
10 ~~rendered by a storm water and surface water sewerage system to users~~ In
11 determining rates for a municipal storm water utility, the property served by the
12 utility may be classified, taking into consideration the volume or peaking of storm
13 water or surface water discharge that is caused by the area of impervious surfaces,
14 topography, impervious surfaces and other surface characteristics, ~~extent and~~
15 ~~reliability of mitigation or treatment measures available to service the property,~~
16 ~~apart from measures provided by the storm water and surface water sewerage~~
17 ~~system,~~ and any other considerations that are reasonably relevant to a use made of
18 the municipal storm water and surface water sewerage utility's system. The ~~charges~~
19 rates may also include standby charges to property not yet developed with significant
20 impervious surfaces for which capacity has been made available in the municipal
21 storm water and surface water sewerage utility's system.

22 **SECTION 6.** 66.0821 (5) (a) of the statutes is amended to read:

23 66.0821 (5) (a) If a user of a service complains to the public service commission
24 that rates, rules and practices are unreasonable or unjustly discriminatory, or if a
25 holder of a mortgage or revenue bond or mortgage certificate or other evidence of

1 debt, secured by a mortgage on the sewerage system or any part of the system or
2 pledge of the income of sewerage service charges, complains that rates are
3 inadequate, the public service commission shall investigate the complaint. If there
4 appears to be sufficient cause for the complaint, the commission shall set the matter
5 for a public hearing upon 10 days' notice to the complainant and the town, village or
6 city. After the hearing, if the public service commission determines that the rates,
7 rules or practices complained of are unreasonable or unjustly discriminatory, it shall
8 determine and by order fix reasonable rates, rules and practices and may make any
9 other order respecting the complaint that is just and reasonable, ~~including, in the~~
10 ~~case of standby charges imposed under sub. (4) (c), an order that a municipality~~
11 ~~refund to the user any amount of the standby charges that have been collected if the~~
12 ~~user has filed a complaint with the public service commission not later than 60 days~~
13 ~~after receiving the original notice of charge or after receiving a notice of charge that~~
14 ~~relates to an increased standby charge.~~ The proceedings under this paragraph are
15 governed, to the extent applicable, by ss. 196.26 to 196.40. The commission shall bill
16 any expense of the commission attributable to a proceeding under this paragraph to
17 the town, village or city under s. 196.85 (1).

18 **SECTION 7.** 66.0821 (5) (c) of the statutes is created to read:

19 66.0821 (5) (c) The subsection does not apply to rates, rules, and practices of
20 a municipal storm water utility.

21 **SECTION 8.** 66.0822 of the statutes is created to read:

22 **66.0822 Municipal storm water utilities.** The rates, rules, and practices
23 of a municipal storm water utility are subject to the authority of the public service
24 commission under ch. 196.

25 **SECTION 9.** 196.01 (3r) of the statutes is created to read:

1 196.01 (3r) "Municipal storm water utility" means a city, village, or town that
2 owns, operates, manages, or controls all or any part of a plant or equipment for the
3 conveyance and disposal of storm water and that requires the public to pay rates for
4 use of such plant or equipment, but does not include a metropolitan sewerage district
5 commission that operates a sewerage system under s. 200.11 (2) or 200.31 (1).

6 **SECTION 10.** 196.01 (5) (a) 1. of the statutes is amended to read:

7 196.01 (5) (a) 1. Any person engaged in the transmission or delivery of natural
8 gas for compensation within this state by means of pipes or mains and any person,
9 ~~except a governmental unit,~~ who furnishes services by means of a sewerage system
10 either directly or indirectly to or for the public.

11 **SECTION 11.** 196.01 (5) (a) 3. of the statutes is created to read:

12 196.01 (5) (a) 3. A municipal storm water utility.

13 **SECTION 12.** 196.01 (5) (b) 7. of the statutes is created to read:

14 196.01 (5) (b) 7. A governmental unit, other than a municipal storm water
15 utility, that furnishes services by means of a sewerage system either directly or
16 indirectly to or for the public.

17 **SECTION 13.** 196.03 (1) of the statutes is amended to read:

18 196.03 (1) Subject to s. 196.63, a public utility shall furnish reasonably
19 adequate service and facilities. The charge made by any public utility for any heat,
20 light, water, telecommunications service or power produced, transmitted, delivered
21 or furnished, for any conveyance or disposal of storm water, or for any service
22 rendered or to be rendered in connection therewith shall be reasonable and just and
23 every unjust or unreasonable charge for such service is prohibited and declared
24 unlawful.

25 **SECTION 14.** 196.03 (7) (b) of the statutes is created to read:

1 196.03 (7) (b) Notwithstanding ss. 196.60, 196.604, and 196.61, the rates under
2 par. (a) shall take into consideration the extent and reliability of mitigation or
3 treatment measures that a ratepayer provides for a property that are apart from the
4 measures provided by the municipal storm water utility and the rates shall provide
5 credits to a rate payer to account for such measures provided by a ratepayer.

6 **SECTION 15.** 196.06 (2) of the statutes is amended to read:

7 196.06 (2) The commission may require any public utility engaged directly or
8 indirectly in any business other than that of the production, transmission or
9 furnishing of heat, light, water, telecommunications service or power or the
10 conveyance or disposal of storm water, to keep and render separately to the
11 commission in like manner and form the accounts of all such other business. This
12 chapter applies to the books, accounts, papers and records of such other business if
13 the commission requires the keeping and rendering separately of the accounts under
14 this subsection.

15 **SECTION 16.** 196.193 (5) of the statutes is created to read:

16 196.193 (5) **APPLICABILITY.** This section does not apply to rates for the
17 conveyance or disposal of storm water.

18 **SECTION 17.** 196.26 (1) (a) of the statutes is amended to read:

19 196.26 (1) (a) A complaint filed with the commission that any rate, toll, charge,
20 or schedule, joint rate, regulation, measurement, act, or practice relating to the
21 provision of heat, light, water, power, or telecommunications service or to the
22 conveyance or disposal of storm water is unreasonable, inadequate, unjustly
23 discriminatory, or cannot be obtained.

24 **SECTION 18.** 196.60 (1) (a) of the statutes is amended to read:

1 196.60 (1) (a) Except as provided under sub. (2), no public utility and no agent,
2 as defined in s. 196.66 (3) (a), or officer of a public utility, directly or indirectly, may
3 charge, demand, collect or receive from any person more or less compensation for any
4 service rendered or to be rendered by it in or affecting or relating to the production,
5 transmission, delivery or furnishing of heat, light, water, telecommunications
6 service or power or the conveyance or disposal of storm water or for any service in
7 connection therewith, than that prescribed in the published schedules or tariffs then
8 in force, or established under this chapter, or than it charges, demands, collects or
9 receives from any other person for a like contemporaneous service.

10 **SECTION 19.** 196.604 of the statutes is amended to read:

11 **196.604 Rebates, concessions and discriminations unlawful.** No person
12 may knowingly solicit, accept or receive any rebate, concession or discrimination
13 from a public utility for any service in or affecting or relating to the production,
14 transmission, delivery or furnishing of heat, light, water or power, the conveying or
15 disposal of storm water, or the conveying of telecommunications messages within
16 this state or for any connected service whereby the service is rendered or is to be
17 rendered free or at a rate less than the rate named in the schedules and tariffs in
18 force, or whereby any other service or advantage is received. Any person violating
19 this section shall be fined not less than \$50 nor more than \$5,000 for each offense.

20 **SECTION 20.** 196.61 of the statutes is amended to read:

21 **196.61 Facilities in exchange for compensation prohibited.** A public
22 utility may not demand, charge, collect or receive from any person less compensation
23 for any service rendered or to be rendered by the public utility in return for the
24 furnishing by that person of any part of the facilities incident to the service. This
25 section may not be construed to prohibit any public utility from renting any facility

1 relating to the production, transmission, delivery or furnishing of heat, light, water,
2 telecommunications service or power or to the conveyance or disposal of storm water
3 and from paying a reasonable rental for the facility. This section may not be
4 construed to require any public utility to furnish any part of any appliance which is
5 at the premises of any consumer, except meters and appliances for measurements of
6 any product or service, unless the commission orders otherwise.

7 **SECTION 21.** 196.796 (1) (b) 2. a. of the statutes is amended to read:

8 196.796 (1) (b) 2. a. Any repair, maintenance, installation or construction of a
9 structure owned or used by or for a public utility, or for a customer of a public utility,
10 if the repair, maintenance, installation or construction is related to furnishing heat,
11 light, water or power to the customer or is related to the conveyance or disposal of
12 storm water.

13 **SECTION 22.** 196.796 (1) (f) of the statutes is amended to read:

14 196.796 (1) (f) “Improvements” means any valuable addition made to land,
15 including excavations, gradings, foundations, structures, buildings, streets, parking
16 lots, sidewalks, sewers, septic systems and drainage facilities. “Improvements” does
17 not include any repair, maintenance, installation or construction of structures or
18 facilities owned or used by or for a public utility, or by or for a customer of a public
19 utility, if the repair, maintenance, installation or construction is related to furnishing
20 heat, light, water or power to the customer or is related to the conveyance or disposal
21 of storm water.

22 **SECTION 23.** 196.796 (3) (a) 1. of the statutes is amended to read:

23 196.796 (3) (a) 1. Repairing, maintaining, installing or constructing a structure
24 that is owned or used by or for a public utility or nonutility affiliate, or for a customer
25 of a public utility if the repair, maintenance, installation or construction is related

1 to furnishing heat, light, water or power to the customer or is related to the
2 conveyance or disposal of storm water.

3 **SECTION 24. Effective date.**

4 (1) This act takes effect on the first day of the 13th month beginning after
5 publication.

6 (END)

1

INSERT 1A:

This bill prohibits cities, villages, and towns (which are defined as municipalities) from using both property taxes and service charges to pay for the same costs that are incurred for storm water utilities. Under current law, a municipality is allowed to construct and operate a system for collecting, transporting, pumping, treating, or disposing of storm water and surface water. The costs for such a system may be funded with property taxes, special assessments, service charges, municipal obligations or revenue bonds, or any combination of the foregoing.

Current law allows a municipality to establish service charges in amounts to meet all or part of the costs for any of the following requirements of such a system: constructing, reconstructing, improving, extending, operating, maintaining, repairing, or depreciating the system, or paying all or part of the principal and interest of any indebtedness incurred for the system.

This bill refers to such a system as a "municipal storm water utility". The bill allows a municipality to use any of the sources allowed under current law to meet the costs of a municipal storm water utility. However, if a municipality establishes a service charge to meet all or part of the costs for any requirement described above, the bill prohibits the municipality from including in its property tax levy any expenditure that is made for the purpose of meeting the requirement. In addition, if any portion of an expenditure can be all allocated to meeting the requirement, the municipality may not include the allocated portion of the expenditure in its property tax levy.

In addition, the bill requires a municipality to consider the following when it establishes the amount of a service charge: 1) the volume or peaking of storm water or surface water discharge that is caused by impervious surfaces of the property served by the municipal storm water utility; 2) topography and other surface characteristics of the property; 3) the extent and reliability of mitigation or treatment measures available to service the property, apart from measures provided by the utility; and 4) any other reasonably relevant considerations. Under current law, a municipality is allowed, but not required, to consider these characteristics. ←

The bill also makes a change to the requirements for complaints about municipal storm water utilities. Under current law, a person who uses a municipal storm water utility may complain to the Public Service Commission (PSC) that the rates, rules, or practices of the municipality regarding the utility are unreasonable or unjustly discriminatory. If the PSC finds sufficient cause for the complaint, the PSC must hold a public hearing after providing 10 days' notice to the person who filed the complaint and the municipality. After the hearing, if the PSC determines that the rates, rules, or practices are unreasonable or unjustly discriminatory, the PSC must issue an order establishing reasonable and just rates, rules, or practices. Provisions

This bill specifies that a user of a storm water utility may also complain to the PSC if the municipality violates any requirements under law that apply to the utility, including the requirements created in the bill. fen

7 SEC.#. RN; 66.0821 (1)(a); 66.0821 (1)(a)



ag ag

INSERT 1-8:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SECTION 1. 66.0821 (1) (●) of the statutes is created to read:

66.0821 (1) (●) "Municipal storm water utility" means a municipal public utility operated for the collection, transportation, pumping, treatment, or final disposition of storm water and surface water.

SECTION 2. 66.0821 (3) (a) of the statutes is amended to read:

66.0821 (3) (a) Except as provided in sub. (4) (am) and s. 66.0721, all or a portion of the cost of exercising the authority under sub. (2) may be funded, to the extent applicable, from the municipality's general fund, by taxation, special assessment or sewerage service charges, by municipal obligations or revenue bonds or from any combination of these sources.

History: 1971 c. 276; 1975 c. 414 s. 28; 1977 c. 29; 1981 c. 282, 314; 1983 a. 207; 1989 a. 322; 1991 a. 316; 1995 a. 27 s. 9126 (19); 1997 a. 53, 213; 1999 a. 32; 1999 a. 150 ss. 215 to 229, 242 to 249; Stats. 1999 s. 66.0821; 1999 a. 186 ss. 46, 47; 2001 a. 30.

SECTION 3. 66.0821 (4) (am) of the statutes is created to read:

66.0821 (4) (am) If the governing body of a municipality establishes a service charge to meet any requirement described in par. (a) that is required for a municipal storm water utility, the municipality may not include in its property tax levy any expenditure, or any allocable portion of an expenditure, that is made for the purpose of meeting the requirement.

SECTION 4. 66.0821 (4) (c) of the statutes is amended to read:

66.0821 (4) (c) For the purpose of making equitable charges for all services rendered by a ~~storm water and surface water sewerage system~~ municipal storm water utility to users, the property served ~~may~~ shall be classified, taking into consideration the volume or peaking of storm water or surface water discharge that is caused by the area of impervious surfaces, topography, impervious surfaces and

1 other surface characteristics, extent and reliability of mitigation or treatment
 2 measures available to service the property, apart from measures provided by the
 3 ~~storm water and surface water sewerage system~~ municipal storm water utility, and
 4 any other considerations that are reasonably relevant to a use made of the ~~storm~~
 5 ~~water and surface water sewerage system~~ municipal storm water utility. The
 6 charges may also include standby charges to property not yet developed with
 7 significant impervious surfaces for which capacity has been made available in the
 8 ~~storm water and surface water sewerage system~~ municipal storm water utility.

History: 1971 c. 276; 1975 c. 414 s. 28; 1977 c. 29; 1981 c. 282, 314; 1983 a. 207; 1989 a. 322; 1991 a. 316; 1995 a. 27 s. 9126 (19); 1997 a. 53, 213; 1999 a. 32; 1999 a. 150 ss. 215 to 229, 242 to 249; Stats. 1999 s. 66.0821; 1999 a. 186 ss. 46, 47; 2001 a. 30.

9 **SECTION 5.** 66.0821 (5) (a) of the statutes is amended to read:

10 66.0821 (5) (a) If a user of a service complains to the public service commission
 11 that rates, rules and, or practices are unreasonable or unjustly discriminatory or
 12 violate this section, or if a holder of a mortgage or revenue bond or mortgage
 13 certificate or other evidence of debt, secured by a mortgage on the sewerage system
 14 or any part of the system or pledge of the income of sewerage service charges,
 15 complains that rates are inadequate, the public service commission shall investigate
 16 the complaint. If there appears to be sufficient cause for the complaint, the
 17 commission shall set the matter for a public hearing upon 10 days' notice to the
 18 complainant and the town, village or city. After the hearing, if the public service
 19 commission determines that the rates, rules, or practices complained of are
 20 unreasonable or unjustly discriminatory or violate this section, it shall determine
 21 and by order fix reasonable or lawful rates, rules, and practices and may make any
 22 other order respecting the complaint that is just and reasonable, including, in the
 23 case of standby charges imposed under sub. (4) (c), an order that a municipality
 24 refund to the user any amount of the standby charges that have been collected if the

1 user has filed a complaint with the public service commission not later than 60 days
 2 after receiving the original notice of charge or after receiving a notice of charge that
 3 relates to an increased standby charge. The proceedings under this paragraph are
 4 governed, to the extent applicable, by ss. 196.26 to 196.40. The commission shall bill
 5 any expense of the commission attributable to a proceeding under this paragraph to
 6 the town, village or city under s. 196.85 (1).

History: 1971 c. 276; 1975 c. 414 s. 28; 1977 c. 29; 1981 c. 282, 314; 1983 a. 207; 1989 a. 322; 1991 a. 316; 1995 a. 27 s. 9126 (19); 1997 a. 53, 213; 1999 a. 32; 1999 a. 150 ss. 215 to 229, 242 to 249; Stats. 1999 s. 66.0821; 1999 a. 186 ss. 46, 47; 2001 a. 30.

7 **SECTION 6. Initial applicability.**

8 (1) The treatment of section 66.0821 (3) (a) and (4) (am) and (c) of the statutes
 9 first applies to charges imposed on the effective date of this subsection.

10 (2) The treatment of section 66.0821 (5) (a) of the statutes first applies to
 11 violations occurring on the effective date of this subsection.

12 **SECTION 7. Effective date.**

13 (1) This act takes effect on the first day of the 4th month beginning after
 14 publication.

(end INS)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2794/1dn

MDK/.....

js

Rep. Underheim:

As you requested, this version of the bill takes a different approach than the previous version. Under this version, the PSC has jurisdiction over municipal storm water utility rates (and related practices) only if a person complains to the PSC. Note that the PSC already has such jurisdiction under current law, because it may receive complaints about unreasonable or unjustly discriminatory rates. However, the bill clarifies that the PSC may receive a complaint if a municipality violates the law, including a requirement created in the bill.

Also, this version of the bill changes "may" to "shall" in s. 66.0821 (4) (c) in order to respond to your concerns about giving property owners credits for making efforts to mitigate storm water discharges. Although credits aren't specifically mentioned, the change achieves your intent because the bill requires a municipality to consider various characteristics of a property (including mitigation efforts) when a municipality establishes service charges.

Finally, I shortened the delay in the effective date of the bill. Because the PSC is no longer required to give prior approval to rates, it isn't necessary to provide as long of a delay. However, I still think that some delay is advisable in order to give municipalities time to comply with the bill. I delayed the bill by approximately 3 months. Municipalities may argue that more time is necessary. If the delay in the bill isn't okay, please let me know.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2794/1dn
MDK:cjs:jf

October 6, 2003

Rep. Underheim:

As you requested, this version of the bill takes a different approach than the previous version. Under this version, the PSC has jurisdiction over municipal storm water utility rates (and related practices) only if a person complains to the PSC. Note that the PSC already has such jurisdiction under current law, because it may receive complaints about unreasonable or unjustly discriminatory rates. However, the bill clarifies that the PSC may receive a complaint if a municipality violates the law, including a requirement created in the bill.

Also, this version of the bill changes "may" to "shall" in s. 66.0821 (4) (c) in order to respond to your concerns about giving property owners credits for making efforts to mitigate storm water discharges. Although credits aren't specifically mentioned, the change achieves your intent because the bill requires a municipality to consider various characteristics of a property (including mitigation efforts) when a municipality establishes service charges.

Finally, I shortened the delay in the effective date of the bill. Because the PSC is no longer required to give prior approval to rates, it isn't necessary to provide as long of a delay. However, I still think that some delay is advisable in order to give municipalities time to comply with the bill. I delayed the bill by approximately three months. Municipalities may argue that more time is necessary. If the delay in the bill isn't okay, please let me know.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2794/1

MDK:cjs:ll

D-NOTE

2003 BILL

Today
by NOON

Stays

RM
has been
SUN

Revised

1 AN ACT to renumber 66.0821 (1) (a); to amend 66.0821 (3) (a), 66.0821 (4) (c)
2 and 66.0821 (5) (a); and to create 66.0821 (1) (ag) and 66.0821 (4) (am) of the
3 statutes; relating to: ~~regulating~~ service charges of municipal storm water
4 utilities. and complaints about municipal storm water
and other sewer utilities

Analysis by the Legislative Reference Bureau

This bill prohibits cities, villages, and towns (municipalities) from using both property taxes and service charges to pay for the same costs that are incurred for storm water utilities. Under current law, a municipality is allowed to construct and operate a system for collecting, transporting, pumping, treating, or disposing of storm water and surface water. The costs for such a system may be funded with property taxes, special assessments, service charges, municipal obligations or revenue bonds, or any combination of the foregoing.

Current law allows a municipality to establish service charges in amounts to meet all or part of the costs for any of the following requirements of such a system: constructing, reconstructing, improving, extending, operating, maintaining, repairing, or depreciating the system, or paying all or part of the principal and interest of any indebtedness incurred for the system.

This bill refers to such a system as a "municipal storm water utility." The bill allows a municipality to use any of the sources allowed under current law to meet the costs of a municipal storm water utility. However, if a municipality establishes a service charge to meet all or part of the costs for any requirement described above, the bill prohibits the municipality from including in its property tax levy any

BILL

*and other municipal
sewer utilities*

expenditure that is made for the purpose of meeting the requirement. In addition, if any portion of an expenditure can be all allocated to meeting the requirement, the municipality may not include the allocated portion of the expenditure in its property tax levy.

In addition, the bill requires a municipality to consider the following when it establishes the amount of a service charge: 1) the volume or peaking of storm water or surface water discharge that is caused by impervious surfaces of the property served by the municipal storm water utility; 2) topography and other surface characteristics of the property; 3) the extent and reliability of mitigation or treatment measures available to service the property, apart from measures provided by the utility; and 4) any other reasonably relevant considerations. Under current law, a municipality is allowed, but not required, to consider these characteristics.

Such

The bill also makes a change to the provisions for complaints about municipal storm water utilities. Under current law, a person who uses a ~~municipal storm water utility~~ may complain to the Public Service Commission (PSC) that the rates, rules, or practices of the municipality regarding the utility are unreasonable or unjustly discriminatory. If the PSC finds sufficient cause for the complaint, the PSC must hold a public hearing after providing ten days' notice to the person who filed the complaint and the municipality. After the hearing, if the PSC determines that the rates, rules, or practices are unreasonable or unjustly discriminatory, the PSC must issue an order establishing reasonable and just rates, rules, or practices.

This bill specifies that a user of a storm water utility may also complain to the PSC if the municipality violates any requirements under law that apply to the utility, including the requirements created in the bill.

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

municipal

or other sewer

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

1 **SECTION 1.** 66.0821 (1) (a) of the statutes is renumbered 66.0821 (1) (ar).

2 **SECTION 2.** 66.0821 (1) (ag) of the statutes is created to read:

3 66.0821 (1) (ag) "Municipal storm water utility" means a municipal public
4 utility operated for the collection, transportation, pumping, treatment, or final
5 disposition of storm water and surface water.

6 **SECTION 3.** 66.0821 (3) (a) of the statutes is amended to read:

7 66.0821 (3) (a) Except as provided in sub. (4) (am) and s. 66.0721, all or a
8 portion of the cost of exercising the authority under sub. (2) may be funded, to the

BILL

1 extent applicable, from the municipality's general fund, by taxation, special
2 assessment or sewerage service charges, by municipal obligations or revenue bonds
3 or from any combination of these sources.

4 **SECTION 4.** 66.0821 (4) (am) of the statutes is created to read:

5 66.0821 (4) (am) If the governing body of a municipality establishes a service
6 charge to meet any requirement described in par. (a) that is required for a municipal
7 storm water utility, the municipality may not include in its property tax levy any
8 expenditure, or any allocable portion of an expenditure, that is made for the purpose
9 of meeting the requirement.

10 **SECTION 5.** 66.0821 (4) (c) of the statutes is amended to read:

11 66.0821 (4) (c) For the purpose of making equitable charges for all services
12 rendered by a ~~storm water and surface water sewerage system~~ municipal storm
13 water utility to users, the property served ~~may~~ shall be classified, taking into
14 consideration the volume or peaking of storm water or surface water discharge that
15 is caused by the area of impervious surfaces, topography, impervious surfaces and
16 other surface characteristics, extent and reliability of mitigation or treatment
17 measures available to service the property, apart from measures provided by the
18 ~~storm water and surface water sewerage system~~ municipal storm water utility, and
19 any other considerations that are reasonably relevant to a use made of the ~~storm~~
20 ~~water and surface water sewerage system~~ municipal storm water utility. The
21 charges may also include standby charges to property not yet developed with
22 significant impervious surfaces for which capacity has been made available in the
23 ~~storm water and surface water sewerage system~~ municipal storm water utility.

24 **SECTION 6.** 66.0821 (5) (a) of the statutes is amended to read:

BILL

1 66.0821 (5) (a) If a user of a service complains to the public service commission
2 that rates, rules ~~and~~, or practices are unreasonable or unjustly discriminatory or
3 violate this section, or if a holder of a mortgage or revenue bond or mortgage
4 certificate or other evidence of debt, secured by a mortgage on the sewerage system
5 or any part of the system or pledge of the income of sewerage service charges,
6 complains that rates are inadequate, the public service commission shall investigate
7 the complaint. If there appears to be sufficient cause for the complaint, the
8 commission shall set the matter for a public hearing upon 10 days' notice to the
9 complainant and the town, village or city. After the hearing, if the public service
10 commission determines that the rates, rules, or practices complained of are
11 unreasonable or unjustly discriminatory or violate this section, it shall determine
12 and by order fix reasonable or lawful rates, rules, and practices and may make any
13 other order respecting the complaint that is just and reasonable, including, in the
14 case of standby charges imposed under sub. (4) (c), an order that a municipality
15 refund to the user any amount of the standby charges that have been collected if the
16 user has filed a complaint with the public service commission not later than 60 days
17 after receiving the original notice of charge or after receiving a notice of charge that
18 relates to an increased standby charge. The proceedings under this paragraph are
19 governed, to the extent applicable, by ss. 196.26 to 196.40. The commission shall bill
20 any expense of the commission attributable to a proceeding under this paragraph to
21 the town, village or city under s. 196.85 (1).

SECTION 7. Initial applicability.

22 (1) The treatment of section 66.0821 (3) (a) and (4) (am) and (c) of the statutes
23 first applies to charges imposed on the effective date of this subsection.
24

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

LRB-2794/2dn

MDK.:j:....

J
gs

Rep. Underheim:

This version is identical to the previous version, except that it corrects a mistake in the analysis.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

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

LRB-2794/2dn
MDK:cjs:rs

October 6, 2003

Rep. Underheim:

This version is identical to the previous version, except that it corrects a mistake in the analysis.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Emery, Lynn

From: Emery, Lynn
Sent: Tuesday, October 07, 2003 9:07 AM
To: Thorson, Randy
Subject: LRB-2794/2 & 2dn (attached as requested)



03-2794/2



03-2794/2dn

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us