

2003 DRAFTING REQUEST

Bill

Received: **01/13/2004**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Jensen (608) 264-6970**

By/Representing: **Brett Healy**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters: **rchampag**

Subject: **Public Util. - electric**

Extra Copies: **RC
JK**

Submit via email: **YES**

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

Carbon copy (CC:) to: **Brett.Healy@legis.state.wi.us
darin.renner@legis.state.wi.us
john.stolzenberg@legis.state.wi.us
david.lovell@legis.state.wi.us
bhealy1@wi.rr.com
todd.stuart@legis.state.wi.us
tony.mason@legis.state.wi.us
joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Environmental trust financing

Instructions:

See Attached

Drafting History:

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/P1	mkunkel 01/19/2004	wjackson 01/19/2004	pgreensl 01/20/2004	_____			State
/1	mkunkel 01/20/2004	wjackson 01/20/2004	rschluet 01/20/2004	_____	mbarman 01/20/2004		State
/2	mkunkel 01/30/2004	wjackson 01/30/2004	pgreensl 01/30/2004	_____	sbasford 01/30/2004		State
/3	mkunkel 02/10/2004	wjackson 02/10/2004	chaugen 02/10/2004	_____	lnorthro 02/10/2004	lnorthro 02/11/2004	

FE Sent For:

<END>

At
Intro.

2003 DRAFTING REQUEST**Bill**Received: **01/13/2004**Received By: **mkunkel**Wanted: **As time permits**

Identical to LRB:

For: **Scott Jensen (608) 264-6970**By/Representing: **Brett Healy**This file may be shown to any legislator: **NO**Drafter: **mkunkel**

May Contact:

Addl. Drafters: **rchampag**Subject: **Public Util. - electric**Extra Copies: **RC
JK**Submit via email: **YES**Requester's email: **Rep.Jensen@legis.state.wi.us**Carbon copy (CC:) to: **Brett.Healy@legis.state.wi.us
darin.renner@legis.state.wi.us
john.stolzenberg@legis.state.wi.us
david.lovell@legis.state.wi.us
bhealy1@wi.rr.com
todd.stuart@legis.state.wi.us
tony.mason@legis.state.wi.us
joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Environmental trust financing

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>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/P1	mkunkel 01/19/2004	wjackson 01/19/2004	pgreensl 01/20/2004	_____			State
/1	mkunkel 01/20/2004	wjackson 01/20/2004	rschluet 01/20/2004	_____	mbarman 01/20/2004		State
/2	mkunkel 01/30/2004	wjackson 01/30/2004	pgreensl 01/30/2004	_____	sbasford 01/30/2004		State
/3	mkunkel 02/10/2004	wjackson 02/10/2004	chaugen 02/10/2004	_____	lnorthro 02/10/2004		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **01/13/2004**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Jensen (608) 264-6970**

By/Representing: **Brett Healy**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters: **rchampag**

Subject: **Public Util. - electric**

Extra Copies: **RC
JK**

Submit via email: **YES**

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

Carbon copy (CC:) to: **Brett.Healy@legis.state.wi.us
darin.renner@legis.state.wi.us
john.stolzenberg@legis.state.wi.us
david.lovell@legis.state.wi.us
bhealy1@wi.rr.com
todd.stuart@legis.state.wi.us
tony.mason@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Environmental trust financing

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>
/?				_____			State

<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 01/19/2004	wjackson 01/19/2004	pgreensl 01/20/2004	_____			State
/1	mkunkel 01/20/2004	wjackson 01/20/2004	rschluet 01/20/2004	_____	mbarman 01/20/2004		State
/2	mkunkel 01/30/2004	wjackson 01/30/2004	pgreensl 01/30/2004	_____	sbasford 01/30/2004		

FE Sent For:

1/3 Wlj 2/10

CH
2-10
CH
86 2-10
<END>

2003 DRAFTING REQUEST

Bill

Received: **01/13/2004**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Jensen (608) 264-6970**

By/Representing: **Brett Healy**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters: **rchampag**

Subject: **Public Util. - electric**

Extra Copies: **RC**

Submit via email: **YES**

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

Carbon copy (CC:) to: **Brett.Healy@legis.state.wi.us**
darin.renner@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Environmental trust financing

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>
/?							State
/P1	mkunkel 01/19/2004	wjackson 01/19/2004	pgreensl 01/20/2004				State
/1	mkunkel	wjackson	rschluet				mbarman

Handwritten notes:
1/30 p 8 P8/15

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/20/2004	01/20/2004	01/20/2004	_____	01/20/2004		

/2 WJ 1/30

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 01/13/2004

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Scott Jensen (608) 264-6970

By/Representing: Brett Healy

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters: rchampag

Subject: Public Util. - electric

Extra Copies: RC

Submit via email: YES

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

Carbon copy (CC:) to: Brett.Healy@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Environmental trust financing

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	1/11/19	1/20/19	1/20/19			State

FE Sent For:

Handwritten notes and signatures:

- 1/20/19
- 1/20/19
- EMD
- 1-20-19

Kunkel, Mark

From: Healy, Brett
Sent: Monday, December 22, 2003 4:47 PM
To: Kunkel, Mark
Subject: Thanks for your help.

4030

Brett Healy

Rep. Scott Jensen

Energy & Utilities Committee

123 West, State Capitol

608-264-6970

1-888-534-0098 toll-free

1 **Section 1.**

2 This Act shall be known as the Environmental Trust Financing Act.

3 **Section 2.** As used in this Act:

4 (A) "Ancillary Agreement" means any bond insurance policy or other financial
5 arrangement entered into in connection with the issuance of Environmental Trust Bonds.

6 (B) "Assignee" means ^{any legal entity} a corporation or other legally recognized entity, including any
7 ~~special purpose entity, which may be~~ ^{including specifically a legal entity that is} an affiliate of the Public Utility, to which an interest in
8 Environmental Control Property is sold, transferred or conveyed.

9 (C) "Commission" means the Public Service Commission of Wisconsin.

10 (D) "Environmental Control Activities" means actions undertaken by a Public Utility
11 that causes the Public Utility to incur Environmental Control Costs.

12 (E) "Environmental Control Charges" means Nonbypassable Charges for the use or
13 availability of utility services approved by the Commission under a Financing Order to fully
14 recover Environmental Control Costs, ^{what} that shall be collected by a Public Utility, its successors,
15 ~~or other collection agents~~, as provided for in the Financing Order.

16 (F) "Environmental Control Costs" means:

17 (i) all costs incurred ^{expected} or to be incurred by a Public Utility to construct, install
18 or otherwise put in place Environmental Control Equipment;

19 (ii) all costs incurred ^{expected} or to be incurred by a Public Utility to retire any existing
20 plant, facility or other utility property in order to reduce, control or eliminate environmental
21 emissions in accordance with federal or state ^{statutes/law} regulations, administrative orders or
22 judicial orders or decrees. ^E Such retirement costs shall include, ~~without limitation~~, the book value
23 of the property to be retired ^{and} as well as demolition and similar costs, net of any salvage value;

1 (iii) all costs incurred or ^{reported} to be incurred by an Public Utility for conservation,
2 energy efficiency or similar demand-side management programs or measures; ✓

3 (iv) all debt service, including interest, payable on Environmental Trust Bonds
4 issued pursuant to a Financing Order;

5 (v) all taxes, including gross receipts taxes and income taxes, related to the
6 collection and recovery of Environmental Control Charges;

7 (vi) all payments required to be made pursuant to Ancillary Agreements, ~~as~~
8 ^{and any} well as amounts needed to fund ~~the~~ reserve accounts; and

9 (vii) all other costs related to the issuance and servicing of Environmental
10 ~~Control~~ ^{Trust} Bonds, including, ~~without limitation,~~ ^{specifically} servicing fees, trustee fees, legal fees,
11 administrative fees, placement fees, capitalized interest and rating agency fees.

12 (G) "Environmental Control Equipment" means any device, facility or technology
13 designed for, and with the primary purpose of, removing pollution from or preventing or
14 reducing or remediating the pollution of air, water or soil. "Environmental Control Equipment"
15 shall include, but not be limited to: (i) "control device" as defined at Wis. Admin.
16 Code § NR 400.02(46); (ii) "control systems" as defined at Wis. Admin. Code § NR 400.02(48);
17 (iii) "treatment work" as defined at Wis. Admin. Code § NR 205.03(40); and (iv) any other
18 device, equipment, facility, or technology for the "pretreatment" of "wastewater" or the removal
19 of "pollutants" from "wastewater", as those terms are defined at Wis. Admin.
20 Code § NR 211.03(13) and Wis. Admin. Code § NR 205.03(28) and (43), respectively.

why list?

21 (H) "Environmental Control Property" means the rights and interests of a
22 ~~Public Utility, or its successors or any Assignee,~~ ^{specifically} under a Financing Order, including ~~without~~
23 ~~limitation,~~ ^{created} all of the following:

1 (i) The right to impose, collect and receive Environmental Control Charges
2 ~~authorized in the Financing Order in an amount necessary to provide the full recovery of all~~
3 ~~Environmental Control Costs.~~

4 (ii) The right ~~under the Financing Order~~ to obtain periodic adjustments of
5 Environmental Control Charges under Sections 3 (C) (III) and 3(F).

6 (iii) All revenue, collections, payments, money and proceeds arising out of the
7 ~~rights and interests described in this Section 2(H).~~

8 (I) "Environmental Trust Bonds" means bonds, debentures, notes, certificates of
9 participation, certificates of beneficial interest, certificates of ownership, or other evidences
10 of indebtedness that are issued by an Public Utility, its successors or an Assignee under a
11 Financing Order, the proceeds of which are used directly or indirectly to recover, finance
12 or refinance Environmental Control Costs, and that are secured by or payable from
13 Environmental Control Property. ~~(If certificates of participation, certificates of beneficial interest,~~
14 ~~or certificates of ownership are issued, references in this Act to principal, interest, or premium~~
15 ~~shall refer to comparable amounts under those certificates.) ?~~

16 (J) "Financing Order" means an order of the Commission approving the issuance of
17 Environmental Trust Bonds, the collection of Environmental Control Charges and the creation of
18 Environmental Control Property.

19 (K) "Nonbypassable Charge" means a charge in a Financing Order payable by a
20 customer to a Public Utility or its Assignees or successors regardless of the identity of the
21 customer's public utility service supplier.

22 ~~(L) "Public Utility" means a public utility as defined in Section 196.01.~~

23

1 **Section 3.**

*in addition to
any other information
the Commission may
require,*

2 (A) A Public Utility may, ~~at its discretion,~~ apply to the Commission for a
3 Financing Order. An application for a Financing Order shall include ~~a~~ ^{at least all of the following} description of the
4 Environmental Control Equipment the Public Utility proposes to install, of the property it
5 proposes to retire, or of the demand-side management programs or measures it proposes to
6 implement; the reasons for installing the Environmental Control Equipment, retiring the property
7 or implementing the demand-side management programs or measures; and an estimate of the
8 cost to install the Environmental Control Equipment, to retire the property or to implement the
9 demand-side management programs or measures. (A Public Utility may, in its sole discretion,
10 choose to finance the Environmental Control Activities that are the subject of a Financing Order

*want to
add to
it*

11 entirely with debt and will indicate its choice in its application.) The information provided in an
12 application for a Financing Order is in addition to, and does not replace, information otherwise
13 required by the Commission in an application for a certificate of public convenience and
14 necessity, or other authorization required to install the Environmental Control Equipment, to
15 retire the property or to implement the demand-side management programs or measures.

*Add
a
sep.
section?*

*why
NEC'Y?*

16 An application for a Financing Order under this Act shall take the place of any application that
17 would otherwise be required under Wis. Stat. Section 201.05 and a Financing Order shall take
18 the place of any certificate of authority that would otherwise be required under Wis. Stat.

19 Section 201.06.
PSC approval of issuance

20 (B) The Commission shall issue a Financing Order or an order rejecting the
21 application no later than [90] days after the Public Utility files its application. In deciding
22 whether to approve or reject the application, the Commission shall apply a public interest
23 standard.

1 (C) In a Financing Order, the Commission shall:

2 (i) Indicate the amount of Environmental Control Costs to be recovered and
3 the period over which the Environmental Control Charges are to be recovered.

4 (ii) Include terms ensuring that the imposition and collection of
5 Environmental Control Charges ~~authorized in the Financing Order~~ are a Nonbypassable Charge.

6 (iii) Include a mechanism requiring that Environmental Control Charges be
7 reviewed and adjusted by the Commission at least annually within 45 days of the anniversary
8 date of the issuance of the Environmental Trust Bonds, to correct any overcollection or
9 undercollection of the preceding 12 months (or shorter period as applicable) and to otherwise
10 ensure the expected recovery of amounts sufficient to timely provide for the recovery of all
11 Environmental Control Costs, ~~including all payments of debt service and other charges in~~
12 ~~connection with the Environmental Trust Bonds.~~

13 (D) ~~Notwithstanding any other provision of law,~~ Environmental Control Bonds may
14 not be considered by the Commission for any regulatory or other purpose to be debt of the
15 Public Utility.

16 (E) A Financing Order is effective in accordance with its terms, and, notwithstanding
17 any law to the contrary, the Financing Order, together with the Environmental Control Charges
18 authorized in the Order, shall be irrevocable. ~~and,~~ Except for periodic adjustments ~~in the~~
19 Environmental Control Charges under Sections 3 (C) (III) and 3(F), shall not be subject to
20 reduction, impairment, or adjustment ~~by further action of the Commission, for any reason,~~
21 ~~including but not limited to the application of the proceeds of the Environmental Trust Bonds to~~ ?
22 ~~purposes other than Environmental Control Costs or otherwise in violation of the Act or the~~ ~~need~~
23 ~~Financing Order.~~ tightening

Do you
need
not with
study
X-ref

issued by the Commission is

1 (F) ~~Notwithstanding any other provision of law,~~ the Commission shall approve such
2 adjustments to the Environmental Control Charges as may be necessary to ensure timely
3 recovery of all Environmental Control Costs ~~that are the subject of the Financing Order,~~ and the
4 ~~costs associated with the provision, recovery, financing, or refinancing thereof, including the~~
5 ~~costs of issuing, servicing, and retiring the Environmental Trust Bonds.~~

6 (G) Environmental Trust Bonds, Environmental Control Charges and all transactions
7 herein authorized or permitted under a Financing Order shall be binding in accordance with their
8 terms notwithstanding that the Financing Order is later vacated, modified or otherwise held to be
9 invalid in whole or in part.

10 (H) Notwithstanding any other provisions of law, a Financing Order may be reviewed
11 by the Circuit Court of Dane County upon a filing within 30 days after the Financing Order is
12 issued by a party to the Commission proceeding in which the Financing Order was approved.
13 All appeals of a Financing Order shall be heard and determined as expeditiously as possible with
14 lawful precedence over other matters. Judicial review of a Financing Order shall be based solely
15 on the record before the Commission and briefs to the court and shall be limited to whether the
16 Financing Order conforms to the Constitution and laws of this State and the United States and is
17 within the authority of the Commission under this Act.

18 (I) At the request of a Public Utility, the Commission may adopt a ^{subsequent} Financing Order
19 providing for retiring and refunding Environmental Trust Bonds if the Commission finds that the
20 future Environmental Trust Charges required to service the new Environmental Trust Bonds,
21 including transaction costs, will be less than the future Environmental Control Charges required
22 to service the Environmental Trust Bonds being refunded, or that the refunding is otherwise in

1 the public interest. On the retirement of the refunded Environmental Trust Bonds, the
2 Commission shall adjust the related Environmental Control Charges accordingly.

3 (J) The Commission shall not have authority either by rescinding, altering, or
4 amending the Financing Order or otherwise, to revalue or revise for rate-making purposes the
5 Environmental Control Costs, or the costs of providing, recovering, financing, or refinancing the
6 Environmental Control Costs, determine that the Environmental Control Charges are unjust or
7 unreasonable, or in any way reduce or impair the value of Environmental Control Property either
8 directly or indirectly by taking the Environmental Control Charges into account when setting
9 other rates for the Public Utility, nor shall the amount of revenues arising with respect thereto be
10 subject to reduction, impairment, postponement, or termination.

not needed

11 **Section 4.**

12 (A) Environmental Control Property shall constitute a present property right even
13 though the imposition and collection of Environmental Control Charges depends on the
14 Public Utility performing its servicing functions relating to the collection of Environmental
15 Control Charges and on future electricity consumption. (The Financing Order shall remain in
16 effect and the Environmental Control Property shall continue to exist until the Environmental
17 Trust Bonds and all costs related to the bonds and any Ancillary Agreements have been paid in
18 full.)

put above

19 (B) The interest of an Assignee or pledgee in Environmental Control Property and in
20 the revenues and collections arising from that property are not subject to setoff, counterclaim,
21 surcharge or defense by the Public Utility or any other person or in connection with the
22 bankruptcy of the Public Utility or any other entity. A Financing Order shall remain in effect
23 and unabated notwithstanding the bankruptcy of the Public Utility or its successors.

1 **Section 5.**

2 (A) The proceeds of the Environmental Trust Bonds shall be placed in a separate
3 account and used solely for the purpose of paying Environmental Control Costs, except that,
4 where the Public Utility proposes to retire property, the proceeds corresponding to the book
5 value of that property shall be used solely for the purpose of refinancing or retiring debt or equity
6 of the Public Utility.

7 (B) Environmental Control Property may be transferred, sold or assigned to an
8 Assignee and may be pledged to secure Environmental Trust Bonds.

9 (C) A Public Utility recovering Environmental Control Charges shall provide a
10 concise explanation of the Charges to its customers annually by means of bill inserts, website
11 information or other appropriate means.

12 (D) The Environmental Trust Bonds are hereby made securities in which all public
13 officers and bodies of this state and all public corporations, municipalities and municipal
14 subdivisions, all insurance companies and associations and other persons carrying on an
15 insurance business, all banks, bankers, trust companies, savings banks and savings associations
16 including savings and loan associations, building and loan associations, investment companies
17 and other persons carrying on a banking business, all administrators, conservators, guardians,
18 executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may
19 hereafter be authorized to invest in bonds or in other obligations of this state, may properly and
20 legally invest funds, including capital, in their control or belonging to them. The Environmental
21 Trust Bonds are also hereby made securities which may be deposited with and may be received
22 by all public officers and bodies of this state and all municipalities and public corporations for

16.527(9)
671253
48
as example
48

1 any purpose for which the deposit of bonds or other obligations of this state is now or may
2 hereafter be authorized.

3 **Section 6.**

4 (A) An agreement by a Public Utility or assignee to transfer Environmental Control
5 Property that expressly states that the transfer is a sale or other absolute transfer signifies that the
6 transaction is a true sale and is not a secured transaction and that title, legal and equitable, has
7 passed to the Assignee.

8 (B) A true sale under this Act applies regardless of whether the purchaser has any
9 recourse against the seller, or any other term of the parties' agreement, including the seller's
10 retention of an equity interest in the Environmental Control Property, or the providing of any
11 indemnifications, obligations or repurchase rights by the seller, the fact that the Public Utility
12 acts as a servicer of Environmental Control Charges relating to the Environmental Control
13 Property, or the treatment of the transfer as a financing for tax, financial reporting or other
14 purposes.

15 **Section 7.**

16 (A) A valid and enforceable lien and security interest in Environmental Control
17 Property or Environmental Control Charges may be created only by a Financing Order and the
18 execution and delivery of a pledge or assignment of such property or charges to secure
19 Environmental Trust Bonds.

20 (B) Notwithstanding any provision of the uniform commercial code to the contrary,
21 any pledge of or other security interest in revenues, moneys, accounts, contract rights, general
22 intangibles or other personal property made or created to secure Environmental Trust Bonds
23 shall be valid, binding and perfected from the time when such pledge is made or other security

look at 16.63(4) (C)
↓

1 interest attaches without any physical delivery of the collateral or further act, and the lien of any
2 such pledge or other security interest shall be valid, binding and perfected against all parties
3 having claims of any kind in tort, contract or otherwise against the pledgor or grantor irrespective
4 of whether or not such parties have notice thereof. No instrument by which such a pledge or
5 security interest is created nor any financing statement need be recorded or filed.

6 (C) The lien and security interest shall attach automatically from the time that value is
7 received for the Environmental Trust Bonds and shall be a continuously perfected lien and
8 security interest in the Environmental Control Property and all proceeds of the property, whether
9 accrued or not, and shall take precedence over any subsequent judicial and other lien creditor.

10 (D) The priority of a lien and security interest under this Act is not impaired by any
11 later modification of the Financing Order or by the commingling of funds arising from
12 Environmental Control Charges with funds of the Public Utility, and any other security interest
13 that may apply to those funds shall be terminated when they are transferred to a segregated
14 account for the Assignee or otherwise the secure Environmental Trust Bonds. If Environmental
15 Control Property has been transferred to an Assignee, any proceeds of that property shall be held
16 in trust for the Assignee.

17 (E) In the event of default by the Public Utility or its successors, in payment of
18 revenues arising with respect to Environmental Control Property, the Commission or a court of
19 appropriate jurisdiction, upon the application of the Assignee or a party holding Environmental
20 Trust Bonds or representing the holders thereof, and without limiting any other remedies
21 available to the applying party, shall order the sequestration and payment, pursuant to this Act
22 and refinancing arrangements hereunder, of revenues arising with respect to the Environmental
23 Control Property. Any such order shall remain in full force and effect notwithstanding any

1 bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor
2 or transferor of the property.

3 (F) Environmental Control Property shall constitute an account as that term is used in
4 this Act.

5 (G) Environmental Control Property shall be in existence whether or not the revenue
6 or proceeds in respect to the property have accrued and whether or not the value of the property
7 right is dependent on the customers of a Public Utility receiving service.

8 (H) Changes in the Financing Order or in the customers' Environmental Control
9 Charges do not affect the validity, perfection, or priority of a security interest pursuant to this
10 Act.

11 (I) The description of Environmental Control Property in a security agreement or
12 other agreement is sufficient if it refers to this Act and the Financing Order establishing the
13 Environmental Control Property.

14 (J) This Act shall control in any conflict between this Act and any other law of this or
15 any other state regarding the attachment and perfection and the effect of perfection and priority
16 of any security interest in Environmental Control Property.

17 **Section 8.**

18 (A) Environmental Trust Bonds are not a debt or obligation of the state and are not a
19 charge on its full faith and credit or taxing power.

20 (B) The state pledges, for the benefit and protection of the holders of Environmental
21 Trust Bonds and the Public Utility, that it will not take or permit any action that would impair the
22 value of Environmental Control Property, reduce or alter, except as allowed under Section 3(D),
23 or impair the Environmental Control Charges to be imposed, collected, and remitted for the

) ?
p. 8, 3

look out
5. 229.52
(1)

look out
2 229.53

1 benefit of the holders of Environmental Trust Bonds, until the principal, interest and premium,
2 and any other charges incurred and contracts to be performed in connection with the related
3 Environmental Trust Bonds have been paid and performed in full. Any party issuing
4 Environmental Trust Bonds is authorized to include this pledge in such bonds and any
5 documentation relating thereto.

6 **Section 9.**

7 (A) The acquisition, ownership or disposition of any direct interest in any
8 Environmental Trust Bond shall not be taken into account in determining whether a person is
9 subject to any income tax, single business tax, franchise tax, business activities tax, intangible
10 property tax, excise tax, stamp tax, or any other tax imposed by this state or any agency or
11 political subdivision of this state.

*tax
drafters*

12 (B) Any successor to a Public Utility, whether pursuant to any bankruptcy,
13 reorganization, or other insolvency proceeding or pursuant to any merger or acquisition, sale or
14 transfer, by operation of law, as a result of Public Utility restructuring or otherwise, shall
15 perform and satisfy all obligations of the Public Utility in the same manner and to the same
16 extent as the Public Utility, including, but not limited to, collecting and paying to the person
17 entitled to revenues with respect to the Environmental Control Property.

18 (C) An Assignee or financing party shall not be considered to be a public utility or
19 person providing electric service solely by virtue of the transactions described in this Act.

20 **Section 10.**

21 Effective on the date the first Environmental Trust Bonds are issued under this Act, if any
22 provision of this Act or portion of this Act is held to be invalid or is invalidated, superseded,
23 replaced, repealed, or expires for any reason, that occurrence does not affect the validity or

*Don't need
gum
ch. 990
severability
provision*

1 continuation of any other provision of this Act that is relevant to the issuance, administration,
2 payment, retirement, or refunding of Environmental Trust Bonds or to any actions of the
3 Public Utility, its successors, an Assignee, a collection agent, or a party to transactions
4 authorized by this Act, which shall remain in full force and effect.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Tomorrow 1/20
10 am
Tuesday please

GEN

1 AN ACT ...; relating to: the issuance of debt by public utilities to finance certain
2 environmental activities.

Analysis by the Legislative Reference Bureau

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

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:

3 SECTION 1. 196.01 (5) (b) 7. of the statutes is created to read:
4 196.01 (5) (b) 7. An assignee, as defined in s. 196.027 (1) (b), unless the assignee
5 furnishes, directly to the public, telecommunications or sewer service, heat, light,
6 water, or power or, by means of pipes or mains, natural gas.

7 SECTION 2. 196.027 of the statutes is created to read:
8 196.027 Environmental trust financing. (1) DEFINITIONS. In this section:

1 (a) "Ancillary agreement" means any bond insurance policy or other financial
2 arrangement entered into in connection with the issuance of environmental trust
3 bonds.

4 (b) "Assignee" means any person to which an interest in environmental control
5 property is sold, transferred, or conveyed and any successor to such a person.

6 (c) "Environmental control activity" means any of the following:

7 1. Construction, installation, or otherwise putting into place environmental
8 control equipment.

9 2. The retiring of any existing plant, facility, or other property ~~in order~~² to
10 reduce, control, or eliminate environmental emissions in accordance with federal or
11 state law.

12 3. A conservation, energy efficiency, or similar demand-side management
13 program or measure.

14 (d) "Environmental control charge" means a charge paid by customers of a
15 public utility for the public utility to recover environmental control costs and
16 financing costs.

17 (e) "Environmental control cost" means a cost incurred or expected to be
18 incurred by a public utility in undertaking an environmental control activity and,
19 with respect to an environmental control activity described in par. (c) 2., includes the
20 book value of property that is retired and any demolition or similar costs that exceed
21 the salvage value of the property.

22 (f) "Environmental control equipment" means any device, facility, or technology
23 that is designed for the primary purpose of removing pollution from² or preventing,
24 reducing, or remediating the pollution of² air, water, or soil.

1 (g) "Environmental control property" means the right specified in a financing
 2 order to impose, collect, or receive environmental control charges^{STET} or to obtain
 3 adjustments to such charges as provided in this section, and any interest in such
 4 right.

5 (h) "Environmental trust bonds" means bonds, debentures, notes, certificates
 6 of participation, certificates of beneficial interest, certificates of ownership, or other
 7 evidences of indebtedness that are issued by a public utility or an assignee, the
 8 proceeds of which are used directly or indirectly to recover, finance, or refinance
 9 environmental control costs and financing costs, and that are secured by or payable
 10 from environmental control property.

11 (i) "Financing cost" means any of the following:

- 12 1. Debt service, including interest, that is payable on environmental trust
 13 bonds.
- 14 2. A payment required under an ancillary agreement, including any amount
 15 required to fund a reserve account.
- 16 3. Any other cost related to issuing and servicing environmental trust bonds,
 17 including servicing fees, trustee fees, legal fees, administrative fees, placement fees,
 18 capitalized interest, and rating agency fees.

19 (j) "Financing order" means an order issued by the commission under sub. (2)
 20 that allows for the issuance of environmental trust bonds, the collection of
 21 environmental control charges, and the creation of environmental control property.

22 (k) "Public utility" means a public utility that provides electricity directly or
 23 indirectly to the public and includes any successor to such a public utility.

1 (2) FINANCING ORDERS. (a) *Applications*. A public utility may apply to the
2 commission for a financing order. In addition to any other information required by
3 the commission, a public utility shall do all of the following in an application:

4 1. Describe the environmental control activities that the public utility proposes
5 to undertake and the reasons for undertaking the activities.

6 2. Estimate the environmental control costs of the activities described under
7 subd. 1,[✓]

8 3. Indicate whether the public utility proposes to finance all or a portion of the
9 costs estimated under subd. 2,[✓] with environmental trust bonds. If the public utility
10 proposes to finance a portion of the costs, the public utility shall identify that portion
11 in the application.

12 4. Estimate the financing costs of the environmental trust bonds proposed
13 under subd. 3.[✓]

14 5. Estimate the environmental control charges necessary to recover the
15 environmental control costs and financing costs estimated in the application.

16 (b) *Commission powers and duties*. 1. No later than 90 days after receiving an
17 application under par. (a),[✓] the commission shall issue a financing order or an order
18 rejecting the application. The commission shall issue a financing order if the
19 commission finds that the order is consistent with the public interest.

20 2. In a financing order issued to a public utility, the commission shall do all of
21 the following:

22 a. Except as provided in subd. 3,[✓] specify the amount of environmental control
23 costs and financing costs that may be recovered through environmental control
24 charges and the period over which such costs may be recovered.

1 b. Require customers of the public utility to pay environmental control charges
2 to the public utility during the period specified in the order, regardless of whether
3 the customers subsequently obtain electric service from a different public utility
4 during the period.

5 c. Include requirements and procedures for the commission to review
6 environmental control charges at least annually within 45 days of the anniversary
7 date that environmental trust bonds are issued pursuant to the order and, if
8 necessary, adjust the environmental control charges that customers are required to
9 pay under the order to correct for any overcollection or undercollection of the charges
10 or to otherwise ensure the public utility's timely recovery of environmental control
11 costs and financing costs.

12 d. Specify the environmental control property *that is created and* that may be used to pay or secure
13 environmental trust bonds.

14 3. In a financing order *the* the commission may exclude a portion of environmental
15 control costs from recovery only if a public utility indicates under par. (a) 3. *that* the
16 public utility does not propose to finance that portion with environmental trust
17 bonds.

18 4. Except as provided in par. (c), *a* a financing order is irrevocable and the
19 commission may reduce, impair, or otherwise adjust environmental control charges
20 approved in the order only as provided *in the order* under subd. 2. c. *✓*

21 (c) *Subsequent orders.* At the request of a public utility that has been issued
22 a financing order par. (b), *the* the commission may issue a subsequent financing order
23 that provides for retiring or refunding environmental trust bonds issued pursuant
24 to the original financing order if the commission finds that environmental trust
25 bonds issued pursuant to the subsequent financing order have lower financing costs

1 than the environmental trust bonds issued pursuant to the original financing order
2 or that retiring or refunding the environmental trust bonds issued pursuant to the
3 original financing order is otherwise in the public interest.

4 (d) *Judicial review.* 1. In this paragraph, "order" means a financing order or
5 an order rejecting an application under par. (b) 1. ✓

6 2. Notwithstanding s. 227.52, ✓ an order is reviewable only by an action for
7 certiorari in the circuit court for Dane County that is commenced by any party to the
8 proceeding on the order, within 30 days after the date on which notice of the order
9 is mailed to that party. The court shall ^g proceed to hear and determine the action
10 as expeditiously as possible and give the action precedence over other matters not
11 accorded similar precedence by law. Any party to the certiorari proceedings may
12 appeal the decision of the court.

13 (e) *Effect of orders.* 1. A financing order shall remain in effect until the
14 environmental trust bonds issued pursuant to the order have been paid in full and
15 the financing costs of the bonds have been recovered in full.

16 2. A financing order issued to a public utility shall remain in effect and
17 unabated notwithstanding the bankruptcy of the public utility.

18 (3) EXCEPTIONS TO COMMISSION JURISDICTION. If the commission issues a
19 financing order to a public utility, the commission may not, in exercising its powers
20 and carrying out its duties under this chapter, consider the environmental trust
21 bonds issued pursuant to the order to be the debt ✓ of the public utility, the
22 environmental control charges paid under the order to be the revenue ✓ of the public
23 utility, or the environmental control costs or financing costs specified in the order to
24 be the costs ✓ of the public utility.

1 (4) PUBLIC UTILITY DUTIES. (a) A public utility shall place the proceeds of any
2 environmental trust bonds issued pursuant to a financing order in a separate
3 account and may use the proceeds only for paying environmental control costs and
4 financing costs, except that, if the public utility proposes to retire property, the
5 proceeds corresponding to the book value of that property may be used only for
6 refinancing or retiring debt or equity of the public utility.

7 (b) A public utility shall annually provide to its customers a concise explanation
8 of the environmental control charges approved in a financing order issued to the
9 public utility. The explanation may be made by bill inserts, website information, or
10 other appropriate means.

11 (5) ENVIRONMENTAL CONTROL PROPERTY. (a) Environmental control property
12 that is specified in a financing order shall constitute a present property right
13 notwithstanding that the imposition and collection of environmental control charges
14 depend on the public utility to which the order is issued performing its servicing
15 functions relating to the collection of environmental control charges and on future
16 electricity consumption.

17 (b) Environmental control property specified in a financing order shall
18 continue to exist until the environmental trust bonds issued pursuant to the order
19 are paid in full and all financing costs of the bonds have been recovered in full.

20 (c) Environmental control property specified in a financing order issued to a
21 public utility may be transferred, sold, or assigned to any person, including an
22 affiliate of the public utility, and may be pledged to secure environmental trust bonds
23 issued pursuant to the order.

24 (d) The interest of an assignee or pledgee in environmental control property
25 specified in a financing order issued to a public utility, and in the revenues and

1 collections arising from that property, are not subject to setoff, counterclaim,
2 surcharge, or defense by the public utility or any other person or in connection with
3 the bankruptcy of the public utility or any other entity.

4 (6) ENVIRONMENTAL TRUST BONDS NOT PUBLIC DEBT. The state is not liable on
5 environmental trust bonds and the bonds are not a debt of the state. An issue of
6 environmental trust bonds does not, directly or indirectly or contingently, obligate
7 the state or a political subdivision of the state to levy any tax or make any
8 appropriation for payment of the bonds.

9 (7) ENVIRONMENTAL TRUST BONDS AS LEGAL INVESTMENTS. Any of the following
10 may legally invest any sinking funds, moneys, or other funds belonging to them or
11 under their control in environmental trust bonds:

12 (a) The state, the investment board, public officers, municipal corporations,
13 political subdivisions, and public bodies.

14 (b) Banks and bankers, savings and loan associations, credit unions, trust
15 companies, savings banks and institutions, investment companies, insurance
16 companies, insurance associations, and other persons carrying on a banking or
17 insurance business.

18 (c) Personal representatives, guardians, trustees, and other fiduciaries.

19 (8) STATE PLEDGE. (a) In this subsection, "bondholder" means a person who
20 holds an environmental trust bond.

21 (b) The state pledges to and agrees with bondholders that the state will not do
22 any of the following:

23 1. Take or permit any action that impairs the value of environmental control
24 property.

1 2. Except as allowed under this section, reduce, alter, or impair environmental
2 control charges that are imposed, collected, and remitted for the benefit of the
3 bondholders until any principal, interest, premium, or other charge incurred, or
4 contract to be performed, in connection with environmental trust bonds held by the
5 bondholders are paid or performed in full.

6 (c) Any person who issues environmental trust bonds is allowed to include the
7 pledge specified in par. (a) in the bonds and relating documentation.

8 **SECTION 3.** 201.01 (3)✓ of the statutes is renumbered 201.01 (3) (intro.)✓ and
9 amended to read:

10 201.01 (3) (intro.) "Securities" means capital stock and evidences of
11 indebtedness of a public service corporation, ~~not including, however, (a) any but do~~
12 not include any of the following:

13 (a) Any obligation of a public service corporation which is not a public utility
14 as defined in the federal ~~power act~~ ^{Power Act}, falling due one year or less after its date and
15 bearing date not later than the day of sale; ~~or (b) any.~~

16 (b) Any evidence of indebtedness of a public service corporation which is a
17 public utility as defined in the federal ~~power act~~ ^{Power Act}, the issuance, renewal or
18 assumption of which is exempt from ~~sec. 204 (a) of the federal power act~~ ^{section} by the
19 provisions of ~~sec. 204 (e) thereof; or (c) any.~~ ^{section}

20 (c) Any obligation issued to the United States of America in connection with
21 loans for rural telecommunications facilities made pursuant to the ~~rural~~
22 ~~electrification act~~ ^{Rural Electrification Act} of 1936, as amended; ~~or (d) any.~~



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4030/PL

MDK:wj:pa

1

O - NOTE ✓

Today ↓

Now,
please

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RM
has been
seen

INSERT 1A ✓

REGEN

1 AN ACT *to renumber and amend* 201.01 (3); and *to create* 196.01 (5) (b) 7.,
2 196.027 and 201.01 (3) (e) of the statutes; **relating to:** the issuance of debt by
3 public utilities to finance certain environmental activities.

Analysis by the Legislative Reference Bureau

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

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:

4 SECTION 1. 196.01 (5) (b) 7. of the statutes is created to read:
5 196.01 (5) (b) 7. An assignee, as defined in s. 196.027 (1) (b), unless the assignee
6 furnishes, directly to the public, telecommunications or sewer service, heat, light,
7 water, power, or, by means of pipes or mains, natural gas.

8 SECTION 2. 196.027 of the statutes is created to read:

1 **196.027 Environmental trust financing.** (1) DEFINITIONS. In this section:

2 (a) "Ancillary agreement" means any bond insurance policy or other financial
3 arrangement entered into in connection with the issuance of environmental trust
4 bonds.

5 (b) "Assignee" means any person to which an interest in environmental control
6 property is sold, transferred, or conveyed and any successor to such a person.

7 (c) "Environmental control activity" means any of the following:

8 1. Construction, installation, or otherwise putting into place environmental
9 control equipment.

10 2. The retiring of any existing plant, facility, or other property to reduce,
11 control, or eliminate environmental emissions in accordance with federal or state
12 law.

13 3. A conservation, energy efficiency, or similar demand-side management
14 program or measure.

15 (d) "Environmental control charge" means a charge paid by customers of a
16 public utility for the public utility to recover environmental control costs and
17 financing costs.

18 (e) "Environmental control cost" means a cost incurred or expected to be
19 incurred by a public utility in undertaking an environmental control activity and,
20 with respect to an environmental control activity described in par. (c) 2., includes the
21 book value of property that is retired and any demolition or similar costs that exceed
22 the salvage value of the property.

23 (f) "Environmental control equipment" means any device, facility, or technology
24 that is designed for the primary purpose of removing pollution from or preventing,
25 reducing, or remediating the pollution of air, water, or soil.

1 (g) "Environmental control property" means the right specified in a financing
2 order to impose, collect, or receive environmental control charges, or to obtain
3 adjustments to such charges as provided in this section, and any interest in such
4 right.

5 (h) "Environmental trust bonds" means bonds, debentures, notes, certificates
6 of participation, certificates of beneficial interest, certificates of ownership, or other
7 evidences of indebtedness that are issued by a public utility or an assignee, the
8 proceeds of which are used directly or indirectly to recover, finance, or refinance
9 environmental control costs and financing costs, and that are secured by or payable
10 from environmental control property.

11 (i) "Financing cost" means any of the following:

12 1. Debt service, including interest, that is payable on environmental trust
13 bonds.

14 2. A payment required under an ancillary agreement, including any amount
15 required to fund a reserve account.

16 3. Any other cost related to issuing and servicing environmental trust bonds,
17 including servicing fees, trustee fees, legal fees, administrative fees, placement fees,
18 capitalized interest, and rating agency fees.

19 (j) "Financing order" means an order issued by the commission under sub. (2)
20 that allows for the issuance of environmental trust bonds, the collection of
21 environmental control charges, and the creation of environmental control property.

22 (k) "Public utility" means a public utility that provides electricity directly or
23 indirectly to the public and includes any successor to such a public utility.

1 (2) FINANCING ORDERS. (a) *Applications.* A public utility may apply to the
2 commission for a financing order. In addition to any other information required by
3 the commission, a public utility shall do all of the following in an application:

4 1. Describe the environmental control activities that the public utility proposes
5 to undertake and the reasons for undertaking the activities.

6 2. Estimate the environmental control costs of the activities described under
7 subd. 1.

8 3. Indicate whether the public utility proposes to finance all or a portion of the
9 costs estimated under subd. 2. with environmental trust bonds. If the public utility
10 proposes to finance a portion of the costs, the public utility shall identify that portion
11 in the application.

12 4. Estimate the financing costs of the environmental trust bonds proposed
13 under subd. 3.

14 5. Estimate the environmental control charges necessary to recover the
15 environmental control costs and financing costs estimated in the application.

16 (b) *Commission powers and duties.* 1. No later than 90 days after receiving an
17 application under par. (a), the commission shall issue a financing order or an order
18 rejecting the application. The commission shall issue a financing order if the
19 commission finds that the order is consistent with the public interest.

20 2. In a financing order issued to a public utility, the commission shall do all of
21 the following:

22 a. Except as provided in subd. 3., specify the amount of environmental control
23 costs and financing costs that may be recovered through environmental control
24 charges and the period over which such costs may be recovered.

1 b. Require customers of the public utility to pay environmental control charges
2 to the public utility during the period specified in the order, regardless of whether
3 the customers subsequently obtain electric service from a different public utility
4 during the period.

5 c. Include requirements and procedures for the commission to review
6 environmental control charges at least annually within 45 days of the anniversary
7 date that environmental trust bonds are issued pursuant to the order and, if
8 necessary, adjust the environmental control charges that customers are required to
9 pay under the order to correct for any overcollection or undercollection of the charges
10 or to otherwise ensure the public utility's timely recovery of environmental control
11 costs and financing costs.

12 d. Specify the environmental control property that is created and that may be
13 used to pay or secure environmental trust bonds.

14 3. In a financing order the commission may exclude a portion of environmental
15 control costs from recovery only if a public utility indicates under par. (a) 3. that the
16 public utility does not propose to finance that portion with environmental trust
17 bonds.

18 4. Except as provided in par. (c), a financing order is irrevocable and the
19 commission may reduce, impair, or otherwise adjust environmental control charges
20 approved in the order only as provided under subd. 2. c.

21 (c) *Subsequent orders.* At the request of a public utility that has been issued
22 a financing order par. (b), the commission may issue a subsequent financing order
23 that provides for retiring or refunding environmental trust bonds issued pursuant
24 to the original financing order if the commission finds that environmental trust
25 bonds issued pursuant to the subsequent financing order have lower financing costs

1 than the environmental trust bonds issued pursuant to the original financing order
2 or that retiring or refunding the environmental trust bonds issued pursuant to the
3 original financing order is otherwise in the public interest.

4 (d) *Judicial review.* 1. In this paragraph, "order" means a financing order or
5 an order rejecting an application under par. (b) 1.

6 2. Notwithstanding s. 227.52, an order is reviewable only by an action for
7 certiorari in the circuit court for Dane County that is commenced by any party to the
8 proceeding on the order, within 30 days after the date on which notice of the order
9 is mailed to that party. The court shall proceed to hear and determine the action as
10 expeditiously as possible and give the action precedence over other matters not
11 accorded similar precedence by law. Any party to the certiorari proceedings may
12 appeal the decision of the court.

13 (e) *Effect of orders.* 1. A financing order shall remain in effect until the
14 environmental trust bonds issued pursuant to the order have been paid in full and
15 the financing costs of the bonds have been recovered in full.

16 2. A financing order issued to a public utility shall remain in effect and
17 unabated notwithstanding the bankruptcy of the public utility.

18 (3) EXCEPTIONS TO COMMISSION JURISDICTION. If the commission issues a
19 financing order to a public utility, the commission may not, in exercising its powers
20 and carrying out its duties under this chapter, consider the environmental trust
21 bonds issued pursuant to the order to be the debt of the public utility, the
22 environmental control charges paid under the order to be the revenue of the public
23 utility, or the environmental control costs or financing costs specified in the order to
24 be the costs of the public utility.

1 (4) PUBLIC UTILITY DUTIES. (a) A public utility shall place the proceeds of any
 2 environmental trust bonds issued pursuant to a financing order in a separate
 3 account and may use the proceeds only for paying environmental control costs and
 4 financing costs, except that, if the public utility proposes to retire property, the
 5 proceeds corresponding to the book value of that property may be used only for
 6 refinancing or retiring debt or equity of the public utility.

7 (b) A public utility shall annually provide to its customers a concise explanation
 8 of the environmental control charges approved in a financing order issued to the
 9 public utility. The explanation may be made by bill inserts, Web site information, or
 10 other appropriate means.

11 (5) ENVIRONMENTAL CONTROL PROPERTY. (a) Environmental control property
 12 that is specified in a financing order shall constitute a present property right
 13 notwithstanding that the imposition and collection of environmental control charges
 14 depend on the public utility to which the order is issued performing its servicing
 15 functions relating to the collection of environmental control charges and on future
 16 electricity consumption.

17 ^{2.} ~~(a)~~ Environmental control property specified in a financing order shall
 18 continue to exist until the environmental trust bonds issued pursuant to the order
 19 are paid in full and all financing costs of the bonds have been recovered in full.

20 ^{3.} ~~(a)~~ Environmental control property specified in a financing order issued to a
 21 public utility may be transferred, sold, or assigned to any person, including an
 22 affiliate of the public utility, and may be pledged to secure environmental trust bonds
 23 issued pursuant to the order.

24 ^{4.} ~~(a)~~ The interest of an assignee or pledgee in environmental control property
 25 specified in a financing order issued to a public utility, and in the revenues and

In general *ital*
1.

INSERT 7-23
No ff

INSERT 8-3

1 collections arising from that property, are not subject to setoff, counterclaim,
2 surcharge, or defense by the public utility or any other person or in connection with
3 the bankruptcy of the public utility or any other entity.

4 (6) ENVIRONMENTAL TRUST BONDS NOT PUBLIC DEBT. The state is not liable on
5 environmental trust bonds and the bonds are not a debt of the state. An issue of
6 environmental trust bonds does not, directly or indirectly or contingently, obligate
7 the state or a political subdivision of the state to levy any tax or make any
8 appropriation for payment of the bonds.

9 (7) ENVIRONMENTAL TRUST BONDS AS LEGAL INVESTMENTS. Any of the following
10 may legally invest any sinking funds, moneys, or other funds belonging to them or
11 under their control in environmental trust bonds:

12 (a) The state, the investment board, public officers, municipal corporations,
13 political subdivisions, and public bodies.

14 (b) Banks and bankers, savings and loan associations, credit unions, trust
15 companies, savings banks and institutions, investment companies, insurance
16 companies, insurance associations, and other persons carrying on a banking or
17 insurance business.

18 (c) Personal representatives, guardians, trustees, and other fiduciaries.

19 (8) STATE PLEDGE. (a) In this subsection, "bondholder" means a person who
20 holds an environmental trust bond.

21 (b) The state pledges to and agrees with bondholders that the state will not do
22 any of the following:

23 1. Take or permit any action that impairs the value of environmental control
24 property.

1 2. Except as allowed under this section, reduce, alter, or impair environmental
2 control charges that are imposed, collected, and remitted for the benefit of the
3 bondholders until any principal, interest, premium, or other charge incurred, or
4 contract to be performed, in connection with environmental trust bonds held by the
5 bondholders are paid or performed in full.

6 (c) Any person who issues environmental trust bonds is allowed to include the
7 pledge specified in par. (a) in the bonds and relating documentation.

8 **SECTION 3.** 201.01 (3) of the statutes is renumbered 201.01 (3) (intro.) and
9 amended to read:

10 201.01 (3) (intro.) "Securities" means capital stock and evidences of
11 indebtedness of a public service corporation, ~~not including, however, (a) any~~ but do
12 not include any of the following:

13 (a) Any obligation of a public service corporation which is not a public utility
14 as defined in the federal ~~power act~~ Power Act, falling due one year or less after its
15 date and bearing date not later than the day of sale; ~~or (b) any.~~

16 (b) Any evidence of indebtedness of a public service corporation which is a
17 public utility as defined in the federal ~~power act~~ Power Act, the issuance, renewal or
18 assumption of which is exempt from ~~see. section~~ section 204 (a) of the federal ~~power act~~
19 Power Act by the provisions of ~~see. section~~ section 204 (e) thereof; ~~or (c) any.~~

20 (c) Any obligation issued to the United States of America in connection with
21 loans for rural telecommunications facilities made pursuant to the ~~rural~~
22 ~~electrification act~~ Rural Electrification Act of 1936, as amended; ~~or (d) any.~~

23 (d) Any securities issued by a corporation organized under ch. 185 for the
24 purpose of furnishing telecommunications service in rural areas.

25 **SECTION 4.** 201.01 (3) (e) of the statutes is created to read:

INSERT 1-A:

This bill allows an electric public utility, with the approval of the Public Service Commission (PSC), to finance the cost of certain environmental control activities with the proceeds of "environmental trust bonds," which the bill defines as bonds that are secured by charges paid by the public utility's customers. The bonds may be issued by the public utility, or an assignee of the public utility, including an affiliate.

A public utility that applies to the PSC for an order approving the issuance of the bonds must describe the environmental control activities that the public utility proposes to undertake and the reasons for undertaking the activities. An "environmental control activity" is defined as any of the following: 1) construction, installation, or otherwise putting in place equipment for controlling pollution; 2) the retiring of existing property to control pollution; or 3) a conservation, energy efficiency, or similar demand-side management program. In addition, the public utility must estimate the costs of proposed activities and indicate whether the public utility proposes to finance all or a specified portion of such costs with the bonds. Also, the public utility must estimate the financing costs of issuing the proposed bonds.

No later than 90 days after the PSC receives an application, the PSC must issue an order that rejects or approves the application. The PSC must approve the application if such approval is in the public interest. The bill refers to an order that approves an application as a "financing order." If the PSC issues a financing order, the order must specify the amount of environmental control and financing costs that the public utility may recover through charges that the public utility's customers must pay over a period specified in the order. The bill refers to such charges as "environmental control charges." The PSC may exclude a portion of environmental control costs from recovery as environmental control charges only if the public utility indicates in the application that ~~that~~ it does not propose to finance that portion with bonds. The order must also require the customers to pay the charges to the public utility, even if the customers subsequently receive electric service from a different public utility. In addition, the order must specify ~~that~~ "environmental control property" is created ~~that~~ ^{and that} may be used to secure the bonds. "Environmental control property" is defined as the right, specified in the order, to impose, collect, or receive the environmental control charges.

The bill also allows for the PSC to adjust the environmental control charges that are approved in a financing order. The order itself must include procedures for the PSC to review environmental control charges annually within 45 days of the anniversary date of the issuance of the bonds. The purpose of the review is to determine whether any adjustments to the charges are necessary based on any overcollection or undercollection of the charges. In addition, based on the review, the PSC may make any other adjustments that are necessary to ensure the public utility's timely recovery of the environmental control and financing costs. The bill also allows a public utility to request a subsequent financing order that allows for retiring or refunding the bonds issued pursuant to the original financing order. The PSC may issue a subsequent order if the financing costs of bonds issued pursuant to

the subsequent order are lower than the financing costs of the bonds issued pursuant to the original order. The PSC may also issue a subsequent order if retiring or refinancing the bonds issued pursuant to the original order is otherwise in the public interest.

The bill prohibits the PSC from revoking a financing order, except for changes made by a subsequent financing order described above. In addition, the bill provides that a financing order remains in effect until environmental trust bonds issued pursuant to the order have been paid in full and the financing costs of the bonds have been recovered in full. Also, the bill provides that a financing order issued to a public utility remains in effect notwithstanding the bankruptcy of the public utility. The bill also creates the following limits on the PSC's jurisdiction over a public utility that is issued a financing order: 1) the PSC may not consider environmental trust bonds to be the debt of the public utility; 2) the PSC may not consider the environmental control charges paid under the order to be the revenues of the public utility; and 3) the PSC may not consider the environmental control or financing costs specified in the order to be the costs of the public utility.

In addition, the bill does all of the following:

1. The bill establishes legal characteristics of environmental control property that is created in a financing order and of any sale, assignment, or transfer of such property.

2. The bill provides that, with certain specified exceptions, the state's version of Article 9 of the Uniform Commercial Code governs the granting and enforcing of security interests in environmental control property created in a financing order.

3. The bill provides that the state is not liable on environmental control bonds and that the bonds are not public debt.

4. The bill requires a public utility to place the proceeds of any environmental trust bonds in a separate account and use the proceeds only for paying environmental control and financing costs.

5. The bill requires a public utility that is issued a financing order to provide annual explanations of environmental control charges to its customers.

6. The bill allows a party to a proceeding in which the PSC issues a financing order, or rejects an application for an order, to seek judicial review of the PSC's action in Dane County circuit court.

7. The bill provides that requirements under current law that apply to the issuance of securities by public utilities do not apply to the issuance of environmental trust bonds under the bill.

INSERT 7-23:

If a public utility defaults on an agreement for such a transfer, sale, assignment, or pledge, the commission or a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of any revenues arising from the environmental control

1

2

3

4

5

5

1 property that is necessary to enforce the agreement. Any such order shall remain
2 in full force and effect notwithstanding any bankruptcy, reorganization, or other
3 insolvency proceedings with respect to the public utility.

4 **INSERT 8-3:**

5 (b) *Security interests.* Except as otherwise provided in this paragraph, the
6 creation, perfection, and enforcement of security interests in environmental control
7 property to secure environmental trust bonds are governed by ch. 409.
8 Notwithstanding ch. 409, with regard to creating, perfecting, and enforcing a valid
9 security interest in environmental control property to secure environmental trust
10 bonds, all of the following apply:

11 1. The description of environmental control property in a security agreement
12 is sufficient if the description refers to this section and the financing order creating
13 the environmental control property.

14 2. A security interest is created, valid, binding, and perfected at the time a
15 security agreement is made and attaches without any physical delivery of collateral
16 or other act, and the lien of such security interest shall be valid, binding, and
17 perfected against all parties having claims of any kind in tort, contract, or otherwise
18 against the person granting the security interest, regardless of whether such parties
19 have notice of the lien. The filing or recording of a financial statement or instrument
20 in which such a security interest is created is not required.

21 3. A security interest in environmental control property is a continuously
22 perfected security interest and has priority over any other lien created by operation
23 of law or otherwise, which subsequently attaches to the environmental control
24 property.

1 4. The priority of a security interest created under this paragraph is not
2 affected by the commingling of proceeds arising from environmental control property
3 with other amounts.

4 5. Any changes that the commission makes to a financing order that creates
5 the environmental control property does not affect the validity, perfection, or priority
6 of a security interest in the environmental control property.

7 (c) *Sales*. The sale, assignment, and transfer of environmental control property
8 are governed by this paragraph. All of the following apply to a sale, assignment, or
9 transfer under this paragraph:

10 1. The sale, assignment, or transfer is an absolute transfer of, and not a pledge
11 of or secured transaction relating to, the seller's right, title, and interest in, to, and
12 under the environmental control property, if the documents governing the
13 transaction expressly state that the transaction is a sale or other absolute transfer.
14 After such a transaction, the environmental control property is not subject to any
15 claims of the seller or the seller's creditors, other than creditors holding a prior
16 security interest in the environmental control property perfected under par. (b).

17 2. The characterization of the sale, assignment, or transfer as an absolute
18 transfer under subd. 1. and the corresponding characterization of the purchaser's
19 property interest is not affected by any of the following factors:

20 a. Commingling of amounts arising with respect to the environmental control
21 property with other amounts.

22 b. The retention by the seller of a partial or residual interest, including an
23 equity interest, in the environmental control property, whether direct or indirect, or
24 whether subordinate or otherwise.

25 c. Any recourse that the purchaser may have against the seller.

- 1 d. Any indemnifications, obligations, or repurchase rights made or provided by
- 2 the seller.
- 3 e. The responsibility of the seller to collect environmental control charges.
- 4 f. The treatment of the sale, assignment, or transfer for tax, financial reporting,
- 5 or other purposes.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4030/1dn

MDK: j:...

WLj

Rep. Jensen:

Please review this bill carefully to make sure it achieves your intent. In particular, please note the following:

1. The provisions of the proposal that you submitted regarding security interests and sales of environmental control property were difficult for me to understand. Therefore, I suggest you pay particular attention to proposed s. 196.027 (5). Some of the language that I used is based on s. 16.63 (4) (b) and (c), stats., which deals with similar issues regarding the sale of the state's rights to tobacco settlement payments.
2. Regarding security interests, the material on page 9, lines 16 to 19 of the proposal is not included because I'm not sure what that material is supposed to accomplish. In particular, the rest of the proposal does not describe how a financing order creates a security interest. Also, regarding security interests, I ~~was~~^{am} not sure how to incorporate the material in the proposal on page 10, lines 12 to 16.
3. Proposed s. 196.027 (5) (a) 3. is intended to accomplish the material in the proposal on page 10, lines 17 to 23. Also, isn't the material on page 10, line 23 to page 11, line 2 redundant, based on the other provisions in the bill regarding bankruptcy?
4. In some cases, the proposal appeared to me to impose substantive requirements in definitions, which is contrary to our drafting style. For example, I did not include a definition for "nonbypassable charge" or use that term in the bill. Instead, I tried to accomplish the purpose of the definition in proposed s. 196.027 (2) (b) 2. b. ✓
5. The material in the proposal on page 2, lines 5 and 6 is not included because it has logical problems. "Environmental control charges" are defined to refer to "environmental control costs". However, in the cited material in the proposal, the definition of "environmental control costs" refers back to "environmental control charges". This approach seems circular and unclear.
6. In the definition of "environmental control equipment", I don't think it's necessary to include references to the terms defined in the Wisconsin Administrative Code.
7. Revenues are not included in the definition of "environmental control property" because I'm not sure what that inclusion is supposed to accomplish.

8. The bill does not affect the requirements for a certificate of authority or a certificate of public convenience and necessity. Therefore, there is no need to include the material in the proposal on page 4, lines 11 to 15.

9. Proposed s. 196.027 (2) (b) 3[✓] is intended to correspond to the material in ^{the} proposal on page 4, lines 9 to 11. However, I'm not sure whether I've carried out your intent.

10. The material in the proposal on page 6, lines 1 to 5³ seems redundant and is not included.

11. The material on page 6, lines 6 to 9³ is not included because I'm not sure what it accomplishes. If you are attempting to remove financing orders from the jurisdiction of a court, that would raise separation of powers issues.

12. Proposed s. 196.027 (3)[✓] is intended to correspond to the material in the proposal on page 7, lines 3 to 10.

13. The material in the proposal on page 11, lines 3 and 4³ is not included because I don't know what it is intended to accomplish.

14. The material in the proposal on page 11, lines 5 to 7³ is not included because it seems redundant.

15. The material in the proposal on page 11, lines 14 to 16³ is not included because I don't know what you are trying to accomplish. Why is the reference to the laws of other states necessary?

16. Is the material in the proposal on page 12, lines 12 to 17³ necessary? (It isn't included in the bill.) Don't the terms of an assignment govern these issues?

17. Why is it necessary to exclude assignees from the definition of public utility (which is accomplished in proposed s. 196.01 (5) b. 7[✓])? Also, in the material in the proposal on page 12, lines 18 and 19, what is a "financing party"?

18. The material in the proposal on page 12, line 21³ to page 13, line 4³ is not necessary. See s. 990.001 (11), stats.

19. Proposed s. 196.027 (7) is based on s. 16.527 (9), stats.

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

The material on page 12, lines 7 to 11 (regarding taxes)³ is not included in the bill because the intent of the material is not clear. Do you mean that the income derived from an environmental trust bond is exempt from the imposition of state income and

franchise taxes? Do you want such income to be excluded from the calculation of any license fee imposed under current law? Please advise.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4030/1dn
MDK:wlj:rs

January 20, 2004

Rep. Jensen:

Please review this bill carefully to make sure it achieves your intent. In particular, please note the following:

1. The provisions of the proposal that you submitted regarding security interests and sales of environmental control property were difficult for me to understand. Therefore, I suggest you pay particular attention to proposed s. 196.027 (5). Some of the language that I used is based on s. 16.63 (4) (b) and (c), stats., which deals with similar issues regarding the sale of the state's rights to tobacco settlement payments.
2. Regarding security interests, the material on page 9, lines 16 to 19, of the proposal is not included because I'm not sure what that material is supposed to accomplish. In particular, the rest of the proposal does not describe how a financing order creates a security interest. Also, regarding security interests, I am not sure how to incorporate the material in the proposal on page 10, lines 12 to 16.
3. Proposed s. 196.027 (5) (a) 3. is intended to accomplish the material in the proposal on page 10, lines 17 to 23. Also, isn't the material on page 10, line 23, to page 11, line 2, redundant, based on the other provisions in the bill regarding bankruptcy?
4. In some cases, the proposal appeared to me to impose substantive requirements in definitions, which is contrary to our drafting style. For example, I did not include a definition for "nonbypassable charge" or use that term in the bill. Instead, I tried to accomplish the purpose of the definition in proposed s. 196.027 (2) (b) 2. b.
5. The material in the proposal on page 2, lines 5 and 6, is not included because it has logical problems. "Environmental control charges" are defined to refer to "environmental control costs." However, in the cited material in the proposal, the definition of "environmental control costs" refers back to "environmental control charges." This approach seems circular and unclear.
6. In the definition of "environmental control equipment," I don't think it's necessary to include references to the terms defined in the Wisconsin Administrative Code.
7. Revenues are not included in the definition of "environmental control property" because I'm not sure what that inclusion is supposed to accomplish.

8. The bill does not affect the requirements for a certificate of authority or a certificate of public convenience and necessity. Therefore, there is no need to include the material in the proposal on page 4, lines 11 to 15.
9. Proposed s. 196.027 (2) (b) 3. is intended to correspond to the material in the proposal on page 4, lines 9 to 11. However, I'm not sure whether I've carried out your intent.
10. The material in the proposal on page 6, lines 1 to 5, seems redundant and is not included.
11. The material on page 6, lines 6 to 9, is not included because I'm not sure what it accomplishes. If you are attempting to remove financing orders from the jurisdiction of a court, that would raise separation of powers issues.
12. Proposed s. 196.027 (3) is intended to correspond to the material in the proposal on page 7, lines 3 to 10.
13. The material in the proposal on page 11, lines 3 and 4, is not included because I don't know what it is intended to accomplish.
14. The material in the proposal on page 11, lines 5 to 7, is not included because it seems redundant.
15. The material in the proposal on page 11, lines 14 to 16, is not included because I don't know what you are trying to accomplish. Why is the reference to the laws of other states necessary?
16. Is the material in the proposal on page 12, lines 12 to 17, necessary? (It isn't included in the bill.) Don't the terms of an assignment govern these issues?
17. Why is it necessary to exclude assignees from the definition of public utility (which is accomplished in proposed s. 196.01 (5) b. 7.)? Also, in the material in the proposal on page 12, lines 18 and 19, what is a "financing party"?
18. The material in the proposal on page 12, line 21, to page 13, line 4, is not necessary. See s. 990.001 (11), stats.
19. Proposed s. 196.027 (7) is based on s. 16.527 (9), stats.

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

The material on page 12, lines 7 to 11 (regarding taxes), is not included in the bill because the intent of the material is not clear. Do you mean that the income derived from an environmental trust bond is exempt from the imposition of state income and

franchise taxes? Do you want such income to be excluded from the calculation of any license fee imposed under current law? Please advise.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us