

**2003 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB463)**

Received: 02/23/2004

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Robert Cowles (608) 266-0484

By/Representing: Todd Stuart

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters:

Subject: Public Util. - energy

Extra Copies:

Submit via email: YES

Requester's email: Sen.Cowles@legis.state.wi.us

Carbon copy (CC:) to: todd.stuart@legis.state.wi.us

**Pre Topic:**

No specific pre topic given

**Topic:**

Environmental trust financing by energy utilities

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 02/23/2004	wjackson 02/23/2004					
/1			rschluet 02/23/2004		sbasford 02/23/2004	sbasford 02/23/2004	

**FE Sent For:**

**<END>**

**2003 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB463)**

Received: **02/23/2004**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Todd Stuart**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - energy**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Cowles@legis.state.wi.us**

Carbon copy (CC:) to: **todd.stuart@legis.state.wi.us**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Environmental trust financing by energy utilities

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?	mkunkel						
----	---------	--	--	--	--	--	--

FE Sent For:

Handwritten signatures and initials are present over the 'Typed' and 'Proofed' columns of the Drafting History table. The word '<END>' is written in the bottom right of the table area.

O-NOTE

Today  
4:30pm

SSA to SB 463

S 0381/1

**ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2003 ASSEMBLY BILL 843**

RM  
NOT  
RM

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.

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

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

5 **73.13 Environmental trust bonds.** The department of revenue shall not  
6 consider the acquisition, ownership, or disposition of any direct interest in an  
7 environmental trust bond, as defined in s. 196.027 (1) (j), for the purpose of  
8 determining whether a person has nexus with this state for tax purposes.

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

10 **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, assigned, transferred, or conveyed and any successor to such a  
6 person.

7 (c) “Energy utility” means a public utility engaged in the transmission,  
8 delivery, or furnishing of natural gas by means of pipes or mains or of heat, light, or  
9 power.

10 (d) “Environmental control activity” means any of the following:

11 1. The construction, installation, or otherwise putting into place  
12 environmental control equipment in connection with an energy utility plant that,  
13 before the effective date of this subdivision .... [revisor inserts date], has been used  
14 to provide service to customers.

15 2. The retiring of any existing plant, facility, or other property to reduce,  
16 control, or eliminate environmental pollution in accordance with federal or state law.

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

20 (f) “Environmental control cost” means capital cost, including capitalized cost  
21 relating to regulatory assets, incurred or expected to be incurred by an energy utility  
22 in undertaking an environmental control activity and, with respect to an  
23 environmental control activity described in par. (d) 2., includes the unrecovered  
24 value of property that is retired, including any demolition or similar cost that exceeds  
25 the salvage value of the property. “Environmental control cost” does not include any

1 monetary penalty, fine, or forfeiture assessed against an energy utility by a  
2 government agency or court under a federal or state environmental statute, rule, or  
3 regulation.

4 (g) “Environmental control equipment” means any device, equipment,  
5 structure, process, facility, or technology, owned or controlled by an energy utility,  
6 that is designed for the primary purpose of preventing, reducing, or remediating  
7 environmental pollution.

8 (h) “Environmental control property” means all of the following:

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

12 2. All revenues and proceeds arising from the right and interests specified in  
13 subd. 1.

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

18 (j) “Environmental trust bonds” means bonds, debentures, notes, certificates  
19 of participation, certificates of beneficial interest, certificates of ownership, or other  
20 evidences of indebtedness that are issued by an energy utility or an assignee, the  
21 proceeds of which are used directly or indirectly to recover, finance, or refinance  
22 environmental control costs and financing costs, and that are secured by or payable  
23 from environmental control property.

24 (k) “Financing cost” means any of the following:

1           1. Interest and redemption premiums, that are payable on environmental trust  
2 bonds.

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

5           3. The cost of retiring or refunding an energy utility's existing debt and equity  
6 securities in connection with the issuance of environmental trust bonds, but only to  
7 the extent the securities were issued for the purpose of financing environmental  
8 control costs.

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

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

14           (L) "Financing order" means an order under sub. (2) that allows for the issuance  
15 of environmental trust bonds, the collection of environmental control charges, and  
16 the creation of environmental control property.

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

20           1. Describe the environmental control activities that the energy utility  
21 proposes to undertake, indicate whether the energy utility's electric, natural gas, or  
22 steam service is associated with the activities, and describe the reasons for  
23 undertaking the activities.

24           2. Estimate the environmental control costs of the activities described under  
25 subd. 1.

1           3. Indicate whether the energy utility proposes to finance all or a portion of the  
2 costs estimated under subd. 2. with environmental trust bonds. If the energy utility  
3 proposes to finance a portion of the costs, the energy utility shall identify that portion  
4 in the application.

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

7           5. Estimate the environmental control charges necessary to recover the  
8 environmental control costs and financing costs estimated in the application and  
9 indicate whether the environmental control charges are proposed for the energy  
10 utility's electric, natural gas, or steam service.

11           6. Estimate any cost savings to customers resulting from financing  
12 environmental control costs with environmental trust bonds as opposed to  
13 alternative financing methods.

14           (b) *Commission powers and duties.* 1. No later than 120 days after receiving  
15 an application under par. (a), the commission shall, after a hearing, issue a financing  
16 order or an order rejecting the application. The commission may issue a financing  
17 order if the commission finds all of the following:

18           a. That the order will result in lower overall costs to customers than would  
19 alternative methods of financing environmental control activities.

20           b. That the proposed structuring and pricing of the environmental trust bonds  
21 will result in the lowest environmental control charges that are consistent with  
22 market conditions and the terms of the financing order.

23           c. That the financing order is otherwise consistent with the public interest, and  
24 is prudent, reasonable, and appropriate.



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 subds. 2. c. and 4., specify the amount of environmental  
4 control costs and financing costs that may be recovered through environmental  
5 control charges and the period over which such costs may be recovered.

6           b. For the period specified in subd. 2. a. require that, as long as any customer  
7 obtains distribution service from the energy utility or its successors, the customer  
8 shall pay environmental control charges to the energy utility or its assignees  
9 regardless of whether the customer obtains other service from a different energy  
10 utility or other energy supplier.

11           c. Include a formula for making any adjustments in the environmental control  
12 charges that customers are required to pay under the order and making any  
13 adjustments that are necessary to correct for any overcollection or undercollection  
14 of the charges or to otherwise ensure the energy utility's or assignee's timely recovery  
15 of environmental control costs and financing costs.

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

18           e. If considered appropriate by the commission, include a provision allowing for  
19 the retirement of environmental trust bonds before their termination dates.

20           f. Include any other conditions that the commission considers appropriate and  
21 that are not otherwise inconsistent with this section.

22           3. A financing order issued to an energy utility may provide that the energy  
23 utility's acquisition of environmental control property specified in subd. 2. d. is  
24 conditioned upon, and shall be simultaneous with, the sale of the environmental

1 control property to an assignee and the pledge of the environmental control property  
2 to secure environmental trust bonds.

3 4. a. If the commission issues a financing order, the commission shall apply, at  
4 least annually, the formula specified in subd. 2. c. and, based on reasonable estimates  
5 of demand and other mathematical factors, make the adjustments described in subd.  
6 2. c. The commission shall make the adjustments within 45 days of the anniversary  
7 date on which environmental trust bonds are issued and after expiration of the  
8 comment period described in subd. 4. b.

9 b. The commission may not hold a hearing for the purpose of making an  
10 adjustment under subd. 4. a., but shall allow interested parties 30 days to make  
11 comments limited to the appropriate amount of any overcollection or undercollection  
12 of environmental control charges and the appropriate amount of an adjustment.

13 5. Except as provided in subds. 2. c. and 4., a financing order is irrevocable and  
14 the commission may not reduce, impair, or otherwise adjust environmental control  
15 charges approved in the order.

16 (c) *Subsequent orders.* The commission may commence a proceeding and issue  
17 a subsequent financing order that provides for retiring or refunding environmental  
18 trust bonds issued pursuant to the original financing order if the commission  
19 included a provision described in par. (b) 2. e. in the original financing order and if  
20 the commission finds that the subsequent financing order satisfies all of the criteria  
21 specified in par. (b) 1. a., b., and c.

22 (d) *Judicial review.* A financing order or an order rejecting an application  
23 under par. (b) 1. is reviewable by the circuit court for Dane County under ch. 227,  
24 except that the court shall proceed to hear and determine the action as expeditiously

1 as practicable and give the action precedence over other matters not accorded similar  
2 precedence by law.

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

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

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

12 (3) EXCEPTIONS TO COMMISSION JURISDICTION. (a) If the commission issues a  
13 financing order to an energy utility, the commission may not, in exercising its powers  
14 and carrying out its duties regarding rate making, consider the environmental trust  
15 bonds issued pursuant to the order to be the debt of the energy utility, the  
16 environmental control charges paid under the order to be the revenue of the energy  
17 utility, or the environmental control costs or financing costs specified in the order to  
18 be the costs of the energy utility, nor may the commission determine that any action  
19 taken by an energy utility that is consistent with the order is unjust or unreasonable.  
20 Nothing in this paragraph affects the authority of the commission to adjust or reduce  
21 an energy utility's revenue requirements under sub. (4) (a).

22 (b) If an energy utility has not made an application under sub. (2) (a), the  
23 commission may not order or otherwise require the energy utility to use  
24 environmental trust bonds to finance any project, addition, plant, facility, extension,  
25 capital improvement, environmental control equipment, or any other expenditure.

1           (4) ENERGY UTILITY DUTIES. (a) An energy utility shall place the proceeds of any  
2 environmental trust bonds issued pursuant to a financing order in a separate  
3 account. An energy utility may use the proceeds only for paying environmental  
4 control costs and financing costs that are prudent, reasonable, and appropriate, and  
5 only if the energy utility has applied for and obtained all approvals from the  
6 commission under this chapter that are required for the environmental control  
7 activities for which the environmental control costs are incurred or expected to be  
8 incurred. If the commission finds that the proceeds have been used for  
9 environmental control costs or financing costs that are not prudent, reasonable, or  
10 appropriate, the commission may adjust or reduce the energy utility's revenue  
11 requirements in connection with charges other than environmental control charges  
12 for the purpose of ensuring that the energy utility's customers do not pay for such  
13 costs.

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

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

21           (5) ENVIRONMENTAL CONTROL PROPERTY. (a) *In general.* 1. Environmental  
22 control property that is specified in a financing order shall constitute a present  
23 property right notwithstanding that the imposition and collection of environmental  
24 control charges depend on the energy utility to which the order is issued performing  
25 its servicing functions relating to the collection of environmental control charges and

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

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

8 3. Environmental control property specified in a financing order issued to an  
9 energy utility may be transferred, sold, conveyed, or assigned to any person,  
10 including an affiliate of the energy utility created for the limited purpose of  
11 facilitating or administering environmental control property or environmental  
12 control trust bonds under the financing order and not including any other affiliate  
13 of the energy utility. Environmental control property may be pledged to secure  
14 environmental trust bonds issued pursuant to the order. Each such transfer, sale,  
15 conveyance, assignment, or pledge by an energy utility or affiliate of an energy utility  
16 is considered to be a transaction in the ordinary course of business.

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

24 5. The interest of an assignee or pledgee in environmental control property  
25 specified in a financing order issued to an energy utility, and in the revenue and

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

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

12 (b) *Security interests.* Except as otherwise provided in this paragraph, the  
13 creation, perfection, and enforcement of security interests in environmental control  
14 property to secure environmental trust bonds are governed by ch. 409.  
15 Notwithstanding ch. 409, with regard to creating, perfecting, and enforcing a valid  
16 security interest in environmental control property to secure environmental trust  
17 bonds, all of the following apply:

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

21 2. A security interest is created, valid, binding, and perfected at the time a  
22 security agreement is made and attaches without any physical delivery of collateral  
23 or other act, and the lien of such security interest shall be valid, binding, and  
24 perfected against all parties having claims of any kind in tort, contract, or otherwise  
25 against the person granting the security interest, regardless of whether such parties

1 have notice of the lien. The filing or recording of a financial statement or instrument  
2 in which such a security interest is created is not required.

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

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

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

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

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

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

1 a. Commingling of amounts arising with respect to the environmental control  
2 property with other amounts.

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

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

7 d. Any indemnifications, obligations, or repurchase rights made or provided by  
8 the seller.

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

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

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

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

20 (a) The state, the investment board, municipal corporations, political  
21 subdivisions, public bodies, and public officers except for members of the public  
22 service commission.

23 (b) Banks and bankers, savings and loan associations, credit unions, trust  
24 companies, savings banks and institutions, investment companies, insurance



1 companies, insurance associations, and other persons carrying on a banking or  
2 insurance business.

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

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

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

8 1. Take or permit any action that impairs the value of environmental control  
9 property.

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

15 (c) Any person who issues environmental trust bonds is allowed to include the  
16 pledge specified in par. (b) in the bonds and relating documentation.

17 (9) CONFLICTS. In the event of conflict between this section and any other law  
18 regarding the attachment, assignment, or perfection, or the effect of perfection, or  
19 priority of any security interest in environmental control property, this section to the  
20 extent of the conflict shall govern.

21 (10) EFFECT OF INVALIDITY ON ACTIONS. Effective on the date that environmental  
22 trust bonds are first issued under this section, if any provision of this section is held  
23 to be invalid or is invalidated, superseded, replaced, repealed, or expires for any  
24 reason, that occurrence shall not affect any action allowed under this section that is

1 taken by an energy utility, an assignee, a collection agent, or a party to a transaction  
2 and any such action shall remain in full force and effect.

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

5 201.01 (3) (intro.) "Securities" means capital stock and evidences of  
6 indebtedness of a public service corporation, ~~not including, however, (a) any~~ but do  
7 not include any of the following:

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

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

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

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

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

21 201.01 (3) (e) Any environmental trust bonds issued pursuant to a financing  
22 order of the commission under s. 196.027 (2).

23 (END)

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

LRBs0381/1dn

MDK: (.....

Wlj

Sen. Cowles:

This is a companion to LRBs0366/1.

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

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

LRBs0381/1dn  
MDK:wlj:rs

February 23, 2004

Sen. Cowles:

This is a companion to LRBs0366/1.

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