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2003 BILL

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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 natural gas and electric
public utilities to finance certain environmental activities.

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Analysis by the Legislative Reference Bureau

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.

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~~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.

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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

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customers in

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Service territory

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 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 ~~public~~ service from a different ~~public~~ utility. In addition, the order must specify the "environmental control property" that is created 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. **INSEAT 2A**

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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 ~~provisions 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.

a formula that the PSC must apply

at least formula energy

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 ~~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 revenue 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. **INSEAT 2B**

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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.

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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~~ ^{an energy} utility to place the proceeds of any environmental trust bonds into a separate account and use the proceeds only for paying environmental control and financing costs.

5. The bill requires ~~a public~~ ^{an energy} 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 ^{energy} 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.

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

INSERT 3-1

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

1 **SECTION 1.** 196.01 (5) (b) 7. of the statutes is created to read:
2 196.01 (5) (b) 7. An assignee, as defined in s. 196.027 (1) (b), unless the assignee
3 furnishes, directly to the public, telecommunications or sewer service, heat, light,
4 water, power, or, by means of pipes or mains, natural gas.

5 **SECTION 2.** 196.027 of the statutes is created to read:
6 **196.027 Environmental trust financing.** (1) DEFINITIONS. In this section:

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

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

12 (c) "Environmental control activity" means any of the following:
INSERT 3-11

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

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

6 3. A conservation, energy efficiency, or similar demand-side management
7 program or measure.

8 (d) "Environmental control charge" means a charge paid by customers of ^{an energy}
9 ~~public~~ utility for the ~~public~~ ^{energy} utility to recover environmental control costs and
10 financing costs.

INSERT 4-12

11 (e) "Environmental control cost" means a cost incurred or expected to be
12 incurred by ~~public~~ ^{an energy} utility in undertaking an environmental control activity and,
13 with respect to an environmental control activity described in par. (d) 2., includes the
14 book value of property that is retired and any demolition or similar costs that exceed
15 the salvage value of the property.

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

all of the following 9 10

19 (g) "Environmental control property" means ^hthe right specified in a financing
20 order to impose, collect, or receive environmental control charges, or to obtain
21 adjustments to such charges as provided in this section, and any interest in such
22 right.

INSERT 4-22

23 (h) "Environmental trust bonds" means bonds, debentures, notes, certificates
24 of participation, certificates of beneficial interest, certificates of ownership, or other
25 evidences of indebtedness that are issued by ~~public~~ ^{an energy} utility or an assignee, the

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1 proceeds of which are used directly or indirectly to recover, finance, or refinance
2 environmental control costs and financing costs, and that are secured by or payable
3 from environmental control property.

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

5 1. Debt service, including interest, that is payable on environmental trust
6 bonds. (INSERT 5-11)

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

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

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

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

(17) (2) FINANCING ORDERS. (a) Applications. ^{An energy}~~public~~ utility may apply to the
18 commission for a financing order. In addition to any other information required by
19 the commission, ^{an energy}~~public~~ utility shall do all of the following in an application:

(20) 1. Describe the environmental control activities that the ^{energy}~~public~~ utility proposes
21 to undertake and the reasons for undertaking the activities.

22 2. Estimate the environmental control costs of the activities described under
23 subd. 1.

(24) 3. Indicate whether the ^{energy}~~public~~ utility proposes to finance all or a portion of the
(25) costs estimated under subd. 2. with environmental trust bonds. If the ^{energy}~~public~~ utility

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1 proposes to finance a portion of the costs, the ~~public~~^{energy} utility shall identify that portion
2 in the application.

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

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

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

11 2. In a financing order issued to ~~public~~^{an energy} utility, the commission shall do all of
12 the following:

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

16 b. Require customers ^{residing in the service territory} of the ~~public~~^{energy} utility to pay environmental control charges
17 to the ~~public~~^{energy} utility, during the period specified in the order, regardless of whether
18 ~~the~~^{any} customers, ^{or an assignee} subsequently obtain ~~public~~^{energy} service from a different ~~public~~^{energy} utility
19 during the period. ^{residing in the service territory of the ~~public~~^{energy} utility}

20 c. ~~Include requirements and procedures for the commission to review~~
21 ~~environmental control charges at least annually within 45 days of the anniversary~~
22 ~~date that environmental trust bonds are issued pursuant to the order and, if~~
23 ~~necessary, adjust the environmental control charges that customers are required to~~
24 pay under the order ^{and making any adjustments that are necessary} to correct for any overcollection or undercollection of the charges

a formula for reviewing

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1 or to otherwise ensure the ~~public~~^{energy} utility's timely recovery of environmental control
2 costs and financing costs. INSERT 7-2

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

5 3. In a financing order the commission may exclude a portion of environmental
6 control costs from recovery only if ~~public~~^{an energy} utility indicates under par. (a) 3. that the
7 ~~utility~~^{energy} utility does not propose to finance that ~~portion~~ with environmental trust
8 bonds.

9 4. Except as not provided in par. (c), a financing order is irrevocable and the
10 commission may reduce, impair, or otherwise adjust environmental control charges
11 approved in the order ⁵ only as provided under subd. 2. c. except

12 (c) *Subsequent orders.* At the request of ~~public~~^{an energy} utility that has been issued
13 a financing order par. (b), the commission may issue a subsequent financing order
14 that provides for retiring or refunding environmental trust bonds issued pursuant
15 to the original financing order if the commission finds that environmental trust
16 bonds issued pursuant to the subsequent financing order have lower financing costs
17 than the environmental trust bonds issued pursuant to the original financing order
18 or that retiring or refunding the environmental trust bonds issued pursuant to the
19 original financing order is otherwise in the public interest.

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

22 2. Notwithstanding s. 227.52, an order is reviewable only by an action for
23 certiorari in the circuit court for Dane County that is commenced by any party to the
24 proceeding on the order, within 30 days after the date on which notice of the order
25 is mailed to that party. The court shall proceed to hear and determine the action as

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1 expeditiously as possible and give the action precedence over other matters not
2 accorded similar precedence by law. Any party to the certiorari proceedings may
3 appeal the decision of the court.

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

7 2. A financing order issued to ^{an energy} ~~public~~ utility shall remain in effect and
8 unabated notwithstanding the bankruptcy of the ~~public~~ ^{energy} utility.

9 (3) EXCEPTIONS TO COMMISSION JURISDICTION. If the commission issues a
10 financing order to ^{an energy} ~~public~~ utility, the commission may not, in exercising its powers
11 and carrying out its duties under this chapter, ^{INSERT 8-11} consider the environmental trust
12 bonds issued pursuant to the order to be the debt of the ~~public~~ ^{energy} utility, the
13 environmental control charges paid under the order to be the revenue of the ~~public~~ ^{energy}
14 utility, or the environmental control costs or financing costs specified in the order to
15 be the costs of the ~~public~~ ^{energy} utility. ^{INSERT 8-15}

16 (4) ^{ENERGY} ~~PUBLIC~~ UTILITY DUTIES. (a) ^{An energy} ~~public~~ utility shall place the proceeds of any
17 environmental trust bonds issued pursuant to a financing order in a separate
18 account and may use the proceeds only for paying environmental control costs and
19 financing costs, except that, if the ~~public~~ ^{energy} utility proposes to retire property, the
20 proceeds corresponding to the book value of that property may be used only for
21 refinancing or retiring debt or equity of the ~~public~~ ^{energy} utility.

22 (b) ^{An energy} ~~public~~ utility shall annually provide to its customers a concise explanation
23 of the environmental control charges approved in a financing order issued to the
24 ~~public~~ ^{energy} utility. The explanation may be made by bill inserts, Web site information, or
25 other appropriate means.

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1 (5) ENVIRONMENTAL CONTROL PROPERTY. (a) *In general.* 1. Environmental
 2 control property that is specified in a financing order shall constitute a present
 3 property right notwithstanding that the imposition and collection of environmental
 4 control charges depend on the ~~public~~^{energy} utility to which the order is issued performing
 5 its servicing functions relating to the collection of environmental control charges and
 6 on future ~~electricity~~^{energy} consumption. INSERT 9-6

7 2. Environmental control property specified in a financing order shall continue
 8 to exist until the environmental trust bonds issued pursuant to the order are paid
 9 in full and all financing costs of the bonds have been recovered in full. (P) 40

10 3. Environmental control property specified in a financing order issued to ~~a~~
 11 ~~public~~^{an energy} utility may be transferred, sold, or assigned to any person, including an
 12 affiliate of the ~~public~~^{energy} utility, and may be pledged to secure environmental trust bonds
 13 issued pursuant to the order. If ~~a public~~^{an energy} utility defaults on ~~an~~ agreement for such
 14 a transfer, sale, assignment, or pledge, INSERT 9-14 the commission or a court, upon application
 15 by an interested party, and without limiting any other remedies available to the
 16 applying party, shall order the sequestration and payment of ~~any~~^(the) revenue arising
 17 from the ~~environmental control property that is necessary to enforce the agreement~~^{seizing}

18 Any such order shall remain in full force and effect notwithstanding any bankruptcy,
 19 reorganization, or other insolvency proceedings with respect to the ~~public~~^{energy} utility.

20 (5) The interest of an assignee or pledgee in environmental control property
 21 specified in a financing order issued to ~~a public~~^{an energy} utility, and in the revenue and
 22 collections arising from that property, are not subject to setoff, counterclaim,
 23 surcharge, or defense by the ~~public~~^{energy} utility or any other person or in connection with
 24 the bankruptcy of the ~~public~~^{energy} utility or any other entity.

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

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

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

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

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

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

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

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

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

17 a. Commingling of amounts arising with respect to the environmental control
18 property with other amounts.

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

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

23 d. Any indemnifications, obligations, or repurchase rights made or provided by
24 the seller.

25 e. The responsibility of the seller to collect environmental control charges.

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1 f. The treatment of the sale, assignment, or transfer for tax, financial reporting,
2 or other purposes.

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

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

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

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

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

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

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

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

24 2. Except as allowed under this section, reduce, alter, or impair environmental
25 control charges that are imposed, collected, and remitted for the benefit of the

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INSECT 13-5 ✓

1 bondholders until any principal, interest, premium, or other charge incurred, or
2 contract to be performed, in connection with environmental trust bonds held by the
3 bondholders are paid or performed in full.

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

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

8 201.01 (3) (intro.) "Securities" means capital stock and evidences of
9 indebtedness of a public service corporation, ~~not including, however, (a) any but do~~
10 not include any of the following:

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

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

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

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

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

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FROM THE
LEGISLATIVE REFERENCE BUREAU

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The bill applies to electric and natural gas²/utilities, which the bill defines as “energy utilities”²

INSERT 1B:

No ff

Also, if the energy[✓] utility has entered into a leased generation contract with an affiliate under current law, the application may describe environmental control activities that the affiliate proposes to undertake.

INSERT 2A:

No ff

“Environmental control property” is also defined to include all revenues and proceeds arising from such right.

INSERT 2B:

No ff

In addition, the bill prohibits the PSC from determining that any action taken by an energy utility that is consistent with the order is unjust or unreasonable.

INSERT 3-1:

SECTION 1. 73.13[✓] of the statutes is created to read:

73.13 Environmental trust bonds. The department of revenue shall not consider the acquisition, ownership, or disposition of any direct interest in an environmental trust bond, as defined in s. 196.027 (1) (i)[✓], for the purpose of determining whether a person is subject to any tax imposed by this state or by a local governmental unit, as defined in s. 16.97 (7)[✓].

INSERT 3-11:

1 (c) "Energy utility" means a public utility engaged in the transmission, delivery,
2 or furnishing of natural gas by means of pipes or mains, heat, light, or power or any
3 successor to such a public utility.

4 **INSERT 4-12:**

5 **No ff**, or an affiliated interest that has entered into a leased generation contract with an
6 energy utility that is approved by the commission under s. 196.52 (3) and (9),

7 **INSERT 4-22:**

8 2. All revenues and proceeds arising from the right and interests specified in
9 subd. ¹2.

10 **INSERT 5-11:**

11 4. Any taxes and license fees imposed on the revenues generated from the
12 collection of environmental control charges.

13 **No ff** **INSERT 7-2:**

14 The order shall require the commission to apply the formula at least annually within
15 45 days of the anniversary date that environmental trust bonds are issued pursuant
16 to the order and to approve any adjustments that result from application of the
17 formula.

18 **No ff** **INSERT 8-11:**

19 , including any power or duty regarding rate making,

20 **INSERT 8-15:**

21 **No ff**, nor may the commission determine that any action taken by an energy utility that
22 is consistent with the order is unjust or unreasonable

23 **INSERT 9-6:**

1 **No ff** Such property is considered to exist whether or not the revenues or proceeds arising
2 from the property have accrued and whether or not the value of the property is
3 dependent on the receipt of service by customers of an energy utility.

4 **INSERT 9-14:**

5 **No ff** any required payment of revenues arising from environmental control property
6 specified in a financing order,

7 **INSERT 13-5:**

8 **(9) CONFLICTS.** In the event of conflict between this section and any other
9 statute, this section to the extent of the conflict shall govern.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4030/2dn
MDK: /:....
WLJ

Rep. Jensen:

This version is identical to the previous version, except for the following:

1. This version refers to "energy utilities" throughout the bill, rather than to "public utilities." See the definition of "energy utility" at proposed s. 196.027 (1) (c). Also, the reference to "electricity consumption" in proposed s. 196.027 (5) (a) 1. is changed to "energy consumption."
2. The definition of "environmental control cost" is revised to refer to costs incurred by affiliated interests under leased generation contracts. See proposed s. 196.027 (1) (f).
3. The definition of "environmental control property" is revised to refer to revenues and proceeds. See proposed s. 196.027 (1) (h) 2.
4. Proposed s. 196.027 (1) (j) 4. (regarding taxes) is added to the definition of "financing costs."
5. The exemption from the definition of "public utility" for an assignee is eliminated.
6. Proposed s. 196.027 (2) (b) 2. b. refers to customers residing in the service territory of an energy utility.
7. Proposed s. 196.027 (2) (b) 2. c. is revised to refer to a formula for making adjustments.
8. Proposed s. 196.027 (2) (b) 4. is revised slightly.
9. Proposed s. 196.027 (3) is revised to refer specifically to rate making and to prohibit the PSC from determining that an action of an energy utility that is consistent with a financing order is unjust or unreasonable.
10. Proposed s. 196.027 (5) (a) 1. is revised by the addition of the last sentence.
11. Proposed s. 196.027 (5) (a) 4. is revised to refer to defaults on payments. (This provision was included in proposed s. 196.027 (5) (a) 3. in the previous version.)
12. Proposed s. 196.027 (9) (regarding conflicts) is added. The language is based on s. 59.22 (4).

√ 13. The proposed creation of s. 73.13 is added.

Note also that the following issues remain to be resolved:

- ① ~~14~~ Does proposed s. 196.027 (2) (b) 3. accomplish the intent that the decision to finance with debt is entirely within the discretion of a utility?
- ② ~~15~~ Regarding judicial review of a financing order, I understand that language may be suggested requiring a court or the PSC to protect the interests of bond holders in the event that a financing order is overturned by a court.
- ③ ~~16~~ I understand that the definition of "environmental control equipment" is being reviewed and may be revised.
- ④ ~~17~~ I understand that there may be further revisions to proposed s. 196.027 (5) (b) and (c) (security interests and sales).

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4030/2dn
MDK:wlj:pg

January 30, 2004

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4. Proposed s. 196.027 (1) (j) 4. (regarding taxes) is added to the definition of "financing costs."
5. The exemption from the definition of "public utility" for an assignee is eliminated.
6. Proposed s. 196.027 (2) (b) 2. b. refers to customers residing in the service territory of an energy utility.
7. Proposed s. 196.027 (2) (b) 2. c. is revised to refer to a formula for making adjustments.
8. Proposed s. 196.027 (2) (b) 4. is revised slightly.
9. Proposed s. 196.027 (3) is revised to refer specifically to rate making and to prohibit the PSC from determining that an action of an energy utility that is consistent with a financing order is unjust or unreasonable.
10. Proposed s. 196.027 (5) (a) 1. is revised by the addition of the last sentence.
11. Proposed s. 196.027 (5) (a) 4. is revised to refer to defaults on payments. (This provision was included in proposed s. 196.027 (5) (a) 3. in the previous version.)
12. Proposed s. 196.027 (9) (regarding conflicts) is added. The language is based on s. 59.22 (4).

13. The proposed creation of s. 73.13 is added.

Note also that the following issues remain to be resolved:

1. Does proposed s. 196.027 (2) (b) 3. accomplish the intent that the decision to finance with debt is entirely within the discretion of a utility?
2. Regarding judicial review of a financing order, I understand that language may be suggested requiring a court or the PSC to protect the interests of bond holders in the event that a financing order is overturned by a court.
3. I understand that the definition of "environmental control equipment" is being reviewed and may be revised.
4. I understand that there may be further revisions to proposed s. 196.027 (5) (b) and (c) (security interests and sales).

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
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Kunkel, Mark

From: Healy, Brett
Sent: Monday, February 09, 2004 10:47 AM
To: Stuart, Todd; Kunkel, Mark; Stolzenberg, John
Subject: ETF amendments full list. I apologize, I had to copy and paste from my home document. I will continue to pour over the list, at first glance it looks complete.

Importance: High

To: Mark Kunkel – Legislative Reference Bureau
 John Stolzenberg – Legislative Council

Fr: Brett Healy – Rep. Jensen’s office
 Thursday, February 05, 2004

Re: Changes to LRB 4030/2 – Environmental Trust Financing

- ~~1.~~ Pg. 4, ln. 5 : before “transferred” insert “assigned.”
- ~~2.~~ Pg. 4, ln. 9 : after “means” strike “any of the following.”
- ~~3.~~ Pg. 4, ln. 10 : strike “1.”
- ~~4.~~ Pg. 4, ln. 11 : after “equipment” insert “in connection with an energy utility plant that has already been used to provide service to customers.”
- ~~5.~~ Pg. 4, lns. 12 – 16 : please strike.
- ~~6.~~ Pg. 4, ln. 20 : after “means” strike “a cost” and instead insert “capital cost , including capitalized cost relating to regulatory assets, “.
- ~~7.~~ Pg. 4, lns. 21 – 22 : after “utility” strike “or an affiliated interest that has entered into a leased generation contract with an energy utility that is approved by the commission under s. 196.52(3) and (9)”.
- ~~8.~~ Pgs. 4 & 5, lns. 23 – 2: after “activity” strike everything through the end of ln. 2 on page 5. In its place insert “Environmental control cost does not include any monetary penalty, fine or forfeiture assessed against an energy utility by a government agency or court under a federal or state environmental statute or regulation.”
- ~~9.~~ Pg. 5, ln. 3: after “device” insert “equipment, structure, process,”.
- ~~10.~~ Pg. 5, ln. 4: after “technology” insert “owned or controlled by an energy utility”.
- ~~11.~~ Pg. 5, ln. 4: after “of” strike “removing pollution from or”.
- ~~12.~~ Pg. 5, ln. 5: after “remediating” strike “the” and insert “environmental”.
- ~~13.~~ Pg. 5, ln. 5: after “pollution” strike of air, water, or soil.”
- ~~14.~~ Pg. 5, ln. 12: insert a new “(i) Environmental pollution means contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.”
- ~~15.~~ Pg. 5, ln. 12: renumber (i) to (j).
- ~~16.~~ Pg. 5, ln. 18: renumber (j) to (k).
- ~~17.~~ Pg. 6, ln. 6: after “utility” insert “in its sole discretion”.
- ~~18.~~ Pg. 6, ln. 7: after “order.” Insert “An application by an energy utility for a financing order and commission approval of a financing order are in addition to and do not replace any other application or approval that might be required for environmental control activities under chapter 196.”
- ~~19.~~ Pg. 6, ln. 13: after “or” insert “only”.
- ~~20.~~ Pg. 6, ln. 24: after “order” strike “is consistent with the public interest” and instead replace it with “will result in lower costs to customers than would alternative methods of financing environmental control

activities and is otherwise consistent with the public interest and that the financing cost is prudent, reasonable and appropriate.”

- ~~21~~ Pg. 7, ln. 3: after “subd.” Strike “3” and replace it with “2.c.”
- ~~22~~ Pg. 7, lns. 6-10: strike lns. 6-10 and replace with “For the period specified in subd. 2. a. require that as long as any customer resides in the service territory of the energy utility as that territory exists on the date the financing order is issued, the customer shall pay environmental control charges to the energy utility or its assignees or successors regardless of whether the customer obtains service from a different energy utility or other energy supplier, including a municipality.
- ~~23~~ Pg. 7, ln. 11: strike “reviewing” and instead insert “making any adjustments in”.
- ~~24~~ Pg. 7, ln. 14: after “utility’s” insert “or its assignee’s”.
- ~~25~~ Pg. 7, ln. 18: after “formula.” insert “Notwithstanding any statute or agency rule to the contrary, the adjustments required by this paragraph shall be made without a hearing.”
- ~~26~~ Pg. 7, ln. 21: point #3 should be made to read “A financing order may provide that the energy utility’s acquisition of environmental control property is conditioned upon and shall be simultaneous with the sale thereof to an assignee and the pledge thereof to secure environmental trust bonds.”
- ~~27~~ Pg. 8, ln. 1: after “in” strike “par,” and insert “under subd. 2.”.
- ~~28~~ Pg. 8, ln. 3: after “order” strike “, except as provided under subd. 2.c.”
- ~~29~~ Pg. 8, lns. 4&5: after “Subsequent orders.” strike “At the request of an energy utility that has been issued a financing order par.(b), the”.
- ~~30~~ Pg. 8, ln. 5: before “commission” insert “The”.
- ~~31~~ Pg. 8, ln. 12: after “Judicial review.” strike “1. In this paragraph, “order” means a” and insert “A”
- ~~32~~ Pg. 8, ln. 13: after “par.(b)1” insert “is review able by the circuit court for Dane County under ch. 227, except that the court shall proceed to hear and determine the action as expeditiously as possible and give the action precedence over other matters not accorded similar precedence by law.”
- ~~33~~ Pg. 8, lns. 14-20: strike lns. 14-20.
- ~~34~~ Pg. 9, ln 1: insert “3. Environmental trust bonds, environmental control charges and all transactions herein authorized or permitted under a financing order shall be binding in accordance with their terms notwithstanding that the financing order is later vacated, modified or otherwise held to be invalid in whole or in part. Once a financing order has been issued by the Commission, any environmental trust bonds issued pursuant to the financing order are valid and not subject to recall or being declared void upon judicial review.”
- ~~35~~ Pg. 9, lns. 13-15: after “costs” strike from “,except that,..” all the way through the end of line 15 “of the energy utility.”
- ~~36~~ Pg. 9, ln. 13: after “costs” insert “. The failure of an energy utility to comply with this subsection shall not invalidate, impair or affect any financing order, environmental control property, environmental control charge or environmental control bonds.”
- ~~37~~ Pg. 10, ln. 8: after “sold,” insert “conveyed”
- ~~38~~ Pg. 10, ln. 10: after “order.” insert “Each such transfer, sale, conveyance, assignment or pledge by an energy utility or affiliate thereof is deemed to be a transaction in the ordinary course of business.”
- ~~39~~ Pg. 10, ln. 22: after ln. 22 insert “6. Any successor to an energy utility whether pursuant to any bankruptcy, reorganization or other insolvency proceeding or pursuant to any merger or acquisition, sale or transfer by operation of law, as a result of energy utility restructuring or otherwise, shall perform and satisfy all obligations of the energy utility under a financing order in the same manner and to the same extent as the energy utility including, but not limited to, collecting and paying to the person entitled to receive them revenues with respect to the environmental control property.”
- ~~40~~ Pg. 14, ln. 6: strike “statute, this section to the extent of the conflict shall govern.” and insert “law regarding the attachment, assignment and perfection and the effect of perfection and priority of any security interest in environmental control property, this section to the extent of the conflict shall govern. (10) SEVERABILITY. Effective on the date the first environmental trust bonds are issued under this Act, if any provision of the Act or portion of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect the validity or continuation of

any other provision of this Act that is relevant to the issuance, administration, payment, retirement, or refunding of environmental trust bonds or to any actions of the energy utility, its successors, any assignee, a collection agent or a party to transaction authorized by this Act, which shall remain in full force and effect.”

-- END --



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4030/2-3
MDK:wlj:pg

D-NOTE

Today by
5:30 PM

PM
has
been
SUN

2003 BILL

REGEN

1 AN ACT to renumber and amend 201.01 (3); and to create 73.13, 196.027 and
2 201.01 (3) (e) of the statutes; relating to: the issuance of debt by natural gas
3 and electric public utilities to finance certain environmental activities.

Analysis by the Legislative Reference Bureau

This bill allows certain public utilities, 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 a public utility's customers. The bill applies to natural gas and electric utilities, which the bill defines as "energy utilities." The bonds may be issued by an energy utility, or an assignee of the energy utility, including an affiliate.

An energy utility that applies to the PSC for an order approving the issuance of the bonds must describe the environmental control activities that the energy utility proposes to undertake and the reasons for undertaking the activities. Also, if the energy utility has entered into a leased generation contract with an affiliate under current law, the application may describe environmental control activities that the affiliate proposes to undertake. 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 energy utility must estimate the costs of proposed activities and indicate whether the energy utility proposes to finance all or

INSERT IN

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only

without holding a hearing

INSERT 24

a specified portion of such costs with the bonds. Also, the energy 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 energy utility may recover through charges that customers in the energy utility's service territory 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 energy utility indicates in the application that it does not propose to finance that portion with bonds. ~~The order must also require customers in the service territory~~

~~to pay the charges to the energy utility, even if the customers subsequently receive service from a different energy utility.~~

In addition, the order must specify the "environmental control property" that is created 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. "Environmental control property" is also defined to include all revenues and proceeds arising from such right.

for making adjustments to

The bill also requires the PSC to adjust the environmental control charges that are approved in a financing order. The order itself must include a formula that the PSC must apply ~~to review~~ environmental control charges at least annually within 45 days of the anniversary date of the issuance of the bonds. The purpose of the formula is to make any adjustments to the charges that are necessary based on any overcollection or undercollection of the charges or are necessary to ensure the energy utility's timely recovery of the environmental control and financing costs. The bill also allows ~~an energy 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.

or an assignee

the PSC to issue

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 an energy utility remains in effect notwithstanding the bankruptcy of the energy utility. The bill also creates the following limits on the PSC's jurisdiction over an energy utility that is issued a financing order: 1) the PSC may not consider environmental trust bonds to be the debt of the energy utility; 2) the PSC may not consider the environmental control charges paid under the order to be the revenue of the energy utility; and 3) the PSC may not consider the environmental control or financing costs

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specified in the order to be the costs of the energy utility. In addition, the bill prohibits the PSC from determining that any action taken by an energy utility that is consistent with the order is unjust or unreasonable.

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 an energy utility to place the proceeds of any environmental trust bonds into a separate account and use the proceeds only for paying environmental control and financing costs.

5. The bill requires an energy 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.

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

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

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

1 **SECTION 1.** 73.13 of the statutes is created to read:

2 **73.13 Environmental trust bonds.** The department of revenue shall not
3 consider the acquisition, ownership, or disposition of any direct interest in an
4 environmental trust bond, as defined in s. 196.027 (1) (j), for the purpose of
5 determining whether a person is subject to any tax imposed by this state or by a local
6 governmental unit, as defined in s. 16.97 (7).

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

8 **196.027 Environmental trust financing.** (1) **DEFINITIONS.** In this section:

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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) "Energy utility" means a public utility engaged in the transmission,
7 delivery, or furnishing of natural gas by means of pipes or mains, heat, light, or power
8 or any successor to such a public utility.

9 (d) "Environmental control activity" means ^{the} ~~any of the following:~~ ~~9~~ ~~No ff~~

10 ~~1~~ Construction, installation, or otherwise putting into place environmental
11 control equipment. *INSERT 4-11*

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

15 ~~3. A conservation, energy efficiency, or similar demand-side management
16 program or measure.~~

17 (e) "Environmental control charge" means a charge paid by customers of an
18 energy utility for the energy utility to recover environmental control costs and
19 financing costs.

20 (f) "Environmental control cost" means ^{*INSERT 4-20*} ~~cost~~ incurred or expected to be
21 incurred by an energy utility ~~or an affiliated interest that has entered into a leased~~

22 ~~generation contract with an energy utility that is approved by the commission under~~

23 ~~s. 196.52 (8) and (9), in undertaking an environmental control activity and, with~~

24 ~~respect to an environmental control activity described in par. (d) 2., includes the book~~

INSERT 4-23

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1 value of property that is retired and any demolition or similar costs that exceed the
2 salvage value of the property.

3 (g) "Environmental control equipment" means any device, facility, or
4 technology that is designed for the primary purpose of removing pollution from or
5 preventing, reducing, or remediating the pollution of ~~air, water, or soil~~ environmental

6 (h) "Environmental control property" means all of the following:

7 1. The right specified in a financing order to impose, collect, or receive
8 environmental control charges, or to obtain adjustments to such charges as provided
9 in this section, and any interest in such right.

10 2. All revenues and proceeds arising from the right and interests specified in
11 subd. 1.

12 (i) "Environmental trust bonds" means bonds, debentures, notes, certificates
13 of participation, certificates of beneficial interest, certificates of ownership, or other
14 evidences of indebtedness that are issued by an energy utility or an assignee, the
15 proceeds of which are used directly or indirectly to recover, finance, or refinance
16 environmental control costs and financing costs, and that are secured by or payable
17 from environmental control property.

18 (j) "Financing cost" means any of the following:

19 1. Debt service, including interest, that is payable on environmental trust
20 bonds.

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

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

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1 4. Any taxes and license fees imposed on the revenues generated from the
2 collection of environmental control charges.

3 (k) "Financing order" means an order issued by the commission under sub. (2)
4 that allows for the issuance of environmental trust bonds, the collection of
5 environmental control charges, and the creation of environmental control property.

6 (2) FINANCING ORDERS. (a) *Applications.* An energy utility ^{in its sole discretion} may apply to the
7 commission for a financing order. In addition to any other information required by
8 the commission, an energy utility shall do all of the following in an application:

9 1. Describe the environmental control activities that the energy utility
10 proposes to undertake and the reasons for undertaking the activities.

11 2. Estimate the environmental control costs of the activities described under
12 subd. 1.

13 3. Indicate whether the energy utility proposes to finance all ^{only} or a portion of the
14 costs estimated under subd. 2. with environmental trust bonds. If the energy utility
15 proposes to finance a portion of the costs, the energy utility shall identify that portion
16 in the application.

17 4. Estimate the financing costs of the environmental trust bonds proposed
18 under subd. 3.

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

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

INSERT
6-24

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INSERT 7-6 ↓

1 2. In a financing order issued to an energy utility, the commission shall do all
2 of the following:

3 a. Except as provided in subd. ~~1~~^g, specify the amount of environmental control
4 costs and financing costs that may be recovered through environmental control
5 charges and the period over which such costs may be recovered.

2000

6 b. ~~Require customers residing in the service territory of the energy utility to
7 pay environmental control charges to the energy utility or an assignee during the
8 period specified in the order, regardless of whether any customers residing in the
9 service territory of the energy utility subsequently obtain service from a different
10 energy utility during the period.~~

making any adjustments in

11 c. Include a formula for ~~reviewing~~^g the environmental control charges that
12 customers are required to pay under the order and making any adjustments that are
13 necessary to correct for any overcollection or undercollection of the charges or to
14 otherwise ensure the energy utility's ^{for assignees} timely recovery of environmental control costs
15 and financing costs. The order shall require the commission to apply the formula at
16 least annually within 45 days of the anniversary date that environmental trust
17 bonds are issued pursuant to the order and to approve any adjustments that result
18 from application of the formula. (INSERT 7-18)

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

21 3. ~~In a financing order the commission may exclude a portion of environmental
22 control costs from recovery only if an energy utility indicates under par. (a) 3. that
23 the energy utility does not propose to finance that portion with environmental trust
24 bonds.~~

INSERT 7-21 ↓

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1 4. Except as provided in ~~subd. (a)~~, a financing order is irrevocable and the
 2 commission may not reduce, impair, or otherwise adjust environmental control
 3 charges approved in the order ~~except as provided under subd. 2. c.~~

4 (c) *Subsequent orders.* ~~At the request of an energy utility that has been issued~~
 5 ~~a financing order par. (b)~~ the commission may issue a subsequent financing order
 6 that provides for retiring or refunding environmental trust bonds issued pursuant
 7 to the original financing order if the commission finds that environmental trust
 8 bonds issued pursuant to the subsequent financing order have lower financing costs
 9 than the environmental trust bonds issued pursuant to the original financing order
 10 or that retiring or refunding the environmental trust bonds issued pursuant to the
 11 original financing order is otherwise in the public interest.

12 (d) *Judicial review.* ~~In this paragraph, "order" means~~ a financing order or
 13 an order rejecting an application under par. (b) 1. INSERT 8-13 No same

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

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

24 2. A financing order issued to an energy utility shall remain in effect and
 25 unabated notwithstanding the bankruptcy of the energy utility.

INSERT 8-25 ✓

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1 (3) EXCEPTIONS TO COMMISSION JURISDICTION. If the commission issues a
 2 financing order to an energy utility, the commission may not, in exercising its powers
 3 and carrying out its duties under this chapter, including any power or duty regarding
 4 rate making, consider the environmental trust bonds issued pursuant to the order
 5 to be the debt of the energy utility, the environmental control charges paid under the
 6 order to be the revenue of the energy utility, or the environmental control costs or
 7 financing costs specified in the order to be the costs of the energy utility, nor may the
 8 commission determine that any action taken by an energy utility that is consistent
 9 with the order is unjust or unreasonable.

10 (4) ENERGY UTILITY DUTIES. (a) An energy utility shall place the proceeds of any
 11 environmental trust bonds issued pursuant to a financing order in a separate
 12 account and may use the proceeds only for paying environmental control costs and
 13 financing costs, ~~except that, if the energy utility proposes to retire property, the~~
 14 ~~proceeds corresponding to the book value of that property may be used only for~~
 15 ~~refinancing or retiring debt or equity of the energy utility.~~

16 (b) An energy utility shall annually provide to its customers a concise
 17 explanation of the environmental control charges approved in a financing order
 18 issued to the energy utility. The explanation may be made by bill inserts, Web site
 19 information, or other appropriate means.

20 (5) ENVIRONMENTAL CONTROL PROPERTY. (a) *In general.* 1. Environmental
 21 control property that is specified in a financing order shall constitute a present
 22 property right notwithstanding that the imposition and collection of environmental
 23 control charges depend on the energy utility to which the order is issued performing
 24 its servicing functions relating to the collection of environmental control charges and
 25 on future energy consumption. Such property is considered to exist whether or not

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1 the revenues or proceeds arising from the property have accrued and whether or not
2 the value of the property is dependent on the receipt of service by customers of an
3 energy utility.

4 2. Environmental control property specified in a financing order shall continue
5 to exist until the environmental trust bonds issued pursuant to the order are paid
6 in full and all financing costs of the bonds have been recovered in full.

7 3. Environmental control property specified in a financing order issued to an
8 energy utility may be transferred, sold, ^{conveyed} or assigned to any person, including an
9 affiliate of the energy utility, and may be pledged to secure environmental trust
10 bonds issued pursuant to the order. INSERT 10-10

11 4. If an energy utility defaults on any required payment of revenues arising
12 from environmental control property specified in a financing order, the commission
13 or a court, upon application by an interested party, and without limiting any other
14 remedies available to the applying party, shall order the sequestration and payment
15 of the revenues. Any such order shall remain in full force and effect notwithstanding
16 any bankruptcy, reorganization, or other insolvency proceedings with respect to the
17 energy utility.

18 5. The interest of an assignee or pledgee in environmental control property
19 specified in a financing order issued to an energy utility, and in the revenue and
20 collections arising from that property, are not subject to setoff, counterclaim,
21 surcharge, or defense by the energy utility or any other person or in connection with
22 the bankruptcy of the energy utility or any other entity.

23 (b) *Security interests.* Except as otherwise provided in this paragraph, the
24 creation, perfection, and enforcement of security interests in environmental control
25 property to secure environmental trust bonds are governed by ch. 409.

INSERT 10-28

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1 Notwithstanding ch. 409, with regard to creating, perfecting, and enforcing a valid
2 security interest in environmental control property to secure environmental trust
3 bonds, all of the following apply:

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

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

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

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

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

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

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

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

14 a. Commingling of amounts arising with respect to the environmental control
15 property with other amounts.

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

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

20 d. Any indemnifications, obligations, or repurchase rights made or provided by
21 the seller.

22 e. The responsibility of the seller to collect environmental control charges.

23 f. The treatment of the sale, assignment, or transfer for tax, financial reporting,
24 or other purposes.

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

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

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

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

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

16 **(8) STATE PLEDGE.** (a) In this subsection, “bondholder” means a person who
17 holds an environmental trust bond.

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

20 1. Take or permit any action that impairs the value of environmental control
21 property.

22 2. Except as allowed under this section, reduce, alter, or impair environmental
23 control charges that are imposed, collected, and remitted for the benefit of the
24 bondholders until any principal, interest, premium, or other charge incurred, or

BILL

INCEPT
14-7

1 contract to be performed, in connection with environmental trust bonds held by the
2 bondholders are paid or performed in full.

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

5 (9) CONFLICTS. In the event of conflict between this section and any other

6 ~~statute, this section to the extent of the conflict shall govern.~~ INCEPT 14-6 ✓

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

9 201.01 (3) (intro.) "Securities" means capital stock and evidences of
10 indebtedness of a public service corporation, ~~not including, however, (a) any~~ but do
11 not include any of the following:

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

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

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

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

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

1 **INSERT 1A:**

2 **No ff** in connection with an energy utility plant that has previously been used to provide
3 service to customers.

4 **INSERT 2A:**

5 **No ff** the order will result in lower costs to customers than would alternative methods of
6 financing environmental control activities, the order is otherwise consistent with
7 the public interest, and the order is prudent, reasonable, and appropriate

8 **INSERT 4-11:**

9 **No ff** in connection with an energy utility plant that has been used to provide service to
10 customers before beginning the construction, installation, or otherwise putting into
11 place environmental control equipment

12 **INSERT 4-20:**

13 **No ff** capital cost, including capitalized cost relating to regulatory assets,

14 **INSERT 4-23:**

15 **No ff** "Environmental control cost" does not include any monetary penalty, fine, or
16 forfeiture assessed against an energy utility by a government agency or court under
17 a federal or state environmental statute, rule, or regulation.

18 **INSERT 5-3:**

19 **No ff** equipment, structure, process,

20 **INSERT 5-4:**

21 **No ff** , owned or controlled by an energy utility,

22 **INSERT 5-11:**

Ⓣ

(i) "Environmental pollution" means the contamination or rendering unclean or impure of the air, land, or waters of the state, or the making of the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.

INSERT 6-24:

Ⓣ

will result in lower costs to customers than would alternative methods of financing environmental control activities, is otherwise consistent with the public interest, and is prudent, reasonable, and appropriate.

INSERT 7-6:

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For the period specified in subd. 2. a. require that, as long as any customer resides in the service territory of the energy utility as that territory exists on the date the financing order is issued, the customer shall pay environmental control charges to the energy utility or its assignees regardless of whether the customer obtains service from a different energy utility or other energy supplier, including a municipality.

INSERT 7-18:

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The commission shall apply a formula and make any adjustments under this subd. 2. c. without a hearing.

INSERT 7-21:

Ⓣ

A financing order issued to an energy utility may provide that the energy utility's acquisition of environmental control property specified in subd. 2. d. is conditioned upon, and shall be simultaneous with, the sale of the environmental control property to an assignee and the pledge of the environmental control property to secure environmental trust bonds.

INSERT 8-13:

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is reviewable by the circuit court for Dane County under ch. 227, except that the

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INSERT 8-25:

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3. An application by an energy utility for a financing order and commission approval of a financing order are in addition to and do not replace any other application or approval under this chapter that may be required for environmental control activities.

INSERT 9-19:

¶

(c) The failure of an energy utility to comply with this subsection shall not invalidate, impair, or affect any financing order, environmental control property, environmental control charge, or environmental control bonds.

INSERT 10-10:

No ¶

Each such transfer, sale, conveyance, assignment, or pledge by an energy utility or affiliate of an energy utility is considered to be a transaction in the ordinary course of business.

INSERT 10-22:

¶

6. Any successor to an energy utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger or acquisition, sale, or transfer by operation of law, as a result of energy utility restructuring or otherwise, shall perform and satisfy all obligations of the energy utility under a financing order in the same manner and to the same extent as the energy utility including collecting and paying to the person entitled to receive them revenues with respect to the environmental control property.

INSERT 14-6:

No ¶

law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of any security interest in environmental control property, this section to the extent of the conflict shall govern.

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INSERT 14-7:



(10) EFFECT OF INVALIDITY ON ACTIONS. Effective on the date that environmental trust bonds are first issued under this section, if any provision of this section is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence shall not affect any action allowed under this section that is taken by an energy utility, an assignee, a collection agent, or a party to a transaction and any such action shall remain in full force and effect.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4030/3dn

MDK/.....

WJ

Rep. Jensen:

Please note the following regarding the instructions in the ^oemail from Brett Healy dated Feb. 9, 2004:

1. See my changes to item 4 of the instructions in the definition of "environmental control activity". Also, is "in connection with" clear enough? In addition, is there any ambiguity over what constitutes an "energy utility plant"?
2. Regarding item 8, I added a reference to "rule" which is how we refer to regulations of state agencies. Also, I'm not sure why the added language is necessary. Costs are defined as costs incurred by utilities in undertaking certain activities. The assessment of a fine, etc., by a federal or state agency or court doesn't logically relate to an activity undertaken by a utility.
3. Regarding item 9, I made slight changes to the grammar.
4. Regarding item 17, I added the phrase "in its sole discretion" but I am not sure why it is necessary. If a statute allows somebody to do something, I think it's generally understood that doing that something is at the person's discretion.
5. Regarding item 18, I created s. 196.027 (2) (e) 3. ✓
6. Regarding item 22, it is not necessary to refer to "successor" because successors are referenced in the definitions of "assignee" and "energy utility".
7. Regarding item 25, I specified that the PSC must apply a formula and make adjustments without holding a hearing, which I think achieves your intent. Note that I did not use the "notwithstanding" language because it is inconsistent with our drafting style.
8. Regarding item 34, I did not include the language because it has significant constitutional problems regarding separation of powers. As a member of the executive branch, the PSC and its actions are subject to law and the courts are the ultimate arbiters of law in this state. For example, if a court finds that the issuance of the bonds violates the public purpose doctrine (which is highly unlikely), the issuance of the bonds is unlawful. Therefore, the suggested language has no legal effect. Please let me know if you are aware of case law to the contrary.

9. Regarding item 36, I included the language as a separate paragraph.
10. Regarding item 38, I used "considered" instead of "deemed" which is consistent with our drafting style.
11. Regarding item 39, under our drafting style, "including" means the same thing as "including, but not limited to".
12. Regarding item 40, I did not include the first part pertaining to severability because it is not necessary. Section 990.001 (11), stats., provides: "The provisions of the statutes are severable.... If any provision of the statutes is invalid, or if the application of [a statute] to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application." As for the second part of item 40, I am not sure what you are trying to achieve. Therefore, please see my revisions to your language.
13. There are other minor changes that I have not pointed out above. Please review this version to make sure that the changes are consistent with your intent.

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-4030/3dn
MDK:wlj:ch

February 10, 2004

Rep. Jensen:

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Mark D. Kunkel
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Northrop, Lori

From: Healy, Brett
Sent: Wednesday, February 11, 2004 11:03 AM
To: LRB.Legal
Subject: Draft review: LRB 03-4030/3 Topic: Environmental trust financing

It has been requested by <Healy, Brett> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-4030/3 Topic: Environmental trust financing



State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -
PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Added To File: 02/13/2004 (Per: MDK)



☞ The 2003 drafting file for LRB 03-4030/3
has been copied/added to the 2003 drafting file for
LRB 03-4260

☞ The attached 2003 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

