

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB843)

Received: 02/18/2004

Received By: **mkunkel**

Wanted: As time permits

Identical to LRB:

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

By/Representing: **Brett Healy**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - energy**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to: **brett.healy@legis.state.wi.us
todd.stuart@legis.state.wi.us
joseph.kreye@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 02/19/2004	wjackson 02/20/2004		_____			
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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

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/?	mkunkel	1 Wlj 2/20					
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Handwritten notes: 1 Wlj 2/20

Handwritten signature and date: 2/20/04 4pb

FE Sent For:

<END>

Kunkel, Mark

From: Healy, Brett
Sent: Wednesday, February 18, 2004 1:31 PM
To: Kunkel, Mark
Cc: Stolzenberg, John; Lovell, David; Stuart, Todd
Subject: feb16 proposed changes. DOC

2003 BILL

We's write-up of changes we discussed based on 4030/3

~~2/16/04 7:00 pm~~ 2/17/04 9:30 am

Further Changes added by PSCW @ 4:00 pm

new changes are highlighted and are single underlined

more non-bypassable change PSCW changes added 9:00 am of 2/18/04

Final version – pending approval on non-bypassable

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

Analysis by the Legislative Reference Bureau

This bill allows certain public utilities, with the approval of the Public Service Commission (PSC), to finance the cost of certain environmental control activities with the proceeds of "environmental trust bonds," which the bill defines as bonds that are secured by charges paid by a public utility's customers. The bill applies to natural gas, steam and electric utilities, which the bill defines as "energy utilities." The bonds may be issued

by an energy utility, or an assignee of the energy utility, including an affiliate that is created with the limited purpose of operating the trust.

An energy utility that applies to the PSC for an order approving the issuance of the bonds must describe the environmental control activities that the energy utility proposes to undertake and the reasons for undertaking the activities. An "environmental control activity" is defined as construction, installation, or otherwise putting in place equipment for controlling environmental pollution in connection with an energy utility plant that has previously been used to provide service to customers. In addition, the energy utility must estimate the costs of proposed activities and indicate whether the energy utility proposes to finance all or only a specified portion of such costs with the bonds. Also, the energy utility must estimate the financing costs of issuing the proposed bonds.

No later than ~~90~~ 120 days after the PSC receives an application, the PSC must issue an order that rejects or approves the application. The PSC must approve the application if the order will result in lower costs to customers than would alternative methods of financing environmental control activities, the order is otherwise consistent with the public interest, and the order is prudent, reasonable, and appropriate. The bill refers to an order that approves an application as a "financing order." If the PSC issues a financing order, the order must specify the amount of environmental control and financing costs that the energy utility may recover through charges that customers in the energy utility's service territory must pay over a period specified in the order. The bill refers to such charges as "environmental control charges." The PSC may exclude a portion of environmental control costs from recovery as environmental control charges only if the energy utility indicates in the application that it does not propose to finance that portion with bonds. In addition, the order must specify the "environmental control property" that is created and that may be used to secure the bonds. "Environmental control property" is defined as the right, specified in the order, to impose, collect, or receive the environmental control charges. "Environmental control property" is also defined to include all revenues and proceeds arising from such right.

The bill also requires the PSC, without holding a hearing, to adjust the environmental control charges that are approved in a financing order. The order itself must include a formula that the PSC must apply for making adjustments to environmental control charges at apply the formula least annually within 45 days of the anniversary date of the issuance of the bonds. The purpose of the formula is to make any adjustments to the charges that are necessary based on any overcollection or undercollection of the charges or are necessary to ensure the energy utility's or an assignee's timely recover of the environmental control and financing costs. The bill also allows the PSC to issue a subsequent financing order for retiring or refunding the bonds issued pursuant to the original financing order. The PSC may issue a subsequent order if the financing costs of bonds issued pursuant to the subsequent order are lower than the financing costs of the bonds issued pursuant to the original order. The PSC may also issue a subsequent order if retiring or refinancing the bonds issued pursuant to the original order is otherwise in the public interest.

The bill prohibits the PSC from revoking a financing order, except for changes made by a subsequent financing order described above. In addition, the bill provides that a financing order remains in effect until environmental trust bonds issued pursuant to the order have been paid in full and the financing costs of the bonds have been recovered in full. Also, the bill provides that a financing order issued to an energy utility remains in effect notwithstanding the bankruptcy of the energy utility.

The bill also creates the following limits on the PSC's jurisdiction over an energy utility that is issued a financing order: 1) the PSC may not consider environmental trust bonds to be the debt of the energy utility; 2) the PSC may not consider the environmental control charges paid under the order to be the revenue of the energy utility; and 3) the PSC may not consider the environmental control or financing costs specified in the order to be the costs of the energy utility. In addition, the bill prohibits the PSC from determining that any action taken by an energy utility that is consistent with the order is unjust or unreasonable.

In addition, the bill does all of the following:

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

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

property created in a financing order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The construction, installation, or otherwise putting into place environmental control equipment in connection with an energy utility plant that has been used to provide service to customers prior to the effective date of this section. ~~before beginning the construction, installation, or otherwise putting into place of environmental control equipment.~~

2. The retiring of any existing plant, facility, or other property to reduce, control or eliminate

environmental pollution in accordance with federal or state law.

†. _____ (e) "Environmental control charge" means a charge paid by customers of an energy utility or its successors for the energy utility to recover environmental control costs and financing costs.

(f) "Environmental control cost" means capital cost, including capitalized cost relating to regulatory assets, incurred or expected to be incurred by an energy utility in undertaking an environmental control activity, costs of retiring or refunding the energy utility's existing debt and equity securities in connection with the issuance of environmental trust bonds, to the extent such securities were issued for the purpose of financing environmental control costs, and, with respect to environmental control activity described in par. (d)(2), includes the unrecovered value of property that is retired including any demolition or similar costs that exceed the salvage value of the property. "Environmental control cost" does not include any monetary penalty, fine, or forfeiture assessed against an energy utility by a government agency or court under a federal or state environmental statute, rule, or regulation.

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

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

1. The right specified in a financing order to impose, collect, or receive environmental control charges, or to obtain adjustments to such charges as provided in this section, and any interest in such right.
2. All revenues and proceeds arising from the right and interests specified in subd. 1.

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

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

(k) "Financing cost" means any of the following:

- 1: Debt service, including principal, interest and redemption premium, that is payable on environmental trust bonds.
- 2: A payment required under an ancillary agreement, including any amount

required to fund a reserve account.

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

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

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

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

1. Describe the environmental control activities that the energy utility proposes to undertake, and which utility service (electric gas or steam) is associated with the activities and the reasons for undertaking the activities.

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

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

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

5. Estimate the environmental control charges necessary based on the respective energy utility service involved to recover the environmental control costs and financing costs estimated in the application.

6. Estimate the cost savings to customers from financing the environmental control activities under this section relative to alternate financing methods.

~~(b)~~ *Commission powers and duties*. 1. No later than ~~90~~120 days after receiving an application under par. (a), and after a hearing, the commission shall issue a financing order or an order rejecting the application. The commission ~~shall~~ may issue a financing order if the commission finds that ~~the~~:

a. The order will result in lower overall costs to customers than would alternative methods of financing environmental control activities,

b. The expected structuring and pricing of the environmental trust bonds will result in the lowest environmental control ~~trust~~ charge consistent with market conditions and the terms of the financing order; and

c. The Order is otherwise consistent with the public interest, and is prudent, reasonable, and appropriate. The Commission may require appropriate conditions in the order that are not otherwise inconsistent with the

other provisions of this section.

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

a. Except as provided in subd. 2. c., specify the amount of environmental control costs and financing costs that may be recovered through environmental control charges and the period over which such costs may be recovered.

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

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

c. Include a formula for making any adjustments in the environmental control charges that customers are required to pay under the order and making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the energy utility's or assignee's timely recovery of environmental control costs and financing costs. ~~The order shall require the commission to apply the formula at least annually within 45 days of the anniversary date that environmental trust bonds are issued pursuant to the order and to approve any adjustments that result from application of the formula within 45 days of the anniversary date that environmental trust bonds are issued. The commission shall apply a formula and make any adjustments under this subd. 2. c. without a hearing after permitting a period not to exceed 30 days for comment by interested persons limited to the appropriate amount of any overcollection or undercollection and the appropriate adjustment.~~

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

~~e. Determine whether it is appropriate for the environmental trust bonds to include a provision permitting the retirement of the bonds prior to their termination date.~~

(f) At least annually, apply the formula in the financing order and make any adjustments to the environmental control charges, based on reasonable estimates of demand and other mathematical factors, necessary to satisfy the purposes of subsection 2 (c) and (f). The adjustment shall be made within 45 days of the anniversary date on which environmental trust bonds are issued, without hearing but after permitting a period not to exceed 30 days for comment by interested parties limited to the appropriate amount of any overcollection or undercollection and the appropriate adjustment.

3. A financing order issued to an energy utility may provide that the energy utility's acquisition of environmental control property specified in subd. 2. d. is

conditioned upon, and shall be simultaneous with, the sale of the environmental control property to an assignee and the pledge of the environmental control property to secure environmental trust bonds.

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

(c) *Subsequent orders.* The commission may initiate a proceeding and issue a subsequent financing order that provides for retiring or refunding environmental trust bonds issued pursuant to the original financing order if permitted under the terms of the environmental trust bonds and if the commission finds that environmental trust bonds issued pursuant to the subsequent financing order satisfy the criteria in subd. (2)(b)1, ~~provided that the subsequent financing order may only permit the retirement and refunding of the Environmental Control charge~~ environmental trust bonds subject to the terms of the original indenture ~~have lower financing costs than the environmental trust bonds issued pursuant to the original financing order or that retiring or refunding the environmental trust bonds issued pursuant to the original financing order is otherwise in the public interest.~~

(d) *Judicial review.* A financing order or an order rejecting an application under par. (b) 1. is reviewable by the circuit court for Dane County under ch. 227, except that the court shall proceed to hear and determine the action as expeditiously as ~~possible~~ practicable and give the action precedence over other matters not accorded similar precedence by law.

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

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

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

(3) EXCEPTIONS TO COMMISSION JURISDICTION. (a.) If the commission issues a financing order to an energy utility, the commission may ~~not~~, in exercising its powers and carrying out its duties ~~under this chapter, including any power or duty~~ regarding rate making, consider the environmental trust bonds issued pursuant to the order to be the debt of the energy utility, the environmental control charges paid under the order to be the revenue of the energy utility, or the environmental control costs or financing costs specified in the order to be the costs of the energy utility, nor may the commission determine that any action taken by an energy utility that is consistent with the order is unjust or unreasonable. Nothing in this section limits or alters the Commission's authority to

affects?

adjust or reduce an energy utility's revenue requirement pursuant to subd. 4.

b. Except as provided in subd.2.c. with respect to refinancing, ~~the~~ the commission shall not require or otherwise order any energy utility that has not yet applied to the Commission under subd.2.a. to finance any project, addition, plant, facility, extension, capital improvement, environmental control equipment or any other expenditure utilizing environmental trust ~~control~~ bonds under this section.

(4) ENERGY UTILITY DUTIES. (a) An energy utility shall place the proceeds of any environmental trust bonds issued pursuant to a financing order in a separate account and may use the proceeds only for paying environmental control costs and financing costs. Bond proceeds from this ~~fund~~ account may only be used for the costs of environmental control activities which have been applied for and have been approved as required under Chapter 196 and for costs incurred which the Commission finds to be prudent, reasonable and appropriate. If the Commission finds that the bond proceeds have been used or the costs have been incurred imprudently or unreasonably, the Commission may adjust or reduce the energy utility's revenue requirement in connection with charges other than environmental control charges so that the energy utility's customers do not pay such costs.

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

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

(5) ENVIRONMENTAL CONTROL PROPERTY. (a) *In general.* 1. Environmental control property that is specified in a financing order shall constitute a present property right notwithstanding that the imposition and collection of environmental control charges depend on the energy utility to which the order is issued performing its servicing functions relating to the collection of environmental control charges and on future energy consumption. Such property is considered to exist whether or not the revenues or proceeds arising from the property have accrued and whether or not the value of the property is dependent on the receipt of service by customers of an energy utility.

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

3. Environmental control property specified in a financing order issued to an energy utility may be transferred, sold, conveyed, or assigned to any person, ~~including an~~ excluding an affiliate of the ~~public~~ energy utility except an affiliate of the energy utility created for the limited purpose of facilitating or administering environmental control property or environmental ~~control~~ trust bonds under the financing order, and may be pledged to secure environmental trust bonds issued pursuant to the order. Each such transfer, sale,

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

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

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

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

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

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

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

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

property.

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

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

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

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

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

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

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

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

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

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

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

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

(7) ENVIRONMENTAL TRUST BONDS AS LEGAL INVESTMENTS. Any of the following may legally invest any sinking funds, moneys, or other funds belonging to them or

under their control in environmental trust bonds:

(a) The state, the investment board, public officers ~~except Public Service Commissioners~~, municipal corporations, political subdivisions, and public bodies.

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

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

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

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

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

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

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

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

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

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

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

(a) Any obligation of a public service corporation which is not a public utility as defined in the federal ~~power act~~ Power Act, falling due one year or less after its

date and bearing date not later than the day of sale, ~~or (b) any.~~

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

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

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

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

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

(END)

Kunkel, Mark

From: Stuart, Todd
Sent: Wednesday, February 18, 2004 11:12 AM
To: Stolzenberg, John; Lovell, David; Kunkel, Mark
Subject: FW: Environmental Trust Financing legislation

Here's the latest. I still need to review to see if it meets what Cowles & Jensen are looking for.
-----Original Message-----

From: Haubrich.Joel [mailto:Joel.Haubrich@we-energies.com]
Sent: Wednesday, February 18, 2004 10:54 AM
To: Brett Healy (E-mail); Todd Stuart (E-mail); dan.ebert@psc.state.wi.us
Cc: 'Lee Cullen'; Haubrich.Joel; mmay@boardmanlawfirm.com; Hanson.Heather; Schubilske.Jim; Salustro.Larry; Mulroy.Molly; Draba.Roman; rthilly@wppisys.org; edgar1@centurytel.net
Subject: Environmental Trust Financing legislation

Dear Brett and Todd:

On behalf of the folks at We Energies I am forwarding you what we think is a final external draft of the ETF legislation. We have worked with the the PSCW,CFIC and the other timidities to make changes that alleviate the previously expressed concerns. We've also vetted the draft with out bond counsel and they too have signed off.

I hope you will find these changes constructive.

Thanks again for your patience. We are available to go over the changes.

Joel M. Haubrich
We Energies - Government Affairs
231 W. Michigan St.
P.O. Box 2046
Milwaukee, WI 53203
414-221-4102 (MKE office)
414-221-3814 (MKE fax)
608-283-3004 (MDSN office)
608-283-0973 (MDSN fax)
joel.haubrich@we-energies.com

2003 BILL

We's write-up of changes we discussed based on 4030/3
2/16/04 7:00 pm 2/17/04 9:30 am

Further Changes added by PSCW @ 4:00 pm
new changes are highlighted and are single underlined
more non-bypassable change PSCW changes added 9:00
am of 2/18/04

Final version – pending approval on non-bypassable

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

Analysis by the Legislative Reference Bureau

This bill allows certain public utilities, with the approval of the Public Service Commission (PSC), to finance the cost of certain environmental control activities with the proceeds of "environmental trust bonds," which the bill defines as bonds that are secured by charges paid by a public utility's customers. The bill applies to natural gas, steam and electric utilities, which the bill defines as "energy utilities." The bonds may be issued by an energy utility, or an assignee of the energy utility, including an affiliate that is created with the limited purpose of operating the trust.

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An energy utility that applies to the PSC for an order approving the issuance of the bonds must describe the environmental control activities that the energy utility proposes to undertake and the reasons for undertaking the activities. An "environmental control activity" is defined as construction, installation, or otherwise putting in place equipment for controlling environmental pollution in connection with an energy utility plant that has previously been used to provide service to customers. In addition, the energy utility must estimate the costs of proposed activities and indicate whether the energy utility proposes to finance all or only a specified portion of such costs with the bonds. Also, the energy utility must estimate the financing costs of issuing the proposed bonds.

No later than ~~90~~120 days after the PSC receives an application, the PSC must issue an order that rejects or approves the application. The PSC must approve the application if the order will result in lower costs to customers than would alternative methods of financing environmental control activities, the order is otherwise consistent with the public interest, and the order is prudent, reasonable, and appropriate. The bill refers to an order that approves an application as a "financing order." If the PSC issues a financing order, the order must specify the amount of environmental control and financing costs that the energy utility may recover through charges that customers in the energy utility's service territory must pay over a period specified in the order. The bill refers to such charges as "environmental control charges." The PSC may exclude a portion of environmental control costs from recovery as environmental control charges only if the energy utility indicates in the application that it does not propose to finance that portion with bonds. In addition, the order must specify the "environmental control property" that is created and that may be used to secure the bonds. "Environmental control property" is defined as the right, specified in the order, to impose, collect, or receive the environmental control charges. "Environmental control property" is also defined to include all revenues and proceeds arising from such right.

The bill also requires the PSC, without holding a hearing, to adjust the environmental control charges that are approved in a financing order. The order itself must include a formula that the PSC must apply for making adjustments to environmental control charges at apply the formula least annually within 45 days of the anniversary date of the issuance of the bonds. The purpose of the formula is to make any adjustments to the charges that are necessary based on any overcollection or undercollection of the charges or are necessary to ensure the energy utility's or an assignee's timely recover of the environmental control and financing costs. The bill also allows the PSC to issue a subsequent financing order for retiring or refunding the bonds issued pursuant to the original financing order. The PSC may issue a subsequent order if the financing costs of bonds issued pursuant to the subsequent order are lower than the financing costs of the bonds issued pursuant to the original order. The PSC may also issue a subsequent order if retiring or refinancing the bonds issued pursuant to the original order is otherwise in the public interest.

The bill prohibits the PSC from revoking a financing order, except for changes made by a subsequent financing order described above. In addition, the bill provides that a financing order remains in effect until environmental trust bonds issued pursuant to the

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order have been paid in full and the financing costs of the bonds have been recovered in full. Also, the bill provides that a financing order issued to an energy utility remains in effect notwithstanding the bankruptcy of the energy utility.

The bill also creates the following limits on the PSC's jurisdiction over an energy utility that is issued a financing order: 1) the PSC may not consider environmental trust bonds to be the debt of the energy utility; 2) the PSC may not consider the environmental control charges paid under the order to be the revenue of the energy utility; and 3) the PSC may not consider the environmental control or financing costs specified in the order to be the costs of the energy utility. In addition, the bill prohibits the PSC from determining that any action taken by an energy utility that is consistent with the order is unjust or unreasonable.

In addition, the bill does all of the following:

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

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

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

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

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

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

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

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

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

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

2 **196.027 Environmental trust financing. (1) DEFINITIONS.** In this section:

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

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

9 (c) "Energy utility" means a public utility engaged in the transmission,
10 delivery, or furnishing of natural gas by means of pipes or mains, ~~or of heat, light, or~~
11 power
12 ~~or any successor to such a public utility.~~

13 (d) "Environmental control activity" means any of the following:

141. ~~1. The construction, installation, or otherwise putting into place environmental~~
15 ~~control equipment in connection with an energy utility plant that has been used to provide~~
16 ~~service to customers prior to the effective date of this section. before beginning the~~
17 ~~construction, installation, or otherwise putting into place of environmental control~~
18 ~~equipment.~~

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

21 1. (e) "Environmental control charge" means a charge paid by customers of
22 an energy utility or its successors for the energy utility to recover environmental control
23 costs and
24 financing costs.

25 (f) "Environmental control cost" means capital cost, including capitalized cost
26 relating to regulatory assets, incurred or expected to be incurred by an energy utility
27 in undertaking an environmental control activity, costs of retiring or refunding the energy
28 utility's existing debt and equity securities in connection with the issuance of
29 environmental trust bonds, to the extent such securities were issued for the purpose of

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1 financing environmental control costs, and, with respect to environmental control activity
2 described in par. (d)(2), includes the unrecovered value of property that is retired
3 including any demolition or similar costs that exceed the salvage value of the property.

4 “Environmental control cost” does not include any monetary penalty, fine, or forfeiture
5 assessed against an energy utility by a government agency or court under a federal or state
6 environmental statute, rule, or regulation.

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

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

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

15 2. All revenues and proceeds arising from the right and interests specified in
16 subd. 1.

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

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

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

28 1. Debt service, including principal, interest and redemption premium, that is
29 payable on environmental trust

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1 bonds.

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

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

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

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

12 **(2) FINANCING ORDERS. (a) Applications.** An energy utility ~~in its sole discretion~~
13 may apply to the commission for a financing order. In addition to any other
14 information required by the commission, an energy utility shall do all of the following
15 in an application:

16 1. Describe the environmental control activities that the energy utility
17 proposes to undertake, and which utility service (electric gas or steam) is associated with
18 the activities and the reasons for undertaking the activities.

19 2. Estimate the environmental control costs of the activities described under
20 subd. 1.

21 3. Indicate whether the energy utility proposes to finance all or ~~only~~ a portion
22 of the costs estimated under subd. 2. with environmental trust bonds. If the energy
23 utility proposes to finance a portion of the costs, the energy utility shall identify that
24 portion in the application.

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

27 5. Estimate the environmental control charges necessary based on the respective
28 energy utility service involved to recover the
29 environmental control costs and financing costs estimated in the application.

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1 6. Estimate the cost savings to customers from financing the environmental
2 control activities under this section relative to alternate financing methods.

3 (b) *Commission powers and duties.* 1. No later than ~~90~~120 days after receiving an
4 application under par. (a), and after a hearing, the commission shall issue a financing order
5 or an order rejecting the application. The commission shall may issue a financing order if
6 the commission finds that the:

7 a. The order will result in lower overall costs to customers than would
8 alternative methods of financing environmental control activities,

9 b. The expected structuring and pricing of the environmental trust bonds will
10 result in the lowest environmental control trust charge consistent with market conditions
11 and the terms of the financing order; and

12 c. The Order is otherwise consistent with the public interest, and is prudent,
13 reasonable, and appropriate. The Commission may require appropriate conditions in the
14 order that are not otherwise inconsistent with the other provisions of this section.

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

17 a. Except as provided in subd. 2. c., specify the amount of environmental control
18 costs and financing costs that may be recovered through environmental control
19 charges and the period over which such costs may be recovered.

20 b. For the period specified in subd. 2. a. require that, as long as any customer takes
21 distribution service from the energy utility or its successors, the customer shall pay
22 environmental control charges to the energy utility or its assignees regardless of whether
23 the customer obtains other service from a different energy utility or other energy supplier.
24 ~~For the period specified in subd. 2. a. require that, as long as any customer taking service~~
25 ~~from the energy utility, the customer shall pay the environmental control charge to the~~
26 ~~utility or its assignees regardless of whether the customer also obtains a utility service~~
27 ~~from a different energy company or another energy supplier. resides in the service territory~~
28 ~~of the energy utility as that territory exists on the date the financing order is issued, the~~
29 ~~customer shall pay environmental control charges to the energy utility or its assignees~~
30 ~~regardless of whether the customer obtains service from a different energy utility or other~~

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1 ~~energy supplier, including a municipality.~~

2 c. Include a formula for making any adjustments in the environmental control
3 charges that customers are required to pay under the order and making any adjustments
4 that are necessary to correct for any overcollection or undercollection of the charges or to
5 otherwise ensure the energy utility's or assignee's timely recovery of environmental
6 control costs and financing costs. ~~The order shall require the commission to apply the~~
7 ~~formula at least annually within 45 days of the anniversary date that environmental trust~~
8 ~~bonds are issued pursuant to the order and to approve any adjustments that result from~~
9 ~~application of the formula within 45 days of the anniversary date that environmental trust~~
10 ~~bonds are issued. The commission shall apply a formula and make any adjustments under~~
11 ~~this subd. 2. c. without a hearing after permitting a period not to exceed 30 days for~~
12 ~~comment by interested persons limited to the appropriate amount of any overcollection or~~
13 ~~undercollection and the appropriate adjustment.~~

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

16 e. Determine whether it is appropriate for the environmental trust bonds to include
17 a provision permitting the retirement of the bonds prior to their termination date.

18 (f) At least annually, apply the formula in the financing order and make any
19 adjustments to the environmental control charges, based on reasonable estimates of
20 demand and other mathematical factors, necessary to satisfy the purposes of subsection 2
21 (c) and (f). The adjustment shall be made within 45 days of the anniversary date on which
22 environmental trust bonds are issued, without hearing but after permitting a period not to
23 exceed 30 days for comment by interested parties limited to the appropriate amount of any
24 overcollection or undercollection and the appropriate adjustment.

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

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

4 (c) *Subsequent orders.* The commission may initiate a proceeding and issue a
5 subsequent financing order that provides for retiring or refunding environmental trust
6 bonds issued pursuant to the original financing order if permitted under the terms of the
7 environmental trust bonds and if the commission finds that environmental trust bonds
8 issued pursuant to the subsequent financing order satisfy the criteria in subd. (2)(b)1,
9 provideds that the subsequent financing order may only permit the retirement and
10 refunding of the Environmental Control charge environmental trust bonds subject to the
11 terms of the original indenture have lower financing costs than the environmental trust
12 bonds issued pursuant to the original financing order or that retiring or refunding the
13 environmental trust bonds issued pursuant to the original financing order is otherwise in
14 the public interest.

15 (d) *Judicial review.* A financing order or an order rejecting an application
16 under par. (b) 1. is reviewable by the circuit court for Dane County under ch. 227,
17 except that the court shall proceed to hear and determine the action as expeditiously
18 as ~~possible~~ practicable and give the action precedence over other matters not accorded
19 similar precedence by law.

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

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

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

29 **(3) EXCEPTIONS TO COMMISSION JURISDICTION.** (a.) If the commission issues a

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1 financing order to an energy utility, the commission may not, in exercising its powers
2 and carrying out its duties ~~under this chapter, including any power or duty~~ regarding
3 rate making, consider the environmental trust bonds issued pursuant to the order
4 to be the debt of the energy utility, the environmental control charges paid under the
5 order to be the revenue of the energy utility, or the environmental control costs or
6 financing costs specified in the order to be the costs of the energy utility, nor may the
7 commission determine that any action taken by an energy utility that is consistent
8 with the order is unjust or unreasonable. Nothing in this section limits or alters the
9 Commission's authority to adjust or reduce an energy utility's revenue requirement
10 pursuant to subd. 4.

11 b. Except as provided in subd.2.c. with respect to refinancing, tThe commission
12 shall not require or otherwise order any energy utility that has not yet applied to the
13 Commission under subd.2.a. to finance any project, addition, plant, facility, extension,
14 capital improvement, environmental control equipment or any other expenditure utilizing
15 environmental trust ~~control~~ bonds under this section.

16 (4) ENERGY UTILITY DUTIES. (a) An energy utility shall place the proceeds of any
17 environmental trust bonds issued pursuant to a financing order in a separate
18 account and may use the proceeds only for paying environmental control costs and
19 financing costs. Bond proceeds from this fund account may only be used for the costs of
20 environmental control activities which have been applied for and have been approved as
21 required under Chapter 196 and for costs incurred which the Commission finds to be
22 prudent, reasonable and appropriate. If the Commission finds that the bond proceeds have
23 been used or the costs have been incurred imprudently or unreasonably, the Commission
24 may adjust or reduce the energy utility's revenue requirement in connection with charges
25 other than environmental control charges so that the energy utility's customers do not pay
26 such costs.

27 (b) An energy utility shall annually provide to its customers a concise
28 explanation of the environmental control charges approved in a financing order
29 issued to the energy utility. The explanation may be made by bill inserts, Web site

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1 information, or other appropriate means.

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

5 (5) ENVIRONMENTAL CONTROL PROPERTY. (a) *In general.* 1. Environmental
6 control property that is specified in a financing order shall constitute a present
7 property right notwithstanding that the imposition and collection of environmental
8 control charges depend on the energy utility to which the order is issued performing
9 its servicing functions relating to the collection of environmental control charges and
10 on future energy consumption. Such property is considered to exist whether or not
11 the revenues or proceeds arising from the property have accrued and whether or not
12 the value of the property is dependent on the receipt of service by customers of an
13 energy utility.

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

17 3. Environmental control property specified in a financing order issued to an
18 energy utility may be transferred, sold, conveyed, or assigned to any person, ~~including an~~
19 excluding an affiliate of the public energy utility except an affiliate of the energy utility
20 created for the limited purpose of facilitating or administering environmental control
21 property or environmental control trust bonds under the financing order, and may be
22 pledged to secure environmental trust bonds issued pursuant to the order. Each such
23 transfer, sale, conveyance, assignment, or pledge by an energy utility or affiliate of an
24 energy utility is considered to be a transaction in the ordinary course of business.

25 4. If an energy utility defaults on any required payment of revenues arising
26 from environmental control property specified in a financing order, ~~the commission~~
27 ~~or a court~~, upon application by an interested party, and without limiting any other
28 remedies available to the applying party, shall order the sequestration and payment
29 of the revenues. Any such order shall remain in full force and effect notwithstanding

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1 any bankruptcy, reorganization, or other insolvency proceedings with respect to the
2 energy utility.

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

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

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

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

24 2. A security interest is created, valid, binding, and perfected at the time a
25 security agreement is made and attaches without any physical delivery of collateral
26 or other act, and the lien of such security interest shall be valid, binding, and
27 perfected against all parties having claims of any kind in tort, contract, or otherwise
28 against the person granting the security interest, regardless of whether such parties
29 have notice of the lien. The filing or recording of a ~~financing~~ financial statement or

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1 instrument in which such a security interest is created is not required.

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

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

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

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

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

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

25 a. Commingling of amounts arising with respect to the environmental control
26 property with other amounts.

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

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

7 **(6) ENVIRONMENTAL TRUST BONDS NOT PUBLIC DEBT.** The state is not liable on

8 environmental trust bonds and the bonds are not a debt of the state. An issue of

9 environmental trust bonds does not, directly or indirectly or contingently, obligate

10 the state or a political subdivision of the state to levy any tax or make any

11 appropriation for payment of the bonds.

12 **(7) ENVIRONMENTAL TRUST BONDS AS LEGAL INVESTMENTS.** Any of the following

13 may legally invest any sinking funds, moneys, or other funds belonging to them or

14 under their control in environmental trust bonds:

15 (a) The state, the investment board, public officers except Public Service

16 Commissioners, municipal corporations, political subdivisions, and public bodies.

17 (b) Banks and bankers, savings and loan associations, credit unions, trust

18 companies, savings banks and institutions, investment companies, insurance

19 companies, insurance associations, and other persons carrying on a banking or

20 insurance business.

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

22 **(8) STATE PLEDGE.** (a) In this subsection, "bondholder" means a person who

23 holds an environmental trust bond.

24 (b) The state pledges to and agrees with bondholders that the state will not do

25 any of the following:

26 1. Take or permit any action that impairs the value of environmental control

27 property.

28 2. Except as allowed under this section, reduce, alter, or impair environmental

29 control charges that are imposed, collected, and remitted for the benefit of the

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

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

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

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

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

18 201.01 (3) (intro.) "Securities" means capital stock and evidences of
19 indebtedness of a public service corporation, ~~not including, however, (a) any~~ but do
20 not include any of the following:

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

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

28 (c) Any obligation issued to the United States of America in connection with
29 loans for rural telecommunications facilities made pursuant to the rural

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1 ~~electrification act~~ Rural Electrification Act of 1936, as amended, ~~or (d) any.~~

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

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

5 201.01 (3) (e) Any environmental trust bonds issued pursuant to a financing
6 order of the commission under s. 196.027 (2).

7 (END)

8

9

Kunkel, Mark

From: Stuart, Todd
Sent: Thursday, February 19, 2004 8:41 AM
To: Kunkel, Mark
Subject: FW: Change to AB 843; tax considerations

Mark, could you please add this to the list of changes for the latest version of the sub to SB 463 and AB 843 (see below for details):

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

-----Original Message-----

From: Kreye, Joseph
Sent: Wednesday, February 18, 2004 4:40 PM
To: Stuart, Todd; Healy, Brett
Subject: FW: Change to AB 843; tax considerations

Todd & Brett;

I spoke to Joel Haubrich about the tax provision (s. 73.13) created in AB 843. Please see the language below which I recommend to clarify the intent.

Joe

Joseph T. Kreye
Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

-----Original Message-----

From: Lovell, David
Sent: Wednesday, February 18, 2004 4:35 PM
To: Kreye, Joseph
Cc: Russell, Faith; Renner, Darin; Stolzenberg, John
Subject: RE: Change to AB 843; tax considerations

Joe,

Have you shared this with Todd Stuart & Brett Healy? they will need to know.

I am guessing that it was Joel Haubrich you spoke to, WE Energy's Madison lobbyist.

David

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

-----Original Message-----

From: Kreye, Joseph
Sent: Wednesday, February 18, 2004 4:31 PM
To: Lovell, David; Russell, Faith; Renner, Darin
Subject: Change to AB 843; tax considerations

I just spoke with one of the people involved with the original drafting of AB 843--although now I can't remember his name. He is amendable to changing section 1 of the bill to clarify the intent. This is what I would recommend:

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

Joe

Joseph T. Kreye
Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

Tomorrow
2/20
NOON

ASA to

2003 ASSEMBLY BILL 843

S 0366/1

R M NOT
AMN

February 16, 2004 - Introduced by Representatives JENSEN, GOTTLIEB, FRISKE, NISCHKE, HONADEL, RHOADES, STONE, SERATTI, MUSSER, VRAKAS, M. LEHMAN, GROTHMAN, TAYLOR, MCCORMICK, HAHN, JESKEWITZ, JOHNSRUD, SUDER, HUEBSCH, OLSEN, KAUFERT and GUNDERSON, cosponsored by Senators COWLES, PLALE, MOORE, M. MEYER, KANAVAS, WIRCH and ROESSLER. Referred to Committee on Energy and Utilities.

Regan

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

Analysis by the Legislative Reference Bureau

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

An energy utility that applies to the PSC for an order approving the issuance of the bonds must describe the environmental control activities that the energy utility proposes to undertake and the reasons for undertaking the activities. An "environmental control activity" is defined as construction, installation, or otherwise putting in place equipment for controlling environmental pollution in connection with an energy utility plant that has previously been used to provide service to customers. In addition, the energy utility must estimate the costs of proposed activities and indicate whether the energy utility proposes to finance all or only a specified portion of such costs with the bonds. Also, the energy utility must estimate the financing costs of issuing the proposed bonds.

No later than 90 days after the PSC receives an application, the PSC must issue an order that rejects or approves the application. The PSC must approve the

ASSEMBLY BILL 843

application if the order will result in lower costs to customers than would alternative methods of financing environmental control activities, the order is otherwise consistent with the public interest, and the order is prudent, reasonable, and appropriate. The bill refers to an order that approves an application as a "financing order." If the PSC issues a financing order, the order must specify the amount of environmental control and financing costs that the energy utility may recover through charges that customers in the energy utility's service territory must pay over a period specified in the order. The bill refers to such charges as "environmental control charges." The PSC may exclude a portion of environmental control costs from recovery as environmental control charges only if the energy utility indicates in the application that it does not propose to finance that portion with bonds. In addition, the order must specify the "environmental control property" that is created and that may be used to secure the bonds. "Environmental control property" is defined as the right, specified in the order, to impose, collect, or receive the environmental control charges. "Environmental control property" is also defined to include all revenues and proceeds arising from such right.

The bill also requires the PSC, without holding a hearing, to adjust the environmental control charges that are approved in a financing order. The order itself must include a formula that the PSC must apply for making adjustments to environmental control charges at least annually within 45 days of the anniversary date of the issuance of the bonds. The purpose of the formula is to make any adjustments to the charges that are necessary based on any overcollection or undercollection of the charges or are necessary to ensure the energy utility's or an assignee's timely recover of the environmental control and financing costs. The bill also allows the PSC to issue a subsequent financing order for retiring or refunding the bonds issued pursuant to the original financing order. The PSC may issue a subsequent order if the financing costs of bonds issued pursuant to the subsequent order are lower than the financing costs of the bonds issued pursuant to the original order. The PSC may also issue a subsequent order if retiring or refinancing the bonds issued pursuant to the original order is otherwise in the public interest.

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

In addition, the bill does all of the following:

ASSEMBLY BILL 843

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

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

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

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

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

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

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

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

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

2 **73.13 Environmental trust bonds.** The department of revenue shall not

3 consider the acquisition, ownership, or disposition of any direct interest in an

4 environmental trust bond, as defined in s. 196.027 (1) (j), for the purpose of

5 determining whether a person is subject to any tax imposed by this state or by a local

6 governmental unit, as defined in s. 16.97 (7).

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

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

9 (a) "Ancillary agreement" means any bond insurance policy or other financial

10 arrangement entered into in connection with the issuance of environmental trust

11 bonds.

has nexus with this state
for tax purposes so

ASSEMBLY BILL 843

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

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

(d) "Environmental control activity" means the construction, installation, or otherwise putting into place of environmental control equipment in connection with an energy utility plant that has been used to provide service to customers before beginning the construction, installation, or otherwise putting into place environmental control equipment.

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

(f) "Environmental control cost" means capital cost, including capitalized cost relating to regulatory assets, incurred or expected to be incurred by an energy utility in undertaking an environmental control activity. "Environmental control cost" does not include any monetary penalty, fine, or forfeiture assessed against an energy utility by a government agency or court under a federal or state environmental statute, rule, or regulation.

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

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

or of

any of the following

INSEAT 4-9

INSEAT 4-11

INSEAT 4-17

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ASSEMBLY BILL 843

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

4 2. All revenues and proceeds arising from the right and interests specified in
5 subd. 1.

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

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

16 (k) "Financing cost" means any of the following:

17 1. ~~Debt service, including interest,~~ that is payable on environmental trust
18 bonds. *are*

and redemption premiums

19 2. A payment required under an ancillary agreement, including any amount
20 required to fund a reserve account. *reasonable*

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

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

INSECT 5-20 ↓

ASSEMBLY BILL 843

1

(k) "Financing order" means an order ~~issued by the commission~~ under sub. (2)

2

that allows for the issuance of environmental trust bonds, the collection of environmental control charges, and the creation of environmental control property.

3

4

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

7

8

1. Describe the environmental control activities that the energy utility proposes to undertake ^{describe} and the reasons for undertaking the activities.

9

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

11

12

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

13

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

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

19

20

(b) Commission powers and duties. 1. No later than ~~30~~ days after receiving an application under par. (a), the commission shall issue a financing order or an order rejecting the application. The commission ~~may~~ ^{may} issue a financing order if the commission finds that the order will result in lower ^{overall} costs to customers than would alternative methods of financing environmental control activities, is otherwise consistent with the public interest, and is prudent, reasonable, and appropriate.

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INSERT 6-9

KEEP INSERT 6-19

INSERT 6-24

INSERT 6-20

120

after a hearing

ASSEMBLY BILL 843

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

3 a. Except as provided in subd. 2. c. ^{s and 40} specify the amount of environmental control
4 costs and financing costs that may be recovered through environmental control
5 charges and the period over which such costs may be recovered.

6 b. For the period specified in subd. 2. a. require that, as long as any customer
7 ~~resides in the service territory of the energy utility as that territory exists on the date~~
8 ~~the financing order is issued,~~ the customer shall pay environmental control charges

9 to the energy utility or its assignees regardless of whether the customer obtains
10 ^{other} service from a different energy utility or other energy supplier, ~~including a~~
11 ~~municipality.~~

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

The order shall require the
17 commission to apply the formula at least annually within 45 days of the anniversary
18 date that environmental trust bonds are issued pursuant to the order and to approve
19 any adjustments that result from application of the formula. The commission shall
20 apply a formula and make any adjustments under this subd. 2. c. without a hearing.

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

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

INSERT
7-6

INSERT 7-22

ASSEMBLY BILL 843

(INSERT 8-2 ✓)

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

3 ⁽³⁾ Except as provided in subd. ^{and 40} 2. c. a financing order is irrevocable and the
4 commission may not reduce, impair, or otherwise adjust environmental control
5 charges approved in the order.

commence a proceeding and

6 (c) *Subsequent orders.* The commission may issue a subsequent financing order
7 that provides for retiring or refunding environmental trust bonds issued pursuant
8 to the original financing order if ^(INSERT 8-8) ~~the commission finds that environmental trust~~

9 ~~bonds issued pursuant to the subsequent financing order have lower financing costs~~
10 ~~than the environmental trust bonds issued pursuant to the original financing order~~
11 ~~or that retiring or refunding the environmental trust bonds issued pursuant to the~~
12 ~~original financing order is otherwise in the public interest.~~

13 (d) *Judicial review.* A financing order or an order rejecting an application
14 under par. (b) 1. is reviewable by the circuit court for Dane County under ch. 227,
15 except that the court shall proceed to hear and determine the action as expeditiously
16 as ~~possible~~ and give the action precedence over other matters not accorded similar
17 precedence by law. *practicable*

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

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

23 3. An application by an energy utility for a financing order and commission
24 approval of a financing order are in addition to and do not replace any other

or supersede

ASSEMBLY BILL 843

~~approval~~ ^{review} for approval under this chapter that may be required ^{by the commission} for environmental control activities. ^{or allowed}

(3) EXCEPTIONS TO COMMISSION JURISDICTION. ^(a) If the commission issues a financing order to an energy utility, the commission may not, in exercising its powers and carrying out its duties ~~under this chapter, including any power or duty~~ regarding rate making, consider the environmental trust bonds issued pursuant to the order to be the debt of the energy utility, the environmental control charges paid under the order to be the revenue of the energy utility, or the environmental control costs or financing costs specified in the order to be the costs of the energy utility, nor may the commission determine that any action taken by an energy utility that is consistent with the order is unjust or unreasonable. ^{INSERT 9-11 ✓}

(4) ENERGY UTILITY DUTIES. (a) An energy utility shall place the proceeds of any environmental trust bonds issued pursuant to a financing order in a separate account ^{An energy utility} and may use the proceeds ^{only} for paying environmental control costs and financing costs. ^{INSERT 9-15 ✓}

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

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

(5) ENVIRONMENTAL CONTROL PROPERTY. (a) *In general.* 1. Environmental control property that is specified in a financing order shall constitute a present property right notwithstanding that the imposition and collection of environmental

ASSEMBLY BILL 843

1 control charges depend on the energy utility to which the order is issued performing
2 its servicing functions relating to the collection of environmental control charges and
3 on future energy consumption. Such property is considered to exist whether or not
4 the revenues or proceeds arising from the property have accrued and whether or not
5 the value of the property is dependent on the receipt of service by customers of an
6 energy utility.

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

10 3. Environmental control property specified in a financing order issued to an
11 energy utility may be transferred, sold, conveyed, or assigned to any person,
12 including an affiliate of the energy utility ~~and~~ may be pledged to secure
13 environmental trust bonds issued pursuant to the order. Each such transfer, sale,
14 conveyance, assignment, or pledge by an energy utility or affiliate of an energy utility
15 is considered to be a transaction in the ordinary course of business.

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

23 5. The interest of an assignee or pledgee in environmental control property
24 specified in a financing order issued to an energy utility, and in the revenue and
25 collections arising from that property, are not subject to setoff, counterclaim,

INSERT 10-12 ✓

ASSEMBLY BILL 843

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11-6

1 surcharge, or defense by the energy utility or any other person or in connection with
2 the bankruptcy of the energy utility or any other entity.

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

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

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

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

ASSEMBLY BILL 843

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

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

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

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

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

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

24 a. Commingling of amounts arising with respect to the environmental control
25 property with other amounts.

ASSEMBLY BILL 843

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

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

5 d. Any indemnifications, obligations, or repurchase rights made or provided by
6 the seller.

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

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

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

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

18 (a) The state, the investment board, ~~public officers,~~ municipal corporations,
19 political subdivisions, ~~and~~ public bodies. *and public officers except*

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

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

*members
for ~~the~~ of the public
service
commission*

ASSEMBLY BILL 843

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

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

5 1. Take or permit any action that impairs the value of environmental control
6 property.

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

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

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

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

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

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0366/1ins
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INSERT 4-9:

, before the effective date of this subdivision [revisor inserts date],

INSERT 4-11:

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

INSERT 4-17:

and, with respect to an environmental control activity described in par. (d) 2., includes the unrecovered value of property that is retired, including any demolition or similar cost that exceeds the salvage value of the property

INSERT 5-20:

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

INSERT 6-9:

, indicate whether the energy utility's electric, natural gas, or steam service is associated with the activities,

INSERT 6-19:

and indicate whether the environmental control charges are proposed for the energy utility's electric, natural gas, or steam service

INSERT 6-20:

1 comments limited to the appropriate amount of any overcollection or undercollection
2 of environmental control charges and the appropriate amount of an adjustment.

3 **INSERT 8-8:**

4 the commission included a provision described in par. (b) 2. e. ✓ in the original
5 financing order and if the commission finds that the subsequent financing order
6 satisfies all of the criteria specified in par. (b) 1. ^{STET} a., b., and c. ✓

7 **INSERT 9-11:**

8 Nothing in this paragraph ✓ affects the authority of the commission to adjust or reduce
9 an energy utility's revenue requirements under sub. (4) (a). ✓

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

14 **INSERT 9-15:**

15 that are prudent, reasonable, and appropriate, and only if the energy utility has
16 applied for and obtained all approvals from the commission under this chapter that
17 are required for the environmental control activities for which the environmental
18 control costs are incurred or expected to be incurred. If the commission finds that
19 the proceeds have been used for environmental control costs or financing costs that
20 are not prudent, reasonable, or appropriate, the commission may adjust or reduce
21 the energy utility's revenue requirements in connection with charges other than
22 environmental control charges for the purpose of ensuring that the energy utility's
23 customers do not pay for such costs. ✓

24 **INSERT 10-12:**

1 created for the limited purpose of facilitating or administering environmental
2 control property or environmental control trust bonds under the financing order and
3 not including any other affiliate of the energy utility. Environmental control
4 property

5 **INSERT 11-6:**

6 , and have the same rights under a financing order as,

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0366/1dn
MDK:l:...

Wlj

Rep. Jensen:

This substitute amendment makes the changes requested in Brett Healy's email to me dated February 18, as well as a change to s. 73.13. Please note the following about the substitute amendment:

1. The language regarding costs of retiring certain securities is included in the definition of "financing cost" which I think is more logical than including it in the definition of "environmental control cost".
2. I did not include "principal" in the definition of "financing cost" because I think it is already covered under "environmental control cost". However, perhaps I don't understand your intent on this issue. Also, I eliminated the reference to "debt service" in the definition of "financing cost" because I think "financing cost" should not refer to principal. (An accounting glossary that I consulted defines "debt service" as principal and interest.)
3. The proposed language regarding other appropriate conditions is included in proposed s. 196.027 (2) (b) 2. f.
4. Note that I added a reference to "subd. 4." in proposed s. 196.027 (2) (b) 2. a. and 5.
5. For proposed s. 196.027 (2) (c), the instructions provide that a subsequent financing order "may only permit the retirement and refunding of the environmental trust bonds subject to the terms of the original indenture". I did not include this language because I don't know what it means. "Indenture" is not otherwise used in the bill or substitute amendment. Can you suggest language that is consistent with the rest of the bill or substitute amendment, or, for my benefit, can you be more specific about your intent?
6. Proposed s. 196.027 (3) (b) does not include your "except as provided" language because I do not think that the exception is logically necessary.
7. Are my changes to proposed s. 196.027 (4) (a) consistent with your intent?
8. The last sentence of proposed s. 196.027 (5) (b) 2. refers to a "financial statement". Is that correct, or should it refer to a "financing statement"?
9. Should the definition of "energy utility" be revised to specifically refer to steam?

Mark D. Kunkel
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0366/1dn
MDK:wlj:rs

February 20, 2004

Rep. Jensen:

This substitute amendment makes the changes requested in Brett Healy's e-mail to me dated February 18, as well as a change to s. 73.13. Please note the following about the substitute amendment:

1. The language regarding costs of retiring certain securities is included in the definition of "financing cost," which I think is more logical than including it in the definition of "environmental control cost."
2. I did not include "principal" in the definition of "financing cost" because I think it is already covered under "environmental control cost." However, perhaps I don't understand your intent on this issue. Also, I eliminated the reference to "debt service" in the definition of "financing cost," because I think "financing cost" should not refer to principal. (An accounting glossary that I consulted defines "debt service" as principal and interest.)
3. The proposed language regarding other appropriate conditions is included in proposed s. 196.027 (2) (b) 2. f.
4. Note that I added a reference to "subd. 4." in proposed s. 196.027 (2) (b) 2. a. and 5.
5. For proposed s. 196.027 (2) (c), the instructions provide that a subsequent financing order "may only permit the retirement and refunding of the environmental trust bonds subject to the terms of the original indenture." I did not include this language because I don't know what it means. "Indenture" is not otherwise used in the bill or substitute amendment. Can you suggest language that is consistent with the rest of the bill or substitute amendment, or, for my benefit, can you be more specific about your intent?
6. Proposed s. 196.027 (3) (b) does not include your "except as provided" language because I do not think that the exception is logically necessary.
7. Are my changes to proposed s. 196.027 (4) (a) consistent with your intent?
8. The last sentence of proposed s. 196.027 (5) (b) 2. refers to a "financial statement." Is that correct, or should it refer to a "financing statement"?
9. Should the definition of "energy utility" be revised to specifically refer to steam?

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