

2003 DRAFTING REQUEST

Bill

Received: **12/04/2002**

Received By: **rchampag**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Hoadley**

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

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Bonding - state
Employ Pub - retirement**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Hoadley - BB0380,

Topic:

Payment of unfunded prior service liability under the Wisconsin Retirement System

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>
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Handwritten signatures and initials: /6, 2/7, jld, jln, JRO, 2/7

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dryan @ folpy law.com

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DOA:.....Hoadley -

Topic:

Payment of unfunded prior service liability under the Wisconsin Retirement System[✓]

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Employ Pub - retirement**

Extra Copies:

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Requester's email: **frank.hoadley@doa.state.wi.us**

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Pre Topic:

No specific pre topic given

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Handwritten notes and signatures:
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 [Signature]
 1-8-3
 C/P 14

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Handwritten notes and signatures:
1/11 12/12 jld
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12-12-02
END

**DRAFTING INSTRUCTIONS
FOR UNFUNDED PENSION LIABILITY BONDS**

The Department of Administration has proposed the adoption of legislation necessary to authorize the issuance of obligations to finance the prepayment of the state's unfunded liability under the Wisconsin Retirement System (the "WRS").

Two alternatives have been suggested: special fund obligations under Subchapter II of Chapter 18, Wisconsin Statutes (the "Revenue Obligations Law"), or obligations payable only from such funds as the Legislature may appropriate ("Appropriation Bonds").

Option 1: Special Fund Obligations

The proposed source of revenues for special fund obligations would be one of the excise taxes, such as the taxes imposed on cigarettes, tobacco products, liquor or malt beverages under Chapter 139.

The legislation should provide that the purpose of funding the State's portion of the WRS' unfunded accrued liability is a special fund program. The legislation is also required to contain a determination that financing such purpose with special fund obligations is appropriate and will serve a public purpose.

Chapter 25 should be amended to create a new trust fund (the "Excise Tax Fund") into which the selected excise taxes and other amounts which the Revenue Obligations Law directs to be deposited into the redemption fund provided for in Section 18.562 shall be deposited. Moneys in the Excise Tax Fund in excess of amounts needed to pay debt service, reserves and administrative expenses relating to the bonds should transfer to the general fund.

The legislation should also designate the Excise Tax Fund as a special fund. A determination or finding that the particular taxes are "excise taxes" should be considered.¹

A statutory authorization of up to \$750,000,000 in principal amount of bonds to be issued for the special fund program should be included. This provision should also authorize the payment of issuance and administrative expenses, accrued or capitalized interest, credit enhancement fees, and any appropriate reserves, as well as the issuance of funding or refunding obligations.

Appropriations will be needed in Chapter 20 for the expenditure of the proceeds of the revenue obligations and for the payment of debt service on, and administrative expenses related to, the obligations.

¹ Section 139.02(1) and 139.03(intro), respectively, refer to the malt beverage tax and the liquor tax as "occupational taxes", while Sections 139.31(1) and 139.76(1), respectively, refer to the cigarette tax and the tobacco products tax as "excise taxes". The PIF legislation contained a statement to the effect that the money in the petroleum inspection fund was from "fees, penalties and excise taxes".

The legislation should also contain a moral obligation commitment that, if statutory changes impair the sufficiency of the targeted taxes, the legislature would appropriate moneys from the general fund.

The legislation could also include provisions making all special fund obligations issued under this authorization parity obligations, except as the authorizing resolution may otherwise provide.

The legislation should, in addition to the authority under Section 18.58(4), authorize the Secretary of the Department of Administration to formulate covenants relating to the program and the bonds.

The only prior statutory authorization for special fund obligations under the Revenue Obligations Law related to revenue bonds to fund the Petroleum Environmental Cleanup Fund Act ("PECFA"), payable from money in the petroleum inspection fund created in Section 25.47. In connection with the PIF Revenue Bonds, 1999 Wisconsin Act 9, Section 1994 created Section 101.143(9m) of the Statutes, which:

- Ω identified the PECFA program as a special fund program;
- Ω identified the petroleum inspection fund as a special fund;
- Ω found the fund to be made up of fees, penalties and excise taxes;
- Ω authorized the issuance of bonds and gave the department of commerce and the building commission certain related authority;
- Ω authorized funding or refunding obligations;
- Ω provided for parity obligations; and
- Ω expressed the legislature's "moral obligation".

The appropriations related to the PIF Revenue Bonds were included in 1999 Wisconsin Act 9, Sections 217, 218, 219, 220 and 221. Finally, although the petroleum inspection fund already existed, 1999 Wisconsin Act 9, Sections 713, 714c, 715 and 715e amended Section 25.47 to revise its sources.

Related amendments could be considered to address other issues in the Revenue Obligations Law, including:

- Ω coordination of the Revenue Obligations Law with revised UCC Article 9. Section 409.109(3)(b) excludes from the scope of Article 9 of the UCC any security interest to the extent that another statute expressly governs its creation, perfection, priority or enforcement. Sections 18.561(2) and 18.562(1) address creation, perfection and enforcement, but not priority. The Revenue Obligations Law could be amended to address priority.

Ω coordination of the references to the special fund as the source of payment in Sections 18.52(7) and 18.562(1) (and, in the case of the PIF Revenue Bonds, Section 101.143(9m)) with the reference in Section 18.56 to the redemption fund as being the sole source of payment.²

Option 2: Appropriation Bonds

Unlike the special fund obligations alternative, there is neither a preexisting statutory structure in place for, nor any close analog to, the Appropriation Bond alternative. A new section could be added to Chapter 16 or Chapter 40, giving the Secretary of Administration the authority to authorize the issuance of [evidences of "appropriation obligations"] for the purpose of funding the State's portion of the WRS' unfunded accrued liability.

The legislation should include findings that the issuance of Appropriation Bonds is in the best interests of the public in that it will both result in savings to the State as compared to annual funding of the requirements under Section 40.05(2)(b) and better assure the payment of benefits to retirees.

The legislation should state that the Appropriation Bonds are payable only out of amounts that the Legislature may appropriate for their payment.³

A statutory authorization of up to \$750,000,000 in principal amount of Appropriation Bonds should be included. This provision should also authorize the payment of issuance and administrative expenses, accrued or capitalized interest, credit enhancement fees, and any appropriate reserves, as well as the issuance of funding or refunding obligations. The Secretary should be authorized to determine the amount of bonds to be issued. As a condition to issuance, findings by the Secretary as to cost savings could be included.

Appropriations will be needed for the expenditure of the proceeds of the Appropriation Bonds. In addition, current appropriations will be needed for the payment of debt service coming due in the next year, as well as ongoing administrative expenses related to the Appropriation Bonds. Appropriations for future debt service could not be included at this time, but the current appropriation could provide a structure for future appropriations.

The legislation should provide for the terms (including interest rate and maturity), execution, sale and negotiation of the Appropriation Bonds. In this regard, the following provisions of Chapter 18 (which are contained or incorporated into Subchapter II, relating to revenue obligations) could be used as models, or could be incorporated into the new legislation: Sections 18.03(2) (giving the Secretary certain ancillary powers), 18.06(8) (authorizing certain related agreements), 18.07 (providing for the form of contents of the bonds), 18.10(2), (4) to (9)

² The appropriation in 20.143(3)(s) may also be implicated.

³ Since the Legislature makes appropriations on a biennial basis, and the debt avoidance analysis generally only approves obligations that are either payable in the current year or subject to conditions, the legislation may need to provide either for biennial principal payments or additional conditions, such as the Secretary determining to apply the appropriated funds to the payment.

and (11) (containing fiscal and administrative provisions), 18.55(3), (4) and (5) (relating to the sale and terms of the bonds), 18.58(2) and (3) (containing additional fiscal and administrative provisions), 18.60 (authorizing refunding obligations) [and 18.62 (making the bonds legal investments).]

The legislation should also contain a moral obligation commitment that expresses the Legislature's intention to appropriate, in each biennium, moneys from the general fund sufficient to pay current debt service.

Related Provision:

A related provision could be included to allow municipalities to issue 20-year notes under Section 67.12(12) for purposes of funding their unfunded pension liabilities. Their current authority is for 10-year notes and 10-year refunding notes.



D-Note
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1016/P1

RAC: x:...

FRIDAY

jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

- 1 AN ACT ...; relating to: issuance of appropriation obligations to pay the state's
- 2 unfunded prior service liability under the Wisconsin retirement system and
- 3 making ~~an~~ appropriation. (S)

Analysis by the Legislative Reference Bureau

Under current law, participating employers in the Wisconsin Retirement System (WRS) are required to make employer contributions to fund the retirement benefits provided to participants in the WRS. Among the contributions that participating employers must make are contributions to pay any unfunded prior service liability resulting, generally, from prior creditable service or benefit improvements retroactively granted to participating employees in the WRS. Currently, the payment of unfunded prior service liability under the WRS is amortized as a level percent of payroll over a period of 40 years and is scheduled to be fully paid in 2030.

This bill authorizes the Department of Administration to issue appropriation obligations in an amount up to \$750,000,000 to pay the state's unfunded prior service liability under the WRS. Under the bill, an appropriation obligation is an undertaking by the state to repay a certain amount of borrowed money that is payable from moneys annually appropriated by law for debt service due in that year. The bill also provides that an appropriation obligation is not public debt and that the state is only required to repay in debt service costs in each fiscal year an amount that is actually appropriated for debt service costs in that fiscal year. If moneys are not appropriated in any fiscal year for the payment of debt service costs, the state is not obligated to pay the debt service costs incurred in that fiscal year. The bill, however,

does contain a “moral obligation” pledge, in which the legislature, recognizing its moral obligation to do so, expresses its expectation and aspiration that it will make timely appropriations from moneys in the general fund sufficient to pay the principal and interest costs on any appropriation obligations that are incurred in any year.

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. 16.527[✓] of the statutes is created to read:
- 2 **16.527 Retirement of state’s unfunded prior service liability under the**
- 3 **Wisconsin Retirement System; appropriation obligations.** (1)[✓] LEGISLATIVE
- 4 FINDING AND DETERMINATION. Recognizing that the state may reduce its costs to pay
- 5 part or all of the state’s unfunded prior service liability under s. 40.05 (2) (b), and
- 6 thereby better ensure the timely and full payment of retirement benefits to
- 7 participants and their beneficiaries under the Wisconsin Retirement System, the
- 8 legislature finds and determines that it is in the public interest for the state to issue
- 9 appropriation obligations to pay part or all of the state’s unfunded prior service
- 10 liability under s. 40.05 (2) (b).
- 11 (2)[✓] DEFINITIONS. In this section:[✓]
- 12 (a) “Appropriation obligation” means an undertaking by the state to repay a
- 13 certain amount of borrowed money that is all of the following:
- 14 1. Payable from moneys annually appropriated by law for debt service due in
- 15 that year.
- 16 2. Used for the purpose of paying part or all of the state’s unfunded prior service
- 17 liability under s. 40.05 (2) (b).[✓]
- 18 3. Not public debt under s. 18.01 (4).[✓]

1 (b) "Evidence of appropriation obligation" means a written promise to pay an
2 appropriation obligation.✓

3 (3) POWERS OF DEPARTMENT.✓ The department shall have all powers necessary
4 and convenient to carry out its duties, and exercise its authority, under this✓ section.

5 (4) LIMITS ON APPROPRIATION OBLIGATIONS. (a) Subject to the limitation under
6 par. (b),✓ the department may contract appropriations obligations under this✓ section
7 in the maximum amount that the department believes can be fully paid on a timely
8 basis from moneys received or anticipated to be received.

9 (b) Appropriation obligations issued under this section may not exceed
10 \$750,000,000✓ in principal amount, excluding any obligations that have been
11 defeased✓ under a cash optimization program administered by the building
12 commission. In addition to this limit on principal amount, the department may
13 contract appropriation obligations as the ^{department} ~~determines~~ determines is desirable to fund
14 or refund outstanding appropriation obligations✓ issued under this section, to pay
15 issuance or administrative expenses, to make deposits to reserve funds, to pay
16 accrued or capitalized interest, or to pay the costs of credit enhancement.

17 (5) AUTHORIZING RESOLUTION.✓ No evidence of appropriation obligation✓ may be
18 issued by the state unless the issuance is pursuant to an authorizing resolution.
19 Unless sooner exercised✓ or unless a shorter period is provided in the authorizing
20 resolution, every authorizing resolution shall expire one✓ year after the date of its
21 adoption.

22 (6) PROCEDURES.✓ (a) Appropriation obligations may be sold at either public or
23 private sale and may be sold at any price or percentage of par value.✓ The department
24 may provide in any authorizing resolution for appropriation obligation refunding
25 obligations under sub. (10)✓ that they be exchanged privately in payment and

1 discharge of any of the outstanding obligations[✓] being refunded. All appropriation
2 obligations sold at public sale shall be noticed as provided in the authorizing
3 resolution. Any bid received at public sale may be rejected.

4 (b) Money may be borrowed and[✓] evidences of appropriation obligation issued
5 therefor pursuant to one or more authorizing resolutions, unless otherwise provided
6 in the resolution, at any time, in any specific amounts, at any rates of interest, for
7 any term, payable at any intervals, at any place, in any manner, and having any
8 other terms or conditions that the department[✓] considers necessary or useful.
9 Appropriation obligations may bear interest at variable or fixed rates, bear no
10 interest, or bear interest payable only at maturity or upon redemption prior to
11 maturity.

12 (c) The state treasurer shall act as registrar for each evidence of appropriation
13 obligation. No transfer of a registered evidence of appropriation obligation is valid
14 unless made on a register maintained by the state treasurer, and the state may treat
15 the registered owner as the owner of the instrument for all purposes. Payments of
16 principal and interest shall be by check, share draft, or other draft[✓] to the registered
17 owner at the owner's address as it appears on the register, unless the department has
18 otherwise provided. Information in the register is not available for inspection and
19 copying under s. 19.35 (1).[✓] The department may make any other provision respecting
20 registration as it considers necessary or useful. The state treasurer may enter into
21 a contract for the performance of any of his or her functions relating to appropriation
22 obligations.

23 (d) If any evidence of appropriation obligation is[✓] destroyed, lost, or stolen, the
24 department shall execute and deliver a new evidence of appropriation obligation,
25 upon filing with the department evidence satisfactory to the department that the

1 evidence of appropriation obligation has been destroyed, lost, or stolen, upon
2 providing proof of ownership thereof, and upon furnishing the department with
3 indemnity satisfactory to it and complying with such other rules of the department
4 and paying any expenses ^{that} the department may incur. The department shall cancel
5 the evidences of appropriation obligations surrendered to the department.

6 (e) The state treasurer, or the treasurer's agent, shall maintain records
7 containing a full and correct description of each evidence of appropriation obligation
8 issued, identifying it, and showing its date, issue, amount, interest rate, payment
9 dates, payments made, registration, destruction, and every other relevant
10 transaction.

11 (f) The secretary may appoint one or more trustees and fiscal agents for each
12 issue of appropriation obligations. The state treasurer may be denominated the
13 trustee and the sole fiscal agent or a fiscal agent for any issue of appropriation
14 obligations. Every other fiscal agent shall be an incorporated bank or trust company
15 authorized by the laws of the United States or of the state in which it is located to
16 do a banking or trust company business. The department shall periodically require
17 competitive proposals for fiscal agent services and, in so doing, shall consult the state
18 treasurer. There may be deposited with a trustee, in a special account, moneys to be
19 used only for the purposes expressly provided in a resolution authorizing the
20 issuance of evidences of appropriation obligations or an agreement between the
21 department and the trustee. There may be deposited with a fiscal agent, in a special
22 account, a sum estimated to be sufficient to enable the agent to pay the principal and
23 interest on appropriation obligations that will come due not more than 15 days after
24 the date of such deposit. The department may make other provisions respecting
25 trustees and fiscal agents as the department considers necessary or useful and may

1 enter into a contract with any trustee or fiscal agent containing such terms, including
2 compensation, and conditions in regard to the trustee or fiscal agent as the
3 department considers necessary or useful.

4 (g) The department may authorize evidences of appropriation obligations
5 having any provisions for prepayment considered necessary or useful, including the
6 payment of any premium.

7 (h) The department may procure insurance on any issue of appropriation
8 obligations. ✓

9 (i) All money borrowed by the state pursuant to evidences of appropriation
10 obligations issued under this section ✓ shall be lawful money of the United States and
11 all appropriation obligations shall be payable in such money.

12 (7) AGREEMENTS AND ARRANGEMENTS. ✓ The department may enter into
13 agreements and ancillary ✓ arrangements relating to the issuance of appropriation
14 obligations, including liquidity facilities, remarketing or dealer agreements, letter
15 of credit agreements, insurance policies, ✓ guaranty agreements, reimbursement
16 agreements, indexing agreements, or interest exchange agreements. The
17 department may delegate to other persons the authority and responsibility to take
18 actions necessary and appropriate to implement the agreements and ancillary
19 arrangements.

20 (8) FORM AND CONTENT OF APPROPRIATION OBLIGATIONS. ✓ (a) Notwithstanding s.
21 403.104 (1), every evidence of appropriation obligation and every interest coupon
22 appurtenant ✓ thereto is a negotiable instrument.

23 (b) Every evidence of appropriation obligation shall be executed in the name
24 of and for the state by the governor and the state treasurer and shall be sealed with
25 the great seal of the state or a facsimile thereof, and every interest coupon

1 appurtenant thereto shall be executed in the name of and for the state by the
2 governor. The facsimile signature of either the[✓] governor or state treasurer, or both,
3 may be imprinted in lieu of the manual signature of such officer, as the department
4 directs, if approved by such officer, and shall be so imprinted in the case of interest
5 coupons. Evidence of appropriation obligation and interest coupons appurtenant
6 thereto bearing the manual or facsimile signature of a person in office at the time
7 such signature was signed or imprinted shall be fully valid notwithstanding that
8 before or after the delivery thereof such person ceased to hold such office.

9 (c) Every evidence of appropriation obligation shall be dated not later than the
10 date issued, shall contain a reference by date to the appropriate authorizing
11 resolution, and shall be in accordance with the[✓] authorization resolution.

12 (d) An evidence of appropriation obligation and any interest coupon
13 appurtenant thereto shall be in the[✓] form and contain such statements or terms, as
14 determined by the department, and may not conflict with law or with the appropriate
15 authorizing resolution.[✓]

16 (9) TREATMENT OF APPROPRIATION OBLIGATIONS.[✓] (a) All evidences of appropriation
17 obligation owned or held by any state fund are outstanding in all respects and the
18 state agency controlling the fund shall have the same rights with respect to an
19 evidence of appropriation obligation as a private party, but if any sinking fund
20 acquires appropriation obligations that gave rise to such fund, the obligations are
21 considered paid for all purposes and no longer outstanding and, together with any
22 interest coupons appurtenant thereto, shall be canceled as provided in par.[✓](b). All
23 evidences of appropriation obligation owned by any state fund shall be registered to
24 the fullest extent registrable.

1 (b) Unless otherwise directed by the department, every evidence of
2 appropriation obligation and interest coupon paid or otherwise retired shall be
3 marked "canceled" and delivered, through the state treasurer if delivered to a fiscal
4 agent other than the state treasurer, to the state auditor who shall destroy them and
5 deliver to the state treasurer a certificate to that effect.

6 (c) Interest shall cease to accrue on an appropriation obligation on the date that
7 the obligation becomes due for payment if payment is made or duly provided for, but
8 the obligation and accrued interest shall continue to be a binding obligation
9 according to its terms until 6[✓] years overdue for payment, or such longer period as may
10 be required by federal law. At that time, unless demand for its payment has been
11 made, it shall be extinguished and considered no longer outstanding.

12 (10) REFUNDING OBLIGATIONS.[✓] (a) 1. The department may authorize the
13 issuance of appropriation obligation refunding obligations. Refunding obligations
14 may be issued, subject to any contract rights vested in owners of obligations being
15 refinanced, to refinance more than one issue of obligations notwithstanding that the
16 obligations may have been issued at different times. The principal amount of the
17 refunding obligations may not exceed the sum of: the principal amount of the
18 obligations being refinanced; applicable redemption premiums; unpaid interest on
19 the obligations to the date of delivery or exchange of the refunding obligations; in the
20 event the proceeds are to be deposited in trust as provided in par.[✓](c), interest to
21 accrue on the obligations from the date of delivery to the date of maturity or to the
22 redemption date selected by the department, whichever is earlier; and the expenses
23 incurred in the issuance of the refunding obligations and the payment of the
24 obligations.

1 2. A determination by the department that a refinancing is advantageous or
2 that any of the amounts provided subd. 1. ✓ should be included in the refinancing shall
3 be conclusive.

4 (b) If the department determines to exchange ✓ appropriation obligation
5 refunding obligations, they may be exchanged privately for and in payment and
6 discharge of any of the outstanding obligations being refinanced. Refunding
7 obligations may be exchanged for a like or greater principal amount of the obligations
8 being exchanged therefor except that the principal amount of the refunding
9 obligations may exceed the principal amount of the obligations being exchanged
10 therefor only to the extent determined by the department to be necessary or
11 advisable to pay redemption premiums and unpaid interest to the date of exchange
12 not otherwise provided for. The owners of the obligations being refunded who elect
13 to exchange need not pay accrued interest on the refunding obligations if and to the
14 extent that interest is accrued and unpaid on the obligations being refunded and to
15 be surrendered. If any of the obligations to be refinanced are to be called for
16 redemption, the department shall determine which redemption dates are to be used,
17 if more than one date is applicable and shall, prior to the issuance of the refunding
18 obligations, provide for notice of redemption to be given in the manner and at the
19 times required by the proceedings authorizing the outstanding obligations.

20 (c) 1. The principal proceeds from the sale of any ✓ appropriation obligation
21 refunding obligations shall be applied either to the immediate payment and
22 retirement of the obligations being refinanced or, if the obligations have not matured
23 and are not presently redeemable, to the creation of a trust for and shall be pledged
24 to the payment of the obligations ✓ being refinanced.

1 2. If a trust is created, a separate deposit shall be made for each issue of
2 appropriation obligations being refinanced. Each deposit shall be with the state
3 treasurer or a bank or trust company that is a member of the federal deposit
4 insurance corporation. If the total amount of any deposit, including money other
5 than sale proceeds but legally available for such purpose, is less than the principal
6 amount of the obligations being refinanced and for the payment of which the deposit
7 has been created and pledged, together with applicable redemption premiums and
8 interest accrued and to accrue to maturity or to the date of redemption, then the
9 application of the sale proceeds shall be legally sufficient only if the money deposited
10 is invested in securities issued by the United States or one of its agencies, or
11 securities fully guaranteed by the United States, and only if the principal amount
12 of the securities at maturity and the income therefrom to maturity will be sufficient
13 and available, without the need for any further investment or reinvestment, to pay
14 at maturity or upon redemption the principal amount of the obligations being
15 refinanced together with applicable redemption premiums and interest accrued and
16 to accrue to maturity or to the date of redemption. The income from the principal
17 proceeds of the securities shall be applied solely to the payment of the principal of
18 and interest and redemption premiums on the [✓]obligations being refinanced, but
19 provision may be made for the pledging and disposition of any surplus.

20 3. Nothing in this paragraph [✓]may be construed as a limitation on the duration
21 of any deposit in trust for the retirement of obligations being refinanced that have
22 not matured and that are not presently redeemable. Nothing in this paragraph may
23 be construed to prohibit reinvestment of the income of a trust if the reinvestments
24 will mature at such times that sufficient cash will be available to pay interest,
25 applicable premiums, and principal on the obligations being refinanced.

1 (11) APPROPRIATION OBLIGATIONS AS LEGAL INVESTMENTS. ✓ Any of the following
2 may legally invest any sinking funds, moneys, or other funds belonging to them or
3 under their control in any appropriation obligations issued under this ✓ section:

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

6 (b) Banks and bankers, savings and loan associations, credit unions, trust
7 companies, savings banks and institutions, investment companies, insurance
8 companies, insurance associations, and other persons carrying on a banking or
9 insurance business.

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

11 (12) MMORAL OBLIGATION PLEDGE. ✓ Recognizing its moral obligation to do so, the
12 legislature expresses its expectation and aspiration that it shall make timely
13 appropriations from moneys in the general fund that are sufficient to pay the
14 principal and interest costs on any appropriation obligations that are incurred in any
15 year.

16 SECTION 2. 20.505 (1) (br) ✓ of the statutes is created to read:

17 20.505 (1) (br) *Appropriation obligations repayment.* The amounts in the
18 schedule to pay debt service costs due in the current fiscal year on appropriation
19 obligations issued under s. ✓ 16.527.

20 SECTION 3. 20.505 (1) (ir) ✓ of the statutes is created to read:

21 20.505 (1) (ir) *Appropriation obligation proceeds.* As a continuing
22 appropriation, all moneys received as proceeds from appropriation obligations that
23 are issued under s. 16.527 ✓ to pay part or all of the state's unfunded prior service
24 liability under s. 40.05 (2) (b), ✓ as determined by the secretary of administration, and
25 to provide for reserves and for expenses of issuance and management of the

1 appropriation obligations. Estimated disbursements under this paragraph shall not
2 be included in the schedule under s. 20.005. ✓

3 (END)

D-note



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1016/P1dn

RAC:.....

date

JLD

Frank Hoadley:

1. Most of the core provisions relating to the issuance of appropriation obligations are based on current law provisions in ch. 18 concerning public debt and revenue obligations suggested by Dave Ryan. In incorporating the current law text into the draft, some of which is quite old, I have updated language to conform with modern drafting conventions and eliminated language that I thought was either inapplicable or not necessary. As a guide to reading this draft, please note the following:

- a. Section 16.527 (3) contains material from s. 18.03 (2). ✓
- * b. Section 16.527 (5) contains material from ^ss. 18.06 (1) and 18.55 (5). ✓
- c. Section 16.527 (6) (a) contains material from s. 18.55 (3) and (4). ✓
- d. Section 16.527 (6) (b) contains material from s. 18.55 (5). ✓
- e. Section 16.527 (6) (c) contains material from s. 18.10 (5). ✓
- f. Section 16.527 (6) (d) contains material from s. 18.10 (6). ✓
- g. Section 16.527 (6) (e) contains material from s. 18.10 (7). ✓
- h. Section 16.527 (6) (f) contains material from s. 18.10 (8). ✓
- i. Section 16.527 (6) (g) contains material from s. 18.10 (9). ✓
- j. Section 16.527 (6) (h) contains material from s. 18.58 (2). ✓
- k. Section 16.527 (6) (i) contains material from s. 18.10 (2). ✓
- L. Section 16.527 (7) contains material from s. 18.06 (8). ✓
- m. Section 16.527 (8) (a) contains material from s. 18.07 (1). ✓
- n. Section 16.527 (8) (b) contains material from s. 18.07 (2). ✓
- o. Section 16.527 (8) (c) contains material from s. 18.07 (3). ✓
- * p. Section 16.527 (8) (d) contains material from s. 18.07 (4). ✓
- * q. Section 16.527 (9) (a) contains material from s. 18.10 (4). ✓

- r ~~1~~. Section 16.527 (9) (b) contains material from s. 18.10 (11). ✓
- S ~~2~~. Section 16.527 (9) (c) contains material from s. 18.58 (3). ✓
- t ~~3~~. Section 16.527 (10) (a) 1. and 2. contains material from s. 18.60 (1). ✓
- u ~~4~~. Section 16.527 (10) (b) contains material from s. 18.60 (2). ✓
- v ~~5~~. Section 16.527 (10) (c) 1., 2., and 3. contains material from s. 18.60 (3). ✓
- w ~~6~~. Section 16.527 (11) contains material from s. 18.62. ✓

2. I was unsure how you wanted the appropriation structure set up. In this draft, I simply created a PR appropriation to receive the proceeds of the appropriation obligations and to pay part or all of the unfunded prior service liability under the WRS. I also created a GPR sum certain appropriation to pay the debt service costs in each fiscal year. Thus, in each fiscal year an amount must be appropriated to cover the debt service costs. Please review this structure. As an alternative, I could certainly set up a s. 18.57 type of segregated fund in the state treasury to receive the proceeds of the appropriation obligations and pay the WRS unfunded liability. *

3. There is no case law on the constitutionality of the state's issuing appropriation obligations for purposes not specified under art. VIII, sec. (7) (2) (a), of the Wisconsin Constitution. The draft specifically provides that appropriation obligations are not public debt, as defined in s. 18.01 (4), and it contains a "moral obligation" pledge to promise to appropriate sufficient funds to pay the principal and interest costs of the obligations. Courts have consistently held that "moral obligation" pledges are not legally enforceable, *Libertarian Party v. State*, 199 Wis. 2d 790, 825 (1996). Please note, however, that if a court did find that appropriation obligations are in fact public debt, then art. VIII, sec. (7) (2) (a), of the Wisconsin Constitution would not allow the state to issue appropriation obligations to pay the state's unfunded prior service liability under the Wisconsin Retirement System. *

4. Because there is a chance that this draft will be included in the biennial budget bill, I did not create a ch. 20 schedule entry for s. 20.505 (1) (br). (This will be done by DOA as part of the budget bill compilation process.) If your intent, however, is to introduce this as a bill separate from the biennial budget bill, I will need to create this entry.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1016/P1dn
RAC:jld:rs

December 12, 2002

Frank Hoadley:

1. Most of the core provisions relating to the issuance of appropriation obligations are based on current law provisions in ch. 18 concerning public debt and revenue obligations suggested by Dave Ryan. In incorporating the current law text into the draft, some of which is quite old, I have updated language to conform with modern drafting conventions and eliminated language that I thought was either inapplicable or not necessary. As a guide to reading this draft, please note the following:

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Rick A. Champagne
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1/7/03

- all changes result from a conversation with Dave Ryan of Foley, including the reorganization of the draft.

- T6 draft is reorganized as follows

<u>New Sections</u>	<u>Old Counterparts</u>
16.527 (3)	16.527 (3) & (4)
16.527 (4)	16.527 (6)(b), (9)(a) & (c), (6)(g) and (i), and (7)
16.527 (5)	16.527 (5) & (6)(a)
16.527 (6)	16.527 (8) (10)
16.527 (7)	16.527 (6)(c), (d), (e) & (f), and (9)(b)
	16.527 (6)(h) is gone

- change reduction to certification, since
DOT & not Bd. Comm is the
authorizing body



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1016/P2
RAC:jld:rs

soon

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

for
DOA,
but not
budget
yet draft

Regen

1 AN ACT *to create* 16.527, 20.505 (1) (br) and 20.505 (1) (ir) of the statutes;
 2 **relating to:** issuance of appropriation obligations to pay the state's unfunded
 3 prior service liability under the Wisconsin Retirement System and making
 4 appropriations.

Analysis by the Legislative Reference Bureau

Under current law, participating employers in the Wisconsin Retirement System (WRS) are required to make employer contributions to fund the retirement benefits provided to participants in the WRS. Among the contributions that participating employers must make are contributions to pay any unfunded prior service liability resulting, generally, from prior creditable service or benefit improvements retroactively granted to participating employees in the WRS. Currently, the payment of unfunded prior service liability under the WRS is amortized as a level percent of payroll over a period of 40 years and is scheduled to be fully paid in 2030.

This bill authorizes the Department of Administration to issue appropriation obligations in an amount up to \$750,000,000 to pay the state's unfunded prior service liability under the WRS. Under the bill, an appropriation obligation is an undertaking by the state to repay a certain amount of borrowed money that is payable from moneys annually appropriated by law for debt service due in that year. The bill also provides that an appropriation obligation is not public debt and that the state is only required to repay in debt service costs in each fiscal year an amount that is actually appropriated for debt service costs in that fiscal year. If moneys are not

appropriated in any fiscal year for the payment of debt service costs, the state is not obligated to pay the debt service costs incurred in that fiscal year. The bill, however, does contain a “moral obligation” pledge, in which the legislature, recognizing its moral obligation to do so, expresses its expectation and aspiration that it will make timely appropriations from moneys in the general fund sufficient to pay the principal and interest costs on any appropriation obligations that are incurred in any year.

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. 16.527 of the statutes is created to read:

2 **16.527 Retirement of state’s unfunded prior service liability under the**
 3 **Wisconsin Retirement System; appropriation obligations.** (1) ^{LEGISLATIVE}
 4 FINDING AND DETERMINATION. Recognizing that the state ^{by prepaying} ~~may reduce its costs to pay~~
 5 part or all of the state’s unfunded prior service liability under s. 40.05 (2) (b), ~~and~~
 6 ^{may reduce its costs and} ~~thereby~~ better ensure the timely and full payment of retirement benefits to
 7 participants and their beneficiaries under the Wisconsin Retirement System, the
 8 legislature finds and determines that it is in the public interest for the state to issue
 9 appropriation obligations to pay part or all of the state’s unfunded prior service
 10 liability under s. 40.05 (2) (b).

11 (2) DEFINITIONS. In this section:

12 (a) “Appropriation obligation” means an undertaking by the state to repay a
 13 certain amount of borrowed money that is all of the following:

14 1. Payable from moneys annually appropriated by law for debt service due in
 15 that year.

16 2. Used for the purpose of paying part or all of the state’s unfunded prior service
 17 liability under s. 40.05 (2) (b).

18 3. Not public debt under s. 18.01 (4).

1 (b) "Evidence of appropriation obligation" means a written promise to pay an
2 appropriation obligation.

3 (3) AUTHORIZATION OF APPROPRIATION OBLIGATIONS. (a) The department shall
4 have all powers necessary and convenient to carry out its duties, and exercise its
5 authority, under this section.

6 (b) 1. Subject to the limitation under ~~par. (b)~~ ^{subd. 2.}, the department may contract
7 appropriation obligations ^{of the state} under this section ^{in the maximum amount that the}
8 ~~department believes can be fully paid on a timely basis from moneys received or~~
9 ~~anticipated to be received.~~ ^{plain period}

10 2. Appropriation obligations issued under this [✓] section may not exceed
11 \$750,000,000 in principal amount, excluding any obligations that have been
12 defeased under a cash optimization program administered by the building
13 commission. In addition to this limit on principal amount, the department may
14 contract appropriation obligations as the department determines is desirable to fund
15 or refund outstanding appropriation obligations issued under this section, to pay
16 issuance or administrative expenses, to make deposits to reserve funds, to pay
17 accrued or capitalized interest, or to pay the costs of credit enhancement.

18 (4) TERMS. (a) Money may be borrowed and evidences of appropriation
19 obligation issued therefor pursuant to one or more ^{written} ^{certifications} authorizing ^{resolutions}, unless
20 otherwise provided in the ^{certification} ~~resolution~~, at any time, in any specific amounts, at any
21 rates of interest, for any term, payable at any intervals, at any place, in any manner,
22 and having any other terms or conditions that the department considers necessary
23 or useful. Appropriation obligations may bear interest at variable or fixed rates, bear
24 no interest, or bear interest payable only at maturity or upon redemption prior to
25 maturity.

1 (b) All evidences of appropriation obligation owned or held by any state fund
2 are outstanding in all respects and the state agency controlling the fund shall have
3 the same rights with respect to an evidence of appropriation obligation as a private
4 party, but if any sinking fund acquires appropriation obligations that gave rise to
5 such fund, the obligations are considered paid for all purposes and no longer
6 outstanding and, together with any interest coupons appurtenant thereto, shall be
7 canceled as provided in ~~par (b)~~ ^{sub. (7)(e)} All evidences of appropriation obligation owned by
8 any state fund shall be registered to the fullest extent registrable.

9 (c) Interest shall cease to accrue on an appropriation obligation on the date that
10 the obligation becomes due for payment if payment is made or duly provided for, but
11 the obligation and accrued interest shall continue to be a binding obligation
12 according to its terms until 6 years overdue for payment, or such longer period as may
13 be required by federal law. At that time, unless demand for its payment has been
14 made, it shall be extinguished and considered no longer outstanding.

15 (d) The department may authorize evidences of appropriation obligations
16 having any provisions for prepayment considered necessary or useful, including the
17 payment of any premium.

18 (e) All money borrowed by the state pursuant to evidences of appropriation
19 obligations issued under this section shall be lawful money of the United States and
20 all appropriation obligations shall be payable in such money.

21 (f) The department may enter into agreements and ancillary arrangements
22 relating to the issuance of appropriation obligations, including ^{indentures,} ~~trust indentures~~ liquidity facilities,
23 remarketing or dealer agreements, letter of credit agreements, insurance policies,
24 guaranty agreements, reimbursement agreements, indexing agreements, or interest
25 exchange agreements. The department may delegate to other persons the authority

1 and responsibility to take actions necessary and appropriate to implement the
2 agreements and ancillary arrangements.

3 (5) PROCEDURES. (a) No evidence of appropriation obligation may be issued by
4 the state unless the issuance is pursuant to ^{a written certification} ~~an~~ authorizing ~~resolution~~. Unless sooner
5 exercised or unless a shorter period is provided in the authorizing ^{certification} ~~resolution~~, every
6 authorizing ^{certification} ~~resolution~~ shall expire one year after the date of its adoption.

7 (b) Appropriation obligations may be sold at either public or private sale and
8 may be sold at any price or percentage of par value. The department may provide
9 in any authorizing ^{certification} ~~resolution~~ for appropriation obligation refunding obligations
10 under ~~sub. (a)~~ ^{(sub. (6)(b))} that they be exchanged privately in payment and discharge of any
11 of the outstanding obligations being refunded. All appropriation obligations sold at
12 public sale shall be noticed as provided in the authorizing resolution. Any bid
13 received at public sale may be rejected.

14 (6) FORM. (a) 1. Notwithstanding s. 403.104 (1), every evidence of appropriation
15 obligation and every interest coupon appurtenant thereto is a negotiable
16 instrument. ^{and may be issued in the form of a bond or note}

17 2. Every evidence of appropriation obligation shall be executed in the name of
18 and for the state by the governor and the state treasurer and shall be sealed with the
19 great seal of the state or a facsimile thereof, and every interest coupon appurtenant
20 thereto shall be executed in the name of and for the state by the governor. The
21 facsimile signature of either the governor or state treasurer, or both, may be
22 imprinted in lieu of the manual signature of such officer, as the department directs,
23 if approved by such officer, and shall be so imprinted in the case of interest coupons.
24 Evidence of appropriation obligation and interest coupons appurtenant thereto
25 bearing the manual or facsimile signature of a person in office at the time such

1 signature was signed or imprinted shall be fully valid notwithstanding that before
2 or after the delivery thereof such person ceased to hold such office.

3 3. Every evidence of appropriation obligation shall be dated not later than the
4 date issued, shall contain a reference by date to the appropriate authorizing
5 ~~resolution~~^{certification}, and shall be in accordance with the ~~authorization~~^{authorizing certification}/~~resolution~~.

6 4. An evidence of appropriation obligation and any interest coupon
7 appurtenant thereto shall be in the form and contain such statements or terms, as
8 determined by the department, and may not conflict with law or with the appropriate
9 authorizing ~~resolution~~^{certification}.

10 (b) 1.a. The department may authorize the issuance of appropriation obligation
11 refunding obligations. Refunding obligations may be issued, subject to any contract
12 rights vested in owners of obligations being refinanced, to refinance more than one
13 issue of obligations notwithstanding that the obligations may have been issued at
14 different times. The principal amount of the refunding obligations may not exceed
15 the sum of: the principal amount of the obligations being refinanced; applicable
16 redemption premiums; unpaid interest on the obligations to the date of delivery or
17 exchange of the refunding obligations; in the event the proceeds are to be deposited
18 in trust as provided in ~~par. (c)~~^{subd. 3.}, interest to accrue on the obligations from the date of
19 delivery to the date of maturity or to the redemption date selected by the department,
20 whichever is earlier; and the expenses incurred in the issuance of the refunding
21 obligations and the payment of the obligations.

22 b. A determination by the department that a refinancing is advantageous or
23 that any of the amounts provided ~~subd. 1.~~^{a.} should be included in the refinancing shall
24 be conclusive.

1 2. If the department determines to exchange appropriation obligation
2 refunding obligations, they may be exchanged privately for and in payment and
3 discharge of any of the outstanding obligations being refinanced. Refunding
4 obligations may be exchanged for a like or greater principal amount of the obligations
5 being exchanged therefor except that the principal amount of the refunding
6 obligations may exceed the principal amount of the obligations being exchanged
7 therefor only to the extent determined by the department to be necessary or
8 advisable to pay redemption premiums and unpaid interest to the date of exchange
9 not otherwise provided for. The owners of the obligations being refunded who elect
10 to exchange need not pay accrued interest on the refunding obligations if and to the
11 extent that interest is accrued and unpaid on the obligations being refunded and to
12 be surrendered. If any of the obligations to be refinanced are to be called for
13 redemption, the department shall determine which redemption dates are to be used,
14 if more than one date is applicable and shall, prior to the issuance of the refunding
15 obligations, provide for notice of redemption to be given in the manner and at the
16 times required by the proceedings authorizing the outstanding obligations.

17 3. a. The principal proceeds from the sale of any appropriation obligation
18 refunding obligations shall be applied either to the immediate payment and
19 retirement of the obligations being refinanced or, if the obligations have not matured
20 and are not presently redeemable, to the creation of a trust for and shall be pledged
21 to the payment of the obligations being refinanced.

22 b. If a trust is created, a separate deposit shall be made for each issue of
23 appropriation obligations being refinanced. Each deposit shall be with the state
24 treasurer or a bank or trust company that is a member of the Federal Deposit
25 Insurance Corporation. If the total amount of any deposit, including money other

1 than sale proceeds but legally available for such purpose, is less than the principal
2 amount of the obligations being refinanced and for the payment of which the deposit
3 has been created and pledged, together with applicable redemption premiums and
4 interest accrued and to accrue to maturity or to the date of redemption, then the
5 application of the sale proceeds shall be legally sufficient only if the money deposited
6 is invested in securities issued by the United States or one of its agencies, or
7 securities fully guaranteed by the United States, and only if the principal amount
8 of the securities at maturity and the income therefrom to maturity will be sufficient
9 and available, without the need for any further investment or reinvestment, to pay
10 at maturity or upon redemption the principal amount of the obligations being
11 refinanced together with applicable redemption premiums and interest accrued and
12 to accrue to maturity or to the date of redemption. The income from the principal
13 proceeds of the securities shall be applied solely to the payment of the principal of
14 and interest and redemption premiums on the obligations being refinanced, but
15 provision may be made for the pledging and disposition of any surplus.

16 c. Nothing in this ^{✓ subdivision} paragraph may be construed as a limitation on the duration
17 of any deposit in trust for the retirement of obligations being refinanced that have
18 not matured and that are not presently redeemable. Nothing in this ^{✓ subdivision} paragraph may
19 be construed to prohibit reinvestment of the income of a trust if the reinvestments
20 will mature at such times that sufficient cash will be available to pay interest,
21 applicable premiums, and principal on the obligations being refinanced.

22 (7) FISCAL REGULATIONS. (a) The state treasurer shall act as registrar for each
23 evidence of appropriation obligation. No transfer of a registered evidence of
24 appropriation obligation is valid unless made on a register maintained by the state
25 treasurer, and the state may treat the registered owner as the owner of the

✓
electronic funds transfer,

1 instrument for all purposes. Payments of principal and interest shall be by check,
2 share draft, or other draft to the registered owner at the owner's address as it appears
3 on the register, unless the department has otherwise provided. Information in the
4 register is not available for inspection and copying under s. 19.35 (1). The
5 department may make any other provision respecting registration as it considers
6 necessary or useful. The state treasurer may enter into a contract for the
7 performance of any of his or her functions relating to appropriation obligations.

8 (b) If any evidence of appropriation obligation is destroyed, lost, or stolen, the
9 department shall execute and deliver a new evidence of appropriation obligation,
10 upon filing with the department evidence satisfactory to the department that the
11 evidence of appropriation obligation has been destroyed, lost, or stolen, upon
12 providing proof of ownership thereof, and upon furnishing the department with
13 indemnity satisfactory to it and complying with such other rules of the department
14 and paying any expenses that the department ^{or the state treasurer} may incur. The department shall
15 cancel the evidences of appropriation obligations surrendered to the department.

16 (c) The state treasurer, or the treasurer's agent, shall maintain records
17 containing a full and correct description of each evidence of appropriation obligation
18 issued, identifying it, and showing its date, issue, amount, interest rate, payment
19 dates, payments made, registration, destruction, and every other relevant
20 transaction.

21 (d) The secretary may appoint one or more trustees and fiscal agents for each
22 issue of appropriation obligations. The state treasurer may be denominated the
23 trustee and the sole fiscal agent or a cofiscal agent for any issue of appropriation
24 obligations. Every other fiscal agent shall be an incorporated bank or trust company
25 authorized by the laws of the United States or of the state in which it is located to

1 do a banking or trust company business. ~~The department shall periodically require~~

2 ~~competitive proposals for fiscal agent services and, in so doing, shall consult the state~~

3 ~~treasurer.~~ There may be deposited with a trustee, in a special account, moneys to be

4 used only for the purposes expressly provided in a resolution authorizing the

5 issuance of evidences of appropriation obligations or an agreement between the

6 department and the trustee. ~~There may be deposited with a fiscal agent, in a special~~

7 ~~account, a sum estimated to be sufficient to enable the agent to pay the principal and~~

8 ~~interest on appropriation obligations that will come due not more than 15 days after~~

9 ~~the date of such deposit.~~ The department may make other provisions respecting

10 trustees and fiscal agents as the department considers necessary or useful and may

11 enter into a contract with any trustee or fiscal agent containing such terms, including

12 compensation, and conditions in regard to the trustee or fiscal agent as the

13 department considers necessary or useful.

14 (e) Unless otherwise directed by the department, every evidence of
15 appropriation obligation and interest coupon paid or otherwise retired shall be
16 marked "canceled" and delivered, through the state treasurer if delivered to a fiscal
17 agent other than the state treasurer, to the state auditor who shall destroy them and
18 deliver to the state treasurer a certificate to that effect.

19 (h) ~~The department may procure insurance on any issue of appropriation~~
20 ~~obligations.~~

21 (8) APPROPRIATION OBLIGATIONS AS LEGAL INVESTMENTS. Any of the following may
22 legally invest any sinking funds, moneys, or other funds belonging to them or under
23 their control in any appropriation obligations issued under this section:

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

1 (b) Banks and bankers, savings and loan associations, credit unions, trust
2 companies, savings banks and institutions, investment companies, insurance
3 companies, insurance associations, and other persons carrying on a banking or
4 insurance business.

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

6 (9) MORAL OBLIGATION PLEDGE. Recognizing its moral obligation to do so, the
7 legislature expresses its expectation and aspiration that it shall make timely
8 appropriations from moneys in the general fund that are sufficient to pay the
9 principal and interest costs on any appropriation obligations that are incurred in any
10 year.

11 SECTION 2. 20.505 (1) (br) of the statutes is created to read:

12 20.505 (1) (br) *Appropriation obligations repayment.* The amounts in the
13 schedule to pay debt service costs due in the current fiscal year on appropriation
14 obligations issued under s. 16.527.

15 SECTION 3. 20.505 (1) (ir) of the statutes is created to read:

16 20.505 (1) (ir) *Appropriation obligation proceeds.* As a continuing
17 appropriation, all moneys received as proceeds from appropriation obligations that
18 are issued under s. 16.527 to pay part or all of the state's unfunded prior service
19 liability under s. 40.05 (2) (b), as determined by the secretary of administration, and
20 to provide for reserves and for expenses of issuance and management of the
21 appropriation obligations. Estimated disbursements under this paragraph shall not
22 be included in the schedule under s. 20.005.

23 (END)

Champagne, Rick

From: Ryan, David B. [dryan@foleylaw.com]
Sent: Wednesday, January 15, 2003 10:03 AM
To: 'Champagne, Rick'
Subject: comments on legislation



Proposed

\$3,200,000,000 Bill.pdf



Proposed

\$750,000,000 Bill.pdf

Rick:

I've attached comments on the drafts of legislation for the "appropriation bonds" to provide for the prepayment of unfunded pension liabilities and for the "economic recovery" special fund bonds.

Reed and I have calls in to Frank Hoadley to discuss a couple of items on each of these, but I didn't want to hold up getting back to you.

We think the appropriation bond legislation is very close. I have a couple of suggestions to add language, and Reed pointed out that we should probably get rid of the now-archaic references to interest coupons. In addition, I had a couple further thoughts about the order in which the provisions appear, which you should feel free to accept or reject as you think best.

There are a couple of things on the economic recovery bond draft that I'd like to talk through with you, but I thought I'd go ahead and get the comments in front of you.

I'll give you a call later today to see if you're available to talk through these.

Thanks.

-Dave Ryan

<<Proposed \$3,200,000,000 Bill.pdf>> <<Proposed \$750,000,000 Bill.pdf>>

Dave Ryan's
comments

2003 - 2004 LEGISLATURE

LRB-1016/P2

RAC:jld:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to create* 16.527, 20.505 (1) (br) and 20.505 (1) (ir) of the statutes;
2 relating to: issuance of appropriation obligations to pay the state's unfunded
3 prior service liability under the Wisconsin Retirement System and making
4 appropriations.

Analysis by the Legislative Reference Bureau

Under current law, participating employers in the Wisconsin Retirement System (WRS) are required to make employer contributions to fund the retirement benefits provided to participants in the WRS. Among the contributions that participating employers must make are contributions to pay any unfunded prior service liability resulting, generally, from prior creditable service or benefit improvements retroactively granted to participating employees in the WRS. Currently, the payment of unfunded prior service liability under the WRS is amortized as a level percent of payroll over a period of 40 years and is scheduled to be fully paid in 2030.

This bill authorizes the Department of Administration to issue appropriation obligations in an amount up to \$750,000,000 to pay the state's unfunded prior service liability under the WRS. Under the bill, an appropriation obligation is an undertaking by the state to repay a certain amount of borrowed money that is payable from moneys annually appropriated by law for debt service due in that year. The bill also provides that an appropriation obligation is not public debt and that the state is only required to repay in debt service costs in each fiscal year an amount that is actually appropriated for debt service costs in that fiscal year. If moneys are not

appropriated in any fiscal year for the payment of debt service costs, the state is not obligated to pay the debt service costs incurred in that fiscal year. The bill, however, does contain a “moral obligation” pledge, in which the legislature, recognizing its moral obligation to do so, expresses its expectation and aspiration that it will make timely appropriations from moneys in the general fund sufficient to pay the principal and interest costs on any appropriation obligations that are incurred in any year.

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. 16.527 of the statutes is created to read:

2 **16.527 Retirement of state’s unfunded prior service liability under the**
3 **Wisconsin Retirement System; appropriation obligations. (1) LEGISLATIVE**
4 **FINDING AND DETERMINATION.** Recognizing that the state, by prepaying part or all of
5 the state’s unfunded prior service liability under s. 40.05 (2) (b), may reduce its costs
6 and better ensure the timely and full payment of retirement benefits to participants
7 and their beneficiaries under the Wisconsin Retirement System, the legislature finds
8 and determines that it is in the public interest for the state to issue appropriation
9 obligations to pay part or all of the state’s unfunded prior service liability under s.
10 40.05 (2) (b).

11 (2) DEFINITIONS. In this section:

12 (a) “Appropriation obligation” means an undertaking by the state to repay a
13 certain amount of borrowed money that is all of the following:

14 1. Payable from moneys annually appropriated by law for debt service due in
15 that year.

16 2. Used for the purpose of paying part or all of the state’s unfunded prior service
17 liability under s. 40.05 (2) (b).

18 3. Not public debt under s. 18.01 (4).

1 (b) "Evidence of appropriation obligation" means a written promise to pay an
2 appropriation obligation.

Rider 1

3 (3) AUTHORIZATION OF APPROPRIATION OBLIGATIONS. (a) The department shall
4 have all powers necessary and convenient to carry out its duties, and exercise its
5 authority, under this section.

6 (b) 1. Subject to the limitation under subd. 2., the department may contract
7 appropriation obligations of the state under this section.

8 2. Appropriation obligations issued under this section may not exceed
9 \$750,000,000 in principal amount, excluding any obligations that have been
10 defeased under a cash optimization program administered by the building
11 commission. In addition to this limit on principal amount, the department may
12 contract appropriation obligations as the department determines is desirable to fund
13 or refund outstanding appropriation obligations issued under this section, to pay
14 issuance or administrative expenses, to make deposits to reserve funds, to pay
15 accrued or capitalized interest, or to pay the costs of credit enhancement.

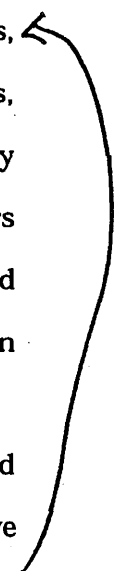
16 (4) TERMS. (a) Money may be borrowed and evidences of appropriation
17 obligation issued therefor pursuant to one or more written authorizing certifications,
18 unless otherwise provided in the certification, at any time, in any specific amounts,
19 at any rates of interest, for any term, payable at any intervals, at any place, in any
20 manner, and having any other terms or conditions that the department considers
21 necessary or useful. Appropriation obligations may bear interest at variable or fixed
22 rates, bear no interest, or bear interest payable only at maturity or upon redemption
23 prior to maturity.

24 (b) All evidences of appropriation obligation owned or held by any state fund
25 are outstanding in all respects and the state agency controlling the fund shall have

*Insert from p. 4,
lines 13-15*

*move
to p. 4*

*Q's cross-ref to
certifications*



*evidences
of*

1 the same rights with respect to an evidence of appropriation obligation as a private
2 party, but if any sinking fund acquires appropriation obligations that gave rise to
3 such fund, the obligations are considered paid for all purposes and no longer
4 outstanding and together with any interest coupons appurtenant thereto shall be
5 canceled as provided in sub. (7) (e). All evidences of appropriation obligation owned
6 by any state fund shall be registered to the fullest extent registrable.

*move
below*

7 (c) Interest shall cease to accrue on an appropriation obligation on the date that
8 the obligation becomes due for payment if payment is made or duly provided for, but
9 the obligation and accrued interest shall continue to be a binding obligation
10 according to its terms until 6 years overdue for payment, or such longer period as may
11 be required by federal law. At that time, unless demand for its payment has been
12 made, it shall be extinguished and considered no longer outstanding.

13 (d) The department may authorize evidences of appropriation obligations
14 having any provisions for prepayment considered necessary or useful, including the
15 payment of any premium.

*move
to
p. 3*

16 (e) All money borrowed by the state pursuant to evidences of appropriation
17 obligations issued under this section shall be lawful money of the United States and
18 all appropriation obligations shall be payable in such money.

19 (f) The department may enter into agreements and ancillary arrangements
20 relating to the issuance of appropriation obligations, including trust indentures,
21 liquidity facilities, remarketing or dealer agreements, letter of credit agreements,
22 insurance policies, guaranty agreements, reimbursement agreements, indexing
23 agreements, or interest exchange agreements. The department may delegate to
24 other persons the authority and responsibility to take actions necessary and
25 appropriate to implement the agreements and ancillary arrangements.

*Insert from p. 3, lines
24 + 25, and lines 1-6 above*

Rider 2

1 (5) PROCEDURES. (a) No evidence of appropriation obligation may be issued by
2 the state unless the issuance is pursuant to a written authorizing certification.
3 Unless sooner exercised or unless a shorter period is provided in the authorizing
4 certification, every authorizing certification shall expire one year after the date of its
5 adoption.

6 (b) Appropriation obligations may be sold at either public or private sale and
7 may be sold at any price or percentage of par value. The department may provide
8 in any authorizing certification for appropriation obligation refunding obligations
9 under sub. (6) (b) that they be exchanged privately in payment and discharge of any
10 of the outstanding obligations being refunded. All appropriation obligations sold at
11 public sale shall be noticed as provided in the authorizing resolution. Any bid
12 received at public sale may be rejected.

refinanced

← conforms to usage elsewhere

13 (6) FORM. (a) (1) Notwithstanding s. 403.104 (1), every evidence of
14 appropriation obligation and every interest coupon appurtenant thereto is a
15 negotiable instrument and may be issued in the form of a bond or note.

Rider 3

16 (b) Every evidence of appropriation obligation shall be executed in the name of
17 and for the state by the governor and the state treasurer and shall be sealed with the
18 great seal of the state or a facsimile thereof, and every interest coupon appurtenant
19 thereto shall be executed in the name of and for the state by the governor. The
20 facsimile signature of either the governor or state treasurer, or both, may be
21 imprinted in lieu of the manual signature of such officer, as the department directs,
22 if approved by such officer, and shall be so imprinted in the case of interest coupons.

23 Evidence of appropriation obligation and interest coupons appurtenant thereto
24 bearing the manual or facsimile signature of a person in office at the time such

An

1 signature was signed or imprinted shall be fully valid notwithstanding that before
2 or after the delivery thereof such person ceased to hold such office.

3 (c) 3. Every evidence of appropriation obligation shall be dated not later than the
4 date issued, shall contain a reference by date to the appropriate authorizing
5 certification, and shall be in accordance with the authorizing certification.

6 (d) 4. An evidence of appropriation obligation and any interest coupon
7 appurtenant thereto shall be in the form and contain such statements or terms, as
8 such determined by the department, and may not conflict with law or with the appropriate
9 authorizing certification. (7) Refunding obligations

10 (b) 1. The department may authorize the issuance of appropriation obligation
11 refunding obligations. Refunding obligations may be issued, subject to any contract
12 rights vested in owners of obligations being refinanced, to refinance more than one

13 (s) issue of obligations notwithstanding that the obligations may have been issued at
14 different times. The principal amount of the refunding obligations may not exceed
15 the sum of: the principal amount of the obligations being refinanced; applicable
16 redemption premiums; unpaid interest on the obligations to the date of delivery or
17 exchange of the refunding obligations; in the event the proceeds are to be deposited
18 in trust as provided in subd. 3., interest to accrue on the obligations from the date
19 of delivery to the date of maturity or to the redemption date selected by the
20 department, whichever is earlier; and the expenses incurred in the issuance of the
21 refunding obligations and the payment of the obligations.

22 A determination by the department that a refinancing is advantageous or
23 that any of the amounts provided subd. 1. (a) should be included in the refinancing
24 shall be conclusive.

all or any part
of or more

(b)
2) If the department determines to exchange appropriation obligation refunding obligations, they may be exchanged privately for and in payment and discharge of any of the outstanding obligations being refinanced. Refunding obligations may be exchanged for a like or greater principal amount of the obligations being exchanged therefor except that the principal amount of the refunding obligations may exceed the principal amount of the obligations being exchanged therefor only to the extent determined by the department to be necessary or advisable to pay redemption premiums and unpaid interest to the date of exchange not otherwise provided for. The owners of the obligations being refunded who elect to exchange need not pay accrued interest on the refunding obligations if and to the extent that interest is accrued and unpaid on the obligations being refunded and to be surrendered. If any of the obligations to be refinanced are to be called for redemption, the department shall determine which redemption dates are to be used, if more than one date is applicable and shall, prior to the issuance of the refunding obligations, provide for notice of redemption to be given in the manner and at the times required by the proceedings ^{certification} authorizing the outstanding obligations.

(c) 3. a. The principal proceeds from the sale of any appropriation obligation refunding obligations shall be applied either to the immediate payment and retirement of the obligations being refinanced or, if the obligations have not matured and are not presently redeemable, to the creation of a trust for and shall be pledged to the payment of the obligations being refinanced.

b. If a trust is created, a separate deposit shall be made for each issue of appropriation obligations being refinanced. Each deposit shall be with the state treasurer or a bank or trust company that is a member of the Federal Deposit Insurance Corporation. If the total amount of any deposit, including money other

1 than sale proceeds but legally available for such purpose, is less than the principal
2 amount of the obligations being refinanced and for the payment of which the deposit
3 has been created and pledged, together with applicable redemption premiums and
4 interest accrued and to accrue to maturity or to the date of redemption, then the
5 application of the sale proceeds shall be legally sufficient only if the money deposited
6 is invested in securities issued by the United States or one of its agencies, or
7 securities fully guaranteed by the United States, and only if the principal amount
8 of the securities at maturity and the income therefrom to maturity will be sufficient
9 and available, without the need for any further investment or reinvestment, to pay
10 at maturity or upon redemption the principal amount of the obligations being
11 refinanced together with applicable redemption premiums and interest accrued and
12 to accrue to maturity or to the date of redemption. The income from the principal
13 proceeds of the securities shall be applied solely to the payment of the principal of
14 and interest and redemption premiums on the obligations being refinanced, but
15 provision may be made for the pledging and disposition of any surplus.

16 3. Nothing in this subdivision may be construed as a limitation on the duration
17 of any deposit in trust for the retirement of obligations being refinanced that have
18 not matured and that are not presently redeemable. Nothing in this subdivision may
19 be construed to prohibit reinvestment of the income of a trust if the reinvestments
20 will mature at such times that sufficient cash will be available to pay interest,
21 applicable premiums, and principal on the obligations being refinanced.

22 8. (1) FISCAL REGULATIONS. (a) The state treasurer shall act as registrar for each
23 evidence of appropriation obligation. No transfer of a registered evidence of
24 appropriation obligation is valid unless made on a register maintained by the state
25 treasurer, and the state may treat the registered owner as the owner of the

1 instrument for all purposes. Payments of principal and interest shall be by electronic
 2 funds transfer, check, share draft, or other draft to the registered owner at the
 3 owner's address as it appears on the register, unless the department has otherwise
 4 provided. Information in the register is not available for inspection and copying
 5 under s. 19.35 (1). The department may make any other provision respecting
 6 registration as it considers necessary or useful. The state treasurer may enter into
 7 a contract for the performance of any of his or her functions relating to appropriation
 8 obligations. *d*

9 (b) If any evidence of appropriation obligation is destroyed, lost, or stolen, the
 10 department shall execute and deliver a new evidence of appropriation obligation,
 11 upon filing with the department evidence satisfactory to the department that the
 12 evidence of appropriation obligation has been destroyed, lost, or stolen, upon
 13 providing proof of ownership thereof, and upon furnishing the department with
 14 indemnity satisfactory to it and complying with such other rules of the department
 15 and paying any expenses that the department or the state treasurer may incur. The
 16 department shall cancel the evidences of appropriation obligations surrendered to
 17 the department. *b*

*made
to
P. 10*

18 (c) The state treasurer, or the treasurer's agent, shall maintain records
 19 containing a full and correct description of each evidence of appropriation obligation
 20 issued, identifying it, and showing its date, issue, amount, interest rate, payment
 21 dates, payments made, registration, destruction, and every other relevant
 22 transaction. *c*

23 (d) The secretary may appoint one or more trustees and fiscal agents for each
 24 issue of appropriation obligations. The state treasurer may be denominated the
 25 trustee and the sole fiscal agent or a cofiscal agent for any issue of appropriation

the certification

1 obligations. Every other fiscal agent shall be an incorporated bank or trust company
 2 authorized by the laws of the United States or of the state in which it is located to
 3 do a banking or trust company business. There may be deposited with a trustee, in
 4 a special account, moneys to be used only for the purposes expressly provided in
 5 ~~resolution~~ authorizing the issuance of evidences of appropriation obligation or an
 6 agreement between the department and the trustee. The department may make
 7 other provisions respecting trustees and fiscal agents as the department considers
 8 necessary or useful and may enter into a contract with any trustee or fiscal agent
 9 containing such terms, including compensation, and conditions in regard to the
 10 trustee or fiscal agent as the department considers necessary or useful.

11 (e) Unless otherwise directed by the department, every evidence of
 12 appropriation obligation ~~and interest coupon~~ paid or otherwise retired shall be
 13 marked "canceled" and delivered, through the state treasurer if delivered to a fiscal
 14 agent other than the state treasurer, to the state auditor who shall destroy them and
 15 deliver to the state treasurer a certificate to that effect.

*Rd
 from
 P. 9
 lines
 9-17*

16 (8) APPROPRIATION OBLIGATIONS AS LEGAL INVESTMENTS. Any of the following may
 17 legally invest any sinking funds, moneys, or other funds belonging to them or under
 18 their control in any appropriation obligations issued under this section:

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

21 (b) Banks and bankers, savings and loan associations, credit unions, trust
 22 companies, savings banks and institutions, investment companies, insurance
 23 companies, insurance associations, and other persons carrying on a banking or
 24 insurance business.

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

1 **(9) MORAL OBLIGATION PLEDGE.** Recognizing its moral obligation to do so, the
2 legislature expresses its expectation and aspiration that it shall make timely
3 appropriations from moneys in the general fund that are sufficient to pay the
4 principal and interest costs on any appropriation obligations that are incurred in any
5 year.

6 **SECTION 2.** 20.505 (1) (br) of the statutes is created to read:

7 20.505 (1) (br) *Appropriation obligations repayment.* The amounts in the
8 schedule to pay debt service costs due in the current fiscal year on appropriation
9 obligations issued under s. 16.527.

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

11 20.505 (1) (ir) *Appropriation obligation proceeds.* As a continuing
12 appropriation, all moneys received as proceeds from appropriation obligations that
13 are issued under s. 16.527 to pay part or all of the state's unfunded prior service
14 liability under s. 40.05 (2) (b), as determined by the secretary of administration, and
15 to provide for reserves and for expenses of issuance and management of the
16 appropriation obligations. Estimated disbursements under this paragraph shall not
17 be included in the schedule under s. 20.005.

18

(END)

? (elsewhere,
department)

Provide for department
to direct timing of
application to ~~prepay~~ prepay
retirement fund obligation.

Provide for investment pending
application.

Champagne, Rick

From: Ryan, David B. [dryan@foleylaw.com]
Sent: Wednesday, January 15, 2003 2:38 PM
To: 'Champagne, Rick'
Subject: 1016/P2 (Appropriation bonds)



Doc2.doc

Rick:

Attached are the riders I noted on my mark-up, together with the additional rider we discussed that conforms to the changes proposed to 18.06(8), which was used as a model for proposed 16.527(4)(f). Feel free to call if you have any questions.

-Dave

<<Doc2.doc>>

Rider 1:

(c) "Refunding obligation" means an appropriation obligation contracted to fund or refund all or any part of one or more outstanding appropriation obligations.

Rider 2:

Such certification shall set forth the aggregate principal amount of appropriation obligations authorized thereby, the manner of sale of the evidences of appropriation obligations, and the form and terms thereof. The certification shall be signed by the secretary [or his or her designee], and shall be transmitted to the governor and the state treasurer.

Rider 3:

Evidences of appropriation obligations may be in the form of bonds, notes or other evidences of obligation, and may be issued in book-entry form or in certificated form.

Rider 4: (not noted on comments, would replace lines 19-25 on page 4)

(a) At the time of contracting for the appropriation obligations and at any time thereafter so long as the appropriation obligations are outstanding, the commission may enter into agreements and ancillary arrangements relating to the appropriation obligations, including trust indentures, liquidity facilities, remarketing or dealer agreements, letter of credit agreements, insurance policies, guaranty agreements, reimbursement agreements, indexing agreements, or interest exchange agreements. At the time of contracting for such agreement or ancillary arrangement, the department shall determine all of the following:

1. for any payments to be received with respect to the agreement or ancillary arrangement, the fund into which the payment will be deposited; and
2. for any payment to be made with respect to the agreement or ancillary arrangement, the source from which the payment will be made and the timing of any transfer of funds. For purposes of this subdivision, the source may be any fund established with respect to the related appropriation obligations or any appropriation for debt service or issuance expenses made with respect to the related appropriation obligations.