



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 11/17/2004 (Per: RAC)



☞ The 2003 drafting file for LRB 03-4353

has been transferred to the drafting file for

2005 LRB 05-0561

Part 01 of 03

☞ This cover sheet, the final request sheet, and the final version of the 2003 draft were copied on yellow paper, and returned to the original 2003 drafting file.

☞ The attached 2003 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2003 DRAFTING REQUEST

Bill

Received: **02/24/2004**

Received By: **rchampag**

Wanted: **Soon**

Identical to LRB:

For: **Administration**

By/Representing: **Frank Hoadley**

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

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Bonding - state**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Debt agreements and ancillary arrangements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	rchampag 02/25/2004	kgilfoy 02/25/2004	jfrantze 02/26/2004	_____	lemery 02/26/2004		State
/2	rchampag 02/26/2004	jdyer 02/26/2004	jfrantze 02/26/2004	_____	lnorthro 02/26/2004		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	rchampag 04/26/2004	csicilia 04/27/2004	pgreensl 04/27/2004	_____	_____	Inorthro 04/27/2004	

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **02/24/2004**

Received By: **rchampag**

Wanted: **Soon**

Identical to LRB:

For: **Administration**

By/Representing: **Frank Hoadley**

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

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Bonding - state**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Debt agreements and ancillary arrangements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							State
/1	rchampag 02/25/2004	kgilfoy 02/25/2004	jfrantze 02/26/2004	<u> </u>	lemery 02/26/2004		State
/2	rchampag 02/26/2004	jdye 02/26/2004	jfrantze 02/26/2004	<u> </u>	lnorthro 02/26/2004		

13 g's 4/27/04 [Handwritten signatures]

02/26/2004 10:28:14 AM

Page 2

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **02/24/2004**

Received By: **rchampag**

Wanted: **Soon**

Identical to LRB:

For: **Administration**

By/Representing: **Frank Hoadley**

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

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Bonding - state**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Debt agreements and ancillary arrangements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							State
/1	rchampag 02/25/2004	kgilfoy 02/25/2004	jfrantze 02/26/2004		lemery 02/26/2004		

FE Sent For:

1/2 rchampag
02/26
Sell
2/26

2003 DRAFTING REQUEST

Bill

Received: **02/24/2004**

Received By: **rchampag**

Wanted: **Soon**

Identical to LRB:

For: **Administration**

By/Representing: **Frank Hoadley**

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

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Bonding - state**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Debt agreements and ancillary arrangements

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>
1/?	rchampag	11-2/25 KMG	2/25	2/25			

FE Sent For:

<END>

Champagne, Rick

From: Hoadley, Frank
Sent: Monday, February 23, 2004 6:42 PM
To: Champagne, Rick
Cc: Runde, Al; Stone, Jeff
Subject: LRB 4082/1 Swaps Authority

Rick -

Back to the swaps legislation.

We need to incorporate two additional elements in the legislation:

1. The Governor's Budget included some additional related elements that you did not include in LRB 4081. Those elements are in LRB1932/4 (also attached). Those elements are necessary to making swaps work.
2. The LFB budget paper on this topic contained a number of suggested additional requirements. Those requirements are included in budget paper 193, a copy of which is attached. Please add the requirements from Alternative 2, "a" thru "f", except that in "e" instead of a 50% collateralization requirement, the collateral level should be the amount necessary to maintain the original credit rating. Also specify that the requirement is not applicable if the rating differential is created by an upgrade of the State's rating.

Frank 6-2305



193 - LFB Paper on
Swaps with ...



03-193241.pdf



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 16, 2003

Joint Committee on Finance

Paper #193

Agreements and Ancillary Arrangements on General Obligation Debt and Operating Notes (Building Commission)

[LFB 2003-05 Budget Summary: Page 90, #7]

CURRENT LAW

The Building Commission has the authority to issue general and revenue obligation debt on behalf of the state. The Commission can enter into certain agreements and ancillary arrangements relating to issuance of state general obligation debt and operating notes.

GOVERNOR

Authorize the Building Commission to determine whether any payments received or paid on agreements or ancillary arrangements relating to public debt would be deposited into, or made from, the bond security redemption fund (BSRF) or the capital improvement fund (CIF). Require that the Commission make this determination when the Commission contracts for any such agreement or ancillary arrangements. Specify that the Commission, in making payment from these funds, would also have the authority to determine the timing of any transfer of funds.

Provide that monies received from the issuance of public debt or payments from any agreement or ancillary arrangement relating to public debt would be deposited in the CIF, except as follows: (a) any monies representing accrued interest or that are for funding or refunding bonds would be credited to the BSRF or the building trust fund; and (b) any monies that represent a premium or that are from an agreement or ancillary arrangement relating to public debt could be credited to the BSRF or the CIF, as determined by the Building Commission. Under current law, monies received from the issuance of public debt are deposited in the CIF, except that any monies representing a premium or accrued interest or that are for funding or refunding bonds are credited to the BSRF or the building trust fund.

Authorize expenditures from the CIF for any payment due under an agreement or ancillary arrangement with respect to public debt and modify current law governing the transfer of the proceeds of public debt to the CIF to pay loans or notes, to also apply to these payments.

Modify current law governing expenditures from the BSRF to add payments due under an agreement or ancillary arrangement as an allowable purpose. Under current law, the BSRF is used to pay principal, interest and premium, if any, on public debt. Related provisions concerning debt service appropriations and the BSRF would be modified to reflect this additional spending purpose.

Delete the current law limitation that an interest exchange agreement is not considered public debt of the state.

Modifications to Operating Note Obligations. Delete current law references that specify that the Building Commission's authority to enter into agreements and ancillary arrangements for public debt applies to operating notes. Instead, create similar authority under the statutes governing operating notes, except specify that the Commission would have that authority at the time of, or in anticipation of, and after issuing operating notes. Delete the Building Commission's specific authority to purchase insurance on operating notes, which, under SB 44, could be purchased as part of an agreement or ancillary arrangement.

In addition, specify that any payment made or received under such agreements or arrangements would be made from, or deposited to, the general fund or the operating note redemption fund, as determined by the Commission.

Specify that all moneys resulting from payments to be received under an agreement or ancillary arrangement regarding operating notes would be credited to the general fund. Authorize the operating note redemption fund to make payments due on an agreement or ancillary arrangement entered into with respect to operating notes. Specify that the payments due under these agreements or arrangements with respect to operating notes would be an allowable purpose for which funds could be transferred from the GPR sum sufficient appropriation for debt service on operating notes to the operating note redemption fund.

DOA Capital Finance officials estimate that the state could receive \$4.5 million in 2003-04 associated with these agreements. These amounts would be applied to GPR debt service appropriations, and would be treated as a GPR-Lapse under SB 44.

DISCUSSION POINTS

1. Since 1969, the Building Commission has been authorized to issue state debt, including the refunding of such debt for refinancing purposes. Each bond issue involves a series of bonds with specific rates and maturities. Some of the state's bonds are callable on the part of the state, which means that if the state can borrow at a lower rate than rates on outstanding callable bonds, the state can pay off the outstanding callable bonds and reissue the debt at the lower rates. Other state bond issues cannot be called, which makes refinancing those bonds more difficult.

2. The refinancing or refunding of debt is a debt management tool that can be used to replace an existing stream of debt service payments with an alternative stream of payments. Typically, the new stream of debt service payments is designed to reduce the interest costs on the outstanding debt by taking advantage of lower current interest rates.

3. Generally, in refinancing state debt, the state issues new general obligation bonds (the refunding bonds) and uses the proceeds of that bond issue for payments on outstanding debt (the refunded bonds). This refunding approach generally involves bonds that are callable, which means that the state has the right pay the bonds off prior to their maturity date. An example of this type of refunding could involve the state calling certain bonds issues that carry rates of 5.25%, and issue replacement bonds that carry rates of 4.0%. An analysis that compares the cash flows under this transaction would likely result in interest cost savings to the state. Generally, if the present value of the savings from a potential refunding exceeds 3% of the amount to be refunded, the state will carry out the refunding.

4. Another way the state currently refunds state debt is through advanced refundings, which typically involve non-callable bonds. Under this type of refunding transaction, a separate set of bonds are issued at rates that are lower than the rates on the existing bonds that are being advanced refunded. The proceeds of these bonds are placed in investments within an escrow account, from which the principal and interest payments on the existing non-callable bonds are made. The state then repays the lower cost bonds, which results in interest cost savings to the state. However, federal tax law allows only one advanced refunding of tax exempt bond issues.

5. According to DOA Capital Finance officials, the proposed modifications relating to agreements on state debt would allow the state to take advantage of low market interest rates, with respect to state bond issues with higher interest rates that cannot be called or advanced refunded at this time. Because such bonds cannot be currently called or directly refinanced, the state cannot take advantage of the potential interest cost savings associated with the lower current market interest rates. DOA Capital Finance officials believe that the financing mechanisms that would be allowed under SB 44 would allow the state to capture such interest rate savings.

6. Interest rate swap and other hedging products are financing mechanisms that involve the exchange of interest payments on a specified principal amount. Often these swaps involve two parties exchanging a fixed rate payment on a specified principal amount with a variable rate payment on that same amount. No principal amounts of debt are exchanged, rather only the interest payments on the specified principal amounts are exchanged. These mechanisms effectively allow issuers to refinance principal amounts to take advantage of potentially lower rates without calling in existing debt and reissuing those amounts at lower rates.

7. The market for swaps, derivatives and hedging products is a relatively new financial market. Its origin dates back to the early 1980's. Since then, it has grown to a significant financial market for both private and public debt issuers. While the use of these mechanisms is widely prevalent among private issuers, governmental units have become involved in the swap market as a method to refinance debt or hedge against changes in interest rates on fixed and variable rate debt.

8. The following example illustrates a potential agreement. Under the example, it is assumed that the state issued \$200 million in bonds in 2000, with bonds maturing each year from 2001 through 2020. Of the \$200 million issued, it is assumed that the \$100 million in bonds due between 2001 and 2010 cannot be called or advance refunded, while the remaining \$100 million in bonds due between 2011 and 2020 could be called beginning in 2011, but cannot be advance refunded. In 2003, interest rates on long-term bonds have been significantly below the rates on the outstanding state bonds, which means that there are interest savings available, if the state could refund these bonds. However, under current law, because the bonds due between 2003 and 2010 cannot be called or advance refunded, the state would not be able to refinance the bonds to take advantage of lower rates until 2011, when the bonds maturing beyond that date could be called.

9. Under the proposed modification included in SB 44, the state could enter into an agreement in 2003 and receive an up-front payment from the counterparty to the agreement. In exchange the counterparty receives the future right to compel the state to call the \$100 million in callable portion of the \$200 million bond issue in 2011. If the counterparty exercises the right, the state would issue refunding bonds in 2011 to pay off the \$100 million in bonds that are called. The type of rate on the refunding bonds could be a fixed rate or a variable rate, whichever is indicated in the agreement. For this example, it is assumed that variable rate refunding bonds are issued. The repayment structure on the refunding bonds would mirror the structure on the callable bonds being refunded. The state would pay the principal due each year on the refunding bonds. However, under the agreement, the counterparty would make the variable rate interest payments to holders of state's refunding bonds, which would be lower than the rate on the original bonds. Conversely, the state would make annual interest payments to the counterparty at the higher fixed rates that existed on the callable bonds. The annual amount of the state's interest payment to counterparty would equal the rate that had existed on the original callable bonds times the annual outstanding (notional) principal amounts that would have existed each year on the original callable bonds from 2011-2020.

10. Under this example, because long-term rates fell in 2003 relative to the rates on the state's \$200 million bond issue, the state could capture some of the interest costs savings resulting from these lower rates through the payment received under the agreement. In this example, a counterparty, interested in holding a long-term obligation, and hoping to make money on the difference between the fixed rate on the state's bonds and future variable rates, is willing to pay the state for the right receive fixed rate payments in the future (from 2011 through 2020).

11. Typically, the state's debt obligations have been entered into to fund capital projects and other improvements for the state and local governments and to make state land purchases. Under the proposed modifications, the state would be acting as a financial investor by entering into agreement that would be ancillary to the state bond issue in an attempt to make money off the potential differences in market interest rates associated with short, variable and long term debt. This would be a new area of activity for the Building Commission, as it would be given the authority to enter into agreements for the sole purpose of trying to gain financial advantage from differences in market interest rates. In addition, under SB 44, the Commission would be authorized to make expenditures from the state's GPR sum sufficient debt service appropriations for payments required under these agreements. As a result, the proposal in SB 44 would represent a significant expansion of authority for the administration and the Building Commission.

12. The financing mechanisms that would be allowed under the modifications contained in SB 44 would involve various risks. One of the primary risks associated with these agreements would be interest rate risk. Because these agreements are designed to take advantage of interest rate differences, if the assumptions used in entering into an agreement are not sound or if unforeseen changes in interest rates occur, the state could incur additional interest costs or other payments associated with these transactions. For example, if long-term rates fall below the assumed rates that went into pricing the value of an agreement, the state could end up paying higher interest costs under the agreement than would have been paid if the state had retained the right to refund the bond at these lower rates.

13. DOA Capital Finance officials contend that if such mechanisms are not available to the state, the state is forgoing the opportunity to realize savings attributable to its non-callable debt due to lower market interest rates. Further, they indicate that the risk associated with entering into an agreement that may result in the state paying above market rates in the future is no different than the risk the state takes on associated with any non-callable bond issue or refunding issue entered into by the state. Such bonds issues also lock the state into paying a fixed rate in the future that may exceed future market rates.

14. These agreements also carry risk known as termination risk. This risk involves the potential that a party may terminate an agreement prior to its scheduled end date. There is also a risk that early termination of an agreement could result in costs to the various parties of the agreement. Agreements can contain various legal and financial reasons for termination such as bankruptcy or default on the part of one party to the agreement. These agreements may also contain other triggers that could result in the agreement being voluntarily terminated by one party to the agreement who holds a positive position under the agreement. As mentioned earlier, depending on where market rates are compared to rates contained in the agreement, the state could unexpectedly be required to make a lump sum termination payment on these agreements, which could be significant.

15. Other risks include counterparty risk, which is the risk that a counterparty will not honor its obligations as specified in the contract. Such risks can be intertwined with termination risk evaluations. Generally bond rating agencies expect rated borrowers to accept agreements only with counterparties that hold ratings that are at least as high as their own ratings.

16. Under the proposal, agreements, while generally associated with a "notional" principal amounts, would nonetheless be obligations that commit the state to make interest payments based on those amounts. However, unlike the state public debt, which is limited in amount by the Legislature and the State Constitution, the amount of obligations the state could enter into would not be limited under SB 44.

17. The success of the state in generating cost savings under these transactions would largely depend the state's ability to accurately price and establish the terms of these transactions. In doing so, the state would need access to the best information available on the interest markets at the time of the transaction. If the pricing of the transaction or the terms established under the transaction are not sound, the transaction could end up increasing interest costs to the state. While DOA Capital

Finance officials have shown expertise in making pricing decisions on, and in establishing the terms of, state bond issues for capital finance or other improvement projects, such expertise may not automatically transfer to swaps, derivatives and hedging products.

18. DOA Capital Finance officials indicate that they will hire independent firms to conduct a financial risk analysis of each transaction and assist the state in pricing and setting of terms of the agreement. Further, although the Building Commission and DOA Capital Finance would be administering the program, rating agencies would be aware of, and monitor the state's position on these agreements. Rating agency analysts would look at the state's obligations in total, including its overall variable and fixed rate exposure. Any changes in the state's creditworthiness standing associated with these agreements and its exposure to the different type of debt would be reflected in their analysis of the state.

19. To ensure that DOA obtains assistance in making pricing and other market determinations associated with agreements associated with state general obligation debt, the Committee could require such agreements be subject to an independent finding that its terms and conditions reflect a fair market value of such agreement as of the date of its execution.

20. Financial consulting firms specializing in these agreements as well as bond rating agency analyses of parties to such agreements have also noted that such agreements require a high level of monitoring and tracking. They suggest that the state's interest position on such agreements should be constantly measured against the state's interest position on the underlying bond issue that is the basis for the notional principal amount under the agreement. In addition, accounting steps should be taken to ensure that a specific notional principal amount that is the basis of an agreement remains matched to the principal amount on the underlying bond issue, so the state can monitor its interest position on the agreement. The state would want to avoid a situation where it has several outstanding agreements that can no longer be tied to, or measured against, specific bond issues. Similarly, the state would want avoid having to pay on an agreement associated with a bond issue, after the principal on the bonds has been retired.

21. The proposed modifications to state debt obligations included under SB 44 would provide the DOA staff and the Building Commission with broad authority to enter into agreements associated with the state's debt obligations. As mentioned, the state would have certain risks associated with these agreements. Therefore, if the authority to enter into these agreements is provided, the state may want to establish some parameters for the program that could limit the state's risk.

22. Recently the State of New York provided entities that issue bonds in New York the authority to enter into agreements similar to those that would be allowed under SB 44. However, in order to potentially mitigate some of the risks mentioned earlier, the New York Legislature placed certain limitations on such agreements. The following points identify some potential limitations the Committee may want to consider, which are similar in nature to those included in the New York legislation.

23. To place some limits on the size of the program and to the address the issue of

legislative oversight over the amount of such obligations that could be entered into by the state, the Committee could limit the total notional amounts contracted for under such agreements or arrangements to no more than 20% of the state's outstanding general obligation debt, including its commercial paper program, at the time the agreement or arrangement is entered into. Further, to ensure that the State is properly monitoring these transactions, the Committee could require that no agreement would be allowed to have a notional principal amount with a maturity exceeding the maturity of the related general obligation debt and that the authorizing resolution for any agreement be required to identify the underlying general obligation bonds on which the agreement is based. Such provisions would limit the total contractual obligations the state would be exposed to with regard to under these agreement and would help ensure that the maturities on the state's debt obligations and related agreements associated with that debt remain matched.

24. In order to provide further disclosure of the state's position on these agreements to the Legislature, DOA could be required to issue a semi-annual report to the Building Commission and the Co-chairs of the Joint Finance Committee for any year the state continues to be a party to a contract on an agreement, that lists all such contracts. The report could be required to include the following: (a) a description of the contract, including a summary of the terms and conditions, rates, maturity, and the estimated market value of each agreement, and other provisions; (b) any amounts which were required to be paid and received on the contract; (c) any credit enhancement, liquidity facility, or reserves, including an accounting of all such costs and expenses incurred; (d) descriptions of each counterparty; and (e) an assessment of the counterparty risk, the termination risk, and other risks associated with each agreement. Such a report would keep the Legislature apprised of the extent of the use of agreements and of the benefits and risks associated with the program.

25. To address any counterparty risk associated with such agreements, the state could require that any counterparty to such agreement could not have a credit rating from any nationally recognized statistical rating agency that is lower than the state's rating on its general obligation debt at the time of the agreement. In addition, similar to the New York legislation, in the event a counterparty to the state on an agreement is downgraded below the required rating position while the transaction remains active, the Committee could require that the counterparty to the agreement be collateralized with United State Treasury investments. Specifically, the Committee could require that the counterparty be collateralized for the remainder of the agreement, or until the counterparty is upgraded to an allowable rating, in an amount equal to 50% of the net market value of the agreement with the state at the time the downgrade occurs. Any collateral amounts could be deposited with the state, or a trustee of the state.

26. As mentioned earlier, rating agency and industry analysts indicate that developing a debt management system for tracking debt obligations and any ancillary agreements is important. In providing borrowing agencies the authority to enter into agreements, the State of New York required that the issuing authority put in place the guidelines for the program that would include: (a) the conditions under which such contracts can be entered into; (b) the methods by which such contracts are to be solicited and procured; (c) the form and content such contracts shall take; (d) the aspects of risk exposure associated with such contracts; (e) the standards and procedures for counterparty selection; (f) the standards for the procurement of credit enhancement, liquidity

facilities, or the setting aside of reserves in connection with such contracts; (g) provisions for collateralization or other requirements for securing the financial interest in such contracts; (h) the long-term implications associated with entering into such agreements, such as costs of borrowing, historical trends, use of capacity for variable rate bonds and related credit enhancements, and any potential impact on the future ability to call bonds, including opportunities to refund related debt obligations, and similar considerations; (i) the methods to be used to reflect such contracts in the state's financial statements; and (j) a system for financial monitoring and periodic assessment of such contracts. Similarly, the Committee could require the Building Commission to adopt such guidelines prior to authorizing the approval of any contract for any agreement or ancillary arrangement relating to the state's general obligation debt.

27. DOA and the Building Commission would likely develop reporting requirements and safeguards for the proposed program. However, placing specific requirements in statute will provide the Legislature and the public with the assurance that these requirements are in place.

ALTERNATIVES

1. Approve the Governor's recommendation to authorize the Building Commission to determine whether any payments received or paid on agreements or ancillary arrangements relating to public debt would be deposited into, or made from, the bond security redemption fund or the capital improvement fund. Require that the Commission make this determination when the Commission contracts for any such agreement or ancillary arrangements. Specify that the Commission, in making payment from these funds, would also have the authority to determine the timing of any transfer of funds. Provide the Building Commission with the necessary authority included under the Governor's recommendations to carry out these arrangements and agreements related to state general obligation and operating note debt. Estimate lapses from GPR sum sufficient debt service appropriations of \$4,500,000 in 2003-04 associated with the sale of these agreements or arrangements.

2. Approve the Governor's recommendation, as modified by the following provisions:

a. Require that any agreement or ancillary arrangement related to state general obligation debt be subject to an independent finding that its terms and conditions reflect a fair market value of such an agreement, as of the date of its execution;

b. Limit the total notional amounts contracted for under such agreements or arrangements to no more than 20% of the state's outstanding general obligation debt, including its commercial paper program, at the time the agreement or arrangement is entered into;

c. Require that no agreement would be allowed to have a notional principal amount with a maturity exceeding the maturity of the related general obligation debt on which that amount is based and that the authorizing resolution for any agreement be required to identify the related general obligation debt on which the agreement is based;

d. Require DOA to issue a semi-annual report to the Building Commission and the Co-

chairs of the Joint Finance Committee, for any year the state continues to be a party to a contract on an agreement or ancillary arrangement related to state debt, that lists all such contracts. Require that the report contain the following: (1) a description of the contract, including a summary of the terms and conditions, rates, maturity, and the estimated market value of each agreement, and other agreement provisions; (2) any amounts which were required to be paid and received on the contract; (3) any credit enhancement, liquidity facility, or reserves, including an accounting of all such costs and expenses incurred; (4) descriptions of each counterparty; and (5) an assessment of the counterparty risk, the termination risk, and other risks associated with each agreement;

e. Require that any counterparty to an agreement or ancillary arrangement related to state debt could not have a credit rating from at least one nationally recognized rating agency that is lower than the state rating on its general obligation debt at the time of the agreement. Specify that in the event a counterparty to the state is downgraded below this required rating position while the agreement remains outstanding, the counterparty would be required to be collateralized with United State Treasury investments for the remainder of the agreement, or until the counterparty is upgraded to an allowable rating, in an amount equal to 50% of the net market value of the contract to state at the time the downgrade occurs. Further specify that any collateral amounts would be deposited with the state, or a trustee of the state; and

f. Require the Building Commission, prior to entering into any agreement or ancillary arrangements related to state debt, to put in place guidelines for such agreements that would include: (1) the conditions under which such contracts can be entered into; (2) the methods by which such contracts are to be solicited and procured; (3) the form and content such contracts shall take; (4) the aspects of risk exposure associated with such contracts; (5) the standards and procedures for counterparty selection; (6) standards for the procurement of credit enhancement, liquidity facilities, or the setting aside of reserves in connection with such contracts; (7) provisions for collateralization or other requirements for securing the financial interest in such contracts; (8) the long-term implications associated with entering into such agreements, such as costs of borrowing, historical trends, use of capacity for variable rate bonds and related credit enhancements, and any potential impact on the future ability to call bonds, including opportunities to refund related debt obligations, and similar considerations; (9) the methods to be used to reflect such contracts in the state's financial statements; and (10) a system for financial monitoring, and periodic assessment, of such contracts.

3. Delete provision.

Alternative 3	GPR-Lapse
2003-05 FUNDING (Change to Bill)	- \$4,500,000

Prepared by: Al Runde



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4353/1

RAC: /...
King

Thurs AM

2003 BILL

First paragraph of
Analysis & Bill
Sections 2, 3, & 4 are
from 03-4082;

Bill sections 1, 7-20
are from 03-1932/5.

- 1 **AN ACT** ^{Gen. Cat.} relating to: agreements and ancillary arrangements relating to
- 2 public debt and other obligations.

Analysis by the Legislative Reference Bureau

Currently, the Building Commission (commission) may enter into agreements and ancillary arrangements relating to public debt. This bill provides that, at the time of entering into the agreements or ancillary arrangements, or in anticipation thereof, the commission must determine, if applicable, whether the payment will be deposited into, and whether the payment will be made from, the bond security and redemption fund or the capital improvement fund.

The bill also establishes a number of conditions relating to such agreements and ancillary arrangements. These include all of the following:

1. The commission must contract with an independent financial consulting firm to determine if the terms and conditions of the agreement or ancillary arrangement reflect a fair market value, as of the proposed date of the execution of the agreement or ancillary arrangement. Under the bill, the commission may not enter into an agreement or ancillary arrangement until the firm determines that the terms and conditions of the agreement or ancillary arrangement reflect such a fair market value.

2. The total notional amounts that are contracted [✓] under the agreements and ancillary arrangements may not exceed 20% of the sum of the state's outstanding public debt and operating notes. _{percent}

3. No agreement or ancillary arrangement may have a notional principal amount with a maturity exceeding the maturity of the related public debt on which

BILL

the amount is based. The authorizing resolution for any agreement or ancillary arrangement must identify the related public debt on which the agreement is based.

4. No ~~counterparty~~ to an agreement or ancillary arrangement may have a credit rating from any nationally recognized rating agency that is lower than the rating assigned the state by that nationally recognized rating agency on its public debt at the time the commission enters into the agreement or ancillary arrangement.

In addition, every agreement or ancillary arrangement must require that, if the credit rating of a ~~counterparty~~ is downgraded by any nationally recognized rating agency during the term of the agreement or ancillary arrangement, the ~~counterparty~~ must be collateralized by bonds or securities issued by the federal government for the remainder of the agreement or ancillary arrangement or until such time that the credit rating of the ~~counterparty~~ is upgraded to at least the credit rating assigned the state by any nationally recognized credit rating agency on its public debt at the time the commission entered into the agreement or ancillary arrangement, whichever occurs first, in an amount required to maintain the credit rating assigned the ~~counterparty~~ at the time of entering into the agreement or ancillary arrangement.

5. Before entering into any agreement or ancillary arrangement, the commission must establish guidelines relating to the conditions under which the commission may enter into the agreements and ancillary arrangements; the methods by which commission may solicit and procure the agreements and ancillary arrangements; the form and content of the agreements and ancillary arrangements; the aspects of risk exposure associated with the agreements and ancillary arrangements; the standards and procedures for ~~counterparty~~ selection; the standards for the procurement of credit enhancement, liquidity facilities, and the setting aside of reserves in connection with the agreements and ancillary arrangements; the provisions for collateralization or other requirements for securing the financial interest under the agreements and ancillary arrangements; the long-term financial implications of entering into the agreements and ancillary arrangements; the methods to be used to provide an accounting for the agreements and ancillary arrangements in any state financial statements; and a system for financial monitoring and periodic assessment of the agreements and ancillary arrangements.

Finally, the bill requires the Department of Administration to issue a semiannual report that includes a description of each agreement and ancillary arrangement, including a summary of its terms and conditions, rates, maturity, and the estimated market value of each agreement or ancillary arrangement; an accounting of amounts that were required to be paid and received on each agreement and ancillary arrangement; any credit enhancement, liquidity facility, or reserves, including an accounting of all such costs and expenses incurred by the state; a description of the ~~counterparty~~ to each agreement and ancillary arrangement; and an assessment of the ~~counterparty~~ risk, the termination risk, and other risks associated with each agreement and ancillary arrangement.

that

stet

stet

stet

stet

stet

stet

the

that

stet

stet

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.** 18.01 (4) (intro.) of the statutes is amended to read:

2 18.01 (4) (intro.) “Public debt” or “debt” means every voluntary, unconditional
3 undertaking by the state, other than an operating note ~~or an interest exchange~~
4 ~~agreement~~, to repay a sum certain:

5 History: 1973 c. 90 s. 555m (2); 1977 c. 29 s. 1652; 1979 c. 107; 1981 c. 336; 1983 a. 36 s. 96 (4); 1983 a. 189; 1985 a. 6, 29; 1991 a. 39.

6 **SECTION 2.** 18.06 (8) (a) of the statutes is renumbered 18.06 (8) (a) (intro.) and

7 amended to read:

8 18.06 (8) (a) (intro.) The Subject to par. (am), at the time of, or in anticipation
9 of, contracting public debt and at any time thereafter while the public debt is
10 outstanding, the commission may enter into agreements and ancillary
11 arrangements ~~for relating to~~ the public debt, including liquidity facilities,
12 remarketing or dealer agreements, letter of credit agreements, insurance policies,
13 guaranty agreements, reimbursement agreements, indexing agreements, or interest
14 exchange agreements. At the time of contracting for any such agreement or ancillary
15 arrangement, the commission shall determine all of the following, if applicable:

16 History: 1977 c. 317; 1979 c. 107; 1981 c. 336; 1983 a. 368; 1985 a. 6; 1987 a. 27; 1989 a. 31, 46, 68, 366; 1991 a. 39, 221; 1993 a. 16; 1995 a. 27; 1997 a. 27.

17 **SECTION 3.** 18.06 (8) (a) 1. of the statutes is created to read:

18 18.06 (8) (a) 1. For any payment to be received with respect to the agreement
19 or ancillary arrangement, whether the payment will be deposited into the bond
20 security and redemption fund or the capital improvement fund.

21 **SECTION 4.** 18.06 (8) (a) 2. of the statutes is created to read:

BILL

1 a counterparty is downgraded by any nationally recognized rating agency during the
2 term of the agreement or ancillary arrangement, the counterparty must be
3 collateralized by bonds or securities issued by the federal government for the
4 remainder of the agreement or ancillary arrangement or until [✓] such time [✓] that the
5 credit rating of the counterparty is upgraded to at least the credit rating assigned the
6 state by any nationally recognized credit rating agency on its public debt at the time *that*
7 the commission entered into the agreement or ancillary arrangement, whichever
8 occurs first, in an amount required to maintain the credit rating assigned the
9 counterparty at the time of entering into the agreement or ancillary arrangement.
10 Every agreement or ancillary arrangement shall also specify that any such collateral
11 amounts must be deposited in the state treasury or in a distinct fund outside the
12 state treasury, in an account maintained by a trustee.

13 5. Before entering into any agreement or ancillary arrangement, the
14 commission shall establish guidelines for any such agreement or ancillary
15 arrangement, including specifically all of the following:

16 a. The conditions under which the commission may enter into the agreements
17 and ancillary arrangements.

18 b. The methods by which *the* commission may solicit and procure the agreements
19 and ancillary arrangements.

20 c. The form and content of the agreements and ancillary arrangements.

21 d. The aspects of risk exposure associated with the agreements and ancillary
22 arrangements.

23 e. The standards and procedures for counterparty selection.

BILL

1 f. The standards for the procurement of credit enhancement, liquidity facilities,
2 and the setting aside of reserves in connection with the agreements and ancillary
3 arrangements.

4 g. The provisions for collateralization or other requirements for securing the
5 financial interest under the agreements and ancillary arrangements.

6 h. The long-term financial implications of entering into the agreements and
7 ancillary arrangements relating to the costs of borrowing, historical trends, use of
8 capacity for variable rate bonds and related credit enhancements, any potential
9 impact on the future ability to call public debt, including the opportunities to refund
10 related public debt, and similar considerations.

11 i. The methods to be used to provide an accounting for the agreements and
12 ancillary arrangements in any state financial statements.

13 j. A system for financial monitoring and periodic assessment of the agreements
14 and ancillary arrangements.

15 **SECTION 6.** 18.06 (8) (d) of the statutes is created to read:

16 18.06 (8) (d) Semiannually, during any year in which the state is a party to an
17 agreement or ancillary arrangement specified in par. (a) (intro.), the department of
18 administration shall submit a report to the commission and to the co¹/₂ chairpersons
19 of the joint committee on finance listing all such agreements and ancillary
20 arrangements. The report shall include all of the following:

21 1. A description of each agreement and ancillary arrangement, including a
22 summary of its terms and conditions, rates, maturity, and the estimated market
23 value of each agreement or ancillary arrangement.

24 2. An accounting of amounts that were required to be paid and received on each
25 agreement and ancillary arrangement.

BILL

1 3. Any credit enhancement, liquidity facility, or reserves, including an
2 accounting of all such costs and expenses incurred by the state.

3 4. A description of the counterparty to each agreement and ancillary
4 arrangement.

5 5. An assessment of the counterparty risk, the termination risk, and other risks
6 associated with each agreement and ancillary arrangement.

7 **SECTION 7.** 18.08 (1) (a) of the statutes is renumbered 18.08 (1) (a) (intro.) and
8 amended to read:

9 18.08 (1) (a) (intro.) All moneys resulting from the contracting of public debt
10 or any payment to be received with respect to any agreement or ancillary
11 arrangement entered into under s. 18.06 (8) (a) with respect to any such public debt
12 shall be credited to a separate and distinct fund, established in the state treasury,
13 designated as the capital improvement fund, except that ~~such~~:

14 1. Such moneys which represent ~~premium and~~ accrued interest on bonds or
15 notes issued, or are for purposes of funding or refunding bonds pursuant to s. 18.06
16 (5) shall be credited to one or more of the sinking funds of the bond security and
17 redemption fund or to the state building trust fund; and

History: 1971 c. 125; 1973 c. 90 ss. 32c, 555m (2); 1973 c. 243; 1975 c. 39; 1977 c. 29 ss. 1652, 1654 (1); 1977 c. 317, 418; 1979 c. 34; 1983 a. 27 ss. 111n, 2202 (5); 1987 a. 27.

18 **SECTION 8.** 18.08 (1) (a) 2. of the statutes is created to read:

19 18.08 (1) (a) 2. Any such moneys that represent premium or any payments
20 received pursuant to any agreement or ancillary arrangement entered into under s.
21 18.06 (8) (a) with respect to any such public debt may be credited to one or more of
22 the sinking funds of the bond security and redemption fund or to the capital
23 improvement fund as determined by the commission.

24 **SECTION 9.** 18.08 (2) of the statutes is amended to read:

BILL

1 18.08 (2) The capital improvement fund may be expended, pursuant to
2 appropriations, only for the purposes and in the amounts for which the public debts
3 have been contracted, for the payment of principal and interest on loans or on notes,
4 for the payment due, if any, under an agreement or ancillary arrangement entered
5 into under s. 18.06 (8) (a) with respect to any such public debt, for the purposes
6 identified under s. 20.867 (2) (v) and (4) (q), and for expenses incurred in contracting
7 public debt.

History: 1971 c. 125; 1973 c. 90 ss. 32c, 555m (2); 1973 c. 243; 1975 c. 39; 1977 c. 29 ss. 1652, 1654 (1); 1977 c. 317, 418; 1979 c. 34; 1983 a. 27 ss. 111n, 2202 (5); 1987 a. 27.

8 **SECTION 10.** 18.08 (4) of the statutes is amended to read:

9 18.08 (4) If at any time it appears that there will not be on hand in the capital
10 improvement fund sufficient moneys for the payment of principal and interest on
11 loans or on notes or for the payment due, if any, under an agreement or ancillary
12 arrangement entered into under s. 18.06 (8) (a) with respect to any public debt, the
13 department of administration shall transfer to such fund, out of the appropriation
14 made pursuant to s. 20.866, a sum sufficient which, together with any available
15 money on hand in such fund, is sufficient to make such payment.

History: 1971 c. 125; 1973 c. 90 ss. 32c, 555m (2); 1973 c. 243; 1975 c. 39; 1977 c. 29 ss. 1652, 1654 (1); 1977 c. 317, 418; 1979 c. 34; 1983 a. 27 ss. 111n, 2202 (5); 1987 a. 27.

16 **SECTION 11.** 18.09 (2) of the statutes is amended to read:

17 18.09 (2) Each sinking fund shall be expended, and all moneys from time to
18 time on hand therein are irrevocably appropriated, in sums sufficient, only for the
19 payment of principal and interest on the bonds giving rise to it and, premium, if any,
20 due upon refunding redemption of any such bonds, and payment due, if any, under
21 an agreement or ancillary arrangement entered into under s. 18.06 (8) (a) with
22 respect to any such bonds.

History: 1971 c. 125; 1983 a. 27 s. 2202 (5); 1985 a 6; 1987 a. 27.

23 **SECTION 12.** 18.55 (5) of the statutes is amended to read:

BILL

1 18.55 (5) EXERCISE OF AUTHORITY. Money may be borrowed and evidences of
2 revenue obligation issued therefor pursuant to one or more authorizing resolutions,
3 unless otherwise provided in the resolution or in this subchapter, at any time and
4 from time to time, for any combination of purposes, in any specific amounts, at any
5 rates of interest, for any term, payable at any intervals, at any place, in any manner
6 and having any other terms or conditions deemed necessary or useful. Revenue
7 obligation bonds may bear interest at variable or fixed rates, bear no interest or bear
8 interest payable only at maturity or upon redemption prior to maturity. Unless
9 sooner exercised or unless a ~~shorter~~ different period is provided in the resolution,
10 every authorizing resolution, except as provided in s. 18.59 (1), shall expire one year
11 after the date of its adoption.

History: 1977 c. 29; 1985 a. 29; 1987 a. 69; 1989 a. 31, 46; 1999 a. 9; 2003 a. 33.

12 **SECTION 13.** 18.61 (5) of the statutes is amended to read:

13 18.61 (5) The legislature may provide, with respect to any specific issue of
14 revenue obligations, prior to their issuance, that if the special fund income or the
15 enterprise or program income pledged to the payment of the principal of and interest
16 of on the issue is insufficient for that purpose, or is insufficient to replenish a reserve
17 fund, if applicable, it will consider supplying the deficiency by appropriation of funds,
18 from time to time, out of the treasury. If the legislature so provides, the commission
19 may make the necessary provisions therefor in the authorizing resolution and other
20 proceedings of the issue. Thereafter, if the contingency occurs, recognizing its moral
21 obligation to do so, the legislature hereby expresses its expectation and aspiration
22 that it shall make such appropriation.

History: 1977 c. 29; 1979 c. 32 s. 92 (5); 1979 c. 107; 1981 c. 336; 1983 a. 228 s. 16; 1993 a. 301; 1999 a. 9; 2001 a. 103.

23 **SECTION 14.** 18.70 of the statutes is amended to read:

BILL**SECTION 14**

1 **18.70 Provisions applicable.** The following sections apply to this
2 subchapter, except that all references to “public debt”, “debt” or “revenue obligation”
3 are deemed to refer to “operating notes”, all references to “evidence of indebtedness”
4 are deemed to refer to “evidence of operating note”, and all references to “evidences
5 of indebtedness” are deemed to refer to “evidences of operating notes”: ss. 18.03,
6 ~~18.06 (8)~~, 18.07, 18.10 (1), (2), (4) to (9) and (11), 18.17, 18.52 (1), ~~18.58 (2)~~ (1m), 18.61
7 (1), 18.62 and 18.63.

~~NOTE: NOTE 2003 Wis. Act 33 renumbered s. 18.52 (1) to s. 18.52 (1m) and repealed s. 18.58 (2). Corrective legislation is pending. NOTE:~~

History: 1983 a. 3; 1991 a. 39.

8 **SECTION 15.** 18.73 (5) of the statutes is created to read:

9 **18.73 (5) AGREEMENTS AND ARRANGEMENTS; DELEGATION; USE OF OPERATING NOTES.**

10 (a) At the time of, or in anticipation of, contracting operating notes and at any time
11 thereafter while the operating notes are outstanding, the commission may enter into
12 agreements and ancillary arrangements relating to the operating notes, including
13 liquidity facilities, remarketing or dealer agreements, letter of credit agreements,
14 insurance policies, guaranty agreements, reimbursement agreements, indexing
15 agreements, or interest exchange agreements. Any payment received pursuant to
16 any such agreements or ancillary arrangements shall be deposited in, and any
17 payments made pursuant to any such agreements or ancillary arrangements will be
18 made from, the general fund or the operating note redemption fund, as determined
19 by the commission.

20 (b) The commission may delegate to other persons the authority and
21 responsibility to take actions necessary and appropriate to implement agreements
22 and ancillary arrangements under par. (a).

23 (c) Any operating notes may include operating notes contracted to fund
24 interest, accrued or to accrue, on the operating notes.

BILL

1 **SECTION 16.** 18.74 of the statutes is amended to read:

2 **18.74 Application of operating note proceeds.** All moneys resulting from
3 the contracting of operating notes or any payment to be received under an agreement
4 or ancillary arrangement entered into under s. 18.73 (5) with respect to any such
5 operating notes shall be credited to the general fund, except that moneys which
6 represent premium and accrued interest on operating notes, or moneys for purposes
7 of funding or refunding operating notes pursuant to s. 18.72 (1) shall be credited to
8 the operating note redemption fund.

9 History: 1983 a. 3.

9 **SECTION 17.** 18.75 (2) of the statutes is amended to read:

10 18.75 (2) The operating note redemption fund shall be expended and all
11 moneys from time to time on hand therein are irrevocably appropriated, in sums
12 sufficient, only for the payment of principal and interest on operating notes giving
13 rise to it and premium, if any, due upon refunding or early redemption of such
14 operating notes, and for the payment due, if any, under an agreement or ancillary
15 arrangement entered into under s. 18.73 (5) with respect to such operating notes.

16 History: 1983 a. 3; 1985 a. 29 s. 3202 (56).

16 **SECTION 18.** 18.75 (4) of the statutes is amended to read:

17 18.75 (4) There shall be transferred, under s. 20.855 (1) (a), a sum sufficient
18 for the payment of the principal, interest and premium due, if any, and for the
19 payment due, if any, under an agreement or ancillary arrangement entered into
20 pursuant to s. 18.73 (5) with respect to such operating notes on the operating notes
21 giving rise to it as the same falls due. Such transfers shall be so timed that there is
22 at all times on hand in the fund an amount not less than the amount to be paid out
23 of it during the ensuing 30 days or such other period if so provided for in the
24 authorizing resolution. The commission may pledge the deposit of additional

BILL

SECTION 18

1 amounts at periodic intervals and the secretary of the department may impound
 2 moneys of the general fund, including moneys temporarily reallocated from other
 3 funds under s. 20.002 (11), in accordance with the pledge of revenues in the
 4 authorizing resolution, and all such impoundments are deemed to be payments for
 5 purposes of s. 16.53 (10), but no such impoundment may be made until the amounts
 6 to be paid into the bond security and redemption fund under s. 18.09 during the
 7 ensuing 30 days have been deposited in the bond security and redemption fund.

History: 1983 a. 3; 1985 a. 29 s. 3202 (56).

8 **SECTION 19.** 20.866 (intro.) of the statutes is amended to read:

9 **20.866 Public debt.** (intro.) There are irrevocably appropriated to the bond
 10 security and redemption fund and to the capital improvement fund, as a first charge
 11 upon all revenues of this state, sums sufficient for payment of principal, interest and,
 12 premium due, if any, ~~on~~ and payment due, if any, under an agreement or ancillary
 13 arrangement entered into under s. 18.06 (8) (a) with respect to any public debt
 14 contracted under subchs. I and IV of ch. 18.

History: 1971 c. 42; 1971 c. 100 s. 23; 1971 c. 125, 211, 215, 236, 307, 330, 336; 1973 c. 90 ss. 148 to 149m, 555m (2); 1973 c. 333; 1975 c. 26, 39, 40, 41, 200, 224, 422;
 1977 c. 4, 6; 1977 c. 29 ss. 385 to 387, 1650m (4), 1656 (43); 1977 c. 418; 1979 c. 4; 1979 c. 34 ss. 675a to 677v, 2102 (6) (a), (39) (a), (52) (a); 1979 c. 107, 221; 1981 c. 1 ss.
 17, 18, 47; 1981 c. 20, 108, 317, 336; 1983 a. 27; 1983 a. 36 s. 96 (4); 1983 a. 97, 192, 195, 212; 1983 a. 410 s. 2202 (2); 1985 a. 6; 1985 a. 8 ss. 4, 12; 1985 a. 29 ss. 589m to
 598, 3202 (23) (c), (26) (a), (53) (a); 1985 a. 77, 120, 332; 1987 a. 27, 295, 298, 399, 403, 409; 1989 a. 31, 46, 107, 122, 219, 336, 359, 366; 1991 a. 39, 51, 269, 309, 324; 1993
 a. 2, 16, 98, 115, 213, 343, 377, 413, 437, 453, 485; 1995 a. 27 ss. 1159 to 1168s, 9126 (19), 9145 (1); 1995 a. 40, 57, 60, 113; 1995 a. 216, s. 30m and 9127; 1995 a. 227, 246,
 372, 388, 416, 452; 1997 a. 27, 35, 61, 164, 237, 252; 1999 a. 4, 9, 146; 1999 a. 150 s. 672; 1999 a. 184; 2001 a. 12, 16, 103, 109; 2003 a. 33, 64, 91.

15 **SECTION 20.** 20.866 (1) (u) of the statutes, as affected by 2003 Wisconsin Act
 16 **33**, is amended to read:

17 **20.866 (1) (u) Principal repayment and interest.** A sum sufficient from moneys
 18 appropriated under sub. (2) (zp) and ss. 20.115 (2) (d) and (7) (b) and (f), 20.190 (1)
 19 (c), (d), (i), and (j), 20.225 (1) (c) and (i), 20.245 (1) (e) and (j), 20.250 (1) (c) and (e),
 20 20.255 (1) (d), 20.285 (1) (d), (db), (fh), (ih), (je), (jq), (kd), (km), and (ko) and (5) (i),
 21 20.320 (1) (c) and (t) and (2) (c), 20.370 (7) (aa), (ac), (ag), (aq), (ar), (at), (au), (bq), (ca),
 22 (cb), (cc), (cd), (ce), (cf), (cg), (ea), (eq), and (er), 20.395 (6) (af), (aq), (ar), and (at),
 23 20.410 (1) (e), (ec), and (ko) and (3) (e), 20.435 (2) (ee) and (6) (e), 20.465 (1) (d), 20.485

BILL

1 (1) (f) and (go), (3) (t) and (4) (qm), 20.505 (4), (es), (et), (ha), and (hb) and (5) (c), (g)
 2 and (kc), 20.855 (8) (a) and 20.867 (1) (a) and (b) and (3) (a), (b), (bm), (bp), (br), (bt),
 ③ (g), (h), (i), and (q) for the payment of principal and interest on premium due, if any,
 4 and payment due, if any, under an agreement or ancillary arrangement entered into
 5 pursuant to s. 18.06 (8) (a) with respect to any public debt contracted under subchs.
 6 I and IV of ch. 18.

NOTE: NOTE: Par. (u) is amended eff. 7-1-2005 by 2003 Wis. Act 64 to read:NOTE:

7
 8
 9
 10 (u) *Principal repayment and interest.* A sum sufficient from moneys appropriated under sub. (2) (zp) and ss. 20.115 (2) (d) and (7) (b) and (f), 20.190 (1) (c), (d),
 11 (i), and (j), 20.225 (1) (c) and (i), 20.245 (1) (e) and (j), 20.250 (1) (c) and (e), 20.255 (1) (d), 20.285 (1) (d), (db), (fh), (ih), (je), (jq), (kd), (km), and (ko) and (5) (i), 20.320
 12 (1) (c) and (t) and (2) (c), 20.370 (7) (aa), (ac), (ag), (aq), (ar), (at), (au), (bq), (ca), (cb), (cc), (cd), (ce), (cf), (cg), (ea), (eq), and (er), 20.395 (6) (af), (aq), and (ar), 20.410
 (1) (e), (ec), and (ko) and (3) (e), 20.435 (2) (ee) and (6) (e), 20.465 (1) (d), 20.485 (1) (f) and (go), (3) (t) and (4) (qm), 20.505 (4), (es), (et), (ha), and (hb) and (5) (c), (g)
 and (kc), 20.855 (8) (a) and 20.867 (1) (a) and (b) and (3) (a), (b), (bm), (bp), (br), (bt), (g), (h), (i), and (q) for the payment of principal and interest on public debt
 contracted under subchs. I and IV of ch. 18.

History: 1971 c. 42; 1971 c. 100 s. 23; 1971 c. 125, 211, 215, 236, 307, 330, 336; 1973 c. 90 ss. 148 to 149m, 555m (2); 1973 c. 333; 1975 c. 26, 39, 40, 41, 200, 224, 422;
 1977 c. 4, 6; 1977 c. 29 ss. 385 to 387, 1650m (4), 1656 (43); 1977 c. 418; 1979 c. 4; 1979 c. 34 ss. 675a to 677v, 2102 (6) (a), (39) (a), (52) (a); 1979 c. 107, 221; 1981 c. 1 ss.
 17, 18, 47; 1981 c. 20, 108, 317, 336; 1983 a. 27; 1983 a. 36 s. 96 (4); 1983 a. 97, 192, 195, 212; 1983 a. 410 s. 2202 (2); 1985 a. 6; 1985 a. 8 ss. 4, 12; 1985 a. 29 ss. 589m to
 598, 3202 (23) (c), (26) (a), (53) (a); 1985 a. 77, 120, 332; 1987 a. 27, 295, 298, 399, 403, 409; 1989 a. 31, 46, 107, 122, 219, 336, 359, 366; 1991 a. 39, 51, 269, 309, 324; 1993
 a. 2, 16, 98, 115, 213, 343, 377, 413, 437, 453, 485; 1995 a. 27 ss. 1159 to 1168s, 9126 (19), 9145 (1); 1995 a. 40, 57, 60, 113; 1995 a. 216, s. 30m and 9127; 1995 a. 227, 246,
 372, 388, 416, 452; 1997 a. 27, 35, 61, 164, 237, 252; 1999 a. 4, 9, 146; 1999 a. 150 s. 672; 1999 a. 184; 2001 a. 12, 16, 103, 109; 2003 a. 33, 64, 91.

13 **SECTION 21.** 20.866 (1) (u) of the statutes, as affected by 2003 Wisconsin Act 64 ^{Acts}

⑭ ^{64 and} ... (this act), ~~and 2003 Wisconsin Act 64~~ is repealed and recreated to read:

15 20.866 (1) (u) *Principal repayment and interest.* A sum sufficient from moneys
 16 appropriated under sub. (2) (zp) and ss. 20.115 (2) (d) and (7) (b) and (f), 20.190 (1)
 17 (c), (d), (i), and (j), 20.225 (1) (c) and (i), 20.245 (1) (e) and (j), 20.250 (1) (c) and (e),
 18 20.255 (1) (d), 20.285 (1) (d), (db), (fh), (ih), (je), (jq), (kd), (km), and (ko) and (5) (i),
 19 20.320 (1) (c) and (t) and (2) (c), 20.370 (7) (aa), (ac), (ag), (aq), (ar), (at), (au), (bq), (ca),
 20 (cb), (cc), (cd), (ce), (cf), (cg), (ea), (eq), and (er), 20.395 (6) (af), (aq), and (ar), 20.410
 21 (1) (e), (ec), and (ko) and (3) (e), 20.435 (2) (ee) and (6) (e), 20.465 (1) (d), 20.485 (1)
 22 (f) and (go), (3) (t) and (4) (qm), 20.505 (4), (es), (et), (ha), and (hb) and (5) (c), (g) and
 23 (kc), 20.855 (8) (a) and 20.867 (1) (a) and (b) and (3) (a), (b), (bm), (bp), (br), (bt), (g),
 24 (h), (i), and (q) for the payment of principal, interest, premium due, if any, and
 25 payment due, if any, under an agreement or ancillary arrangement entered into
 26 pursuant to s. 18.06 (8) (a) with respect to any public debt contracted under subchs.
 27 I and IV of ch. 18.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4353/12
RAC:kmg:jf

THANK YOU NOW

RMR

2003 BILL

regen cat.

1 **AN ACT to renumber and amend** 18.06 (8) (a) and 18.08 (1) (a); **to amend** 18.01
2 (4) (intro.), 18.08 (2), 18.08 (4), 18.09 (2), 18.55 (5), 18.61 (5), 18.70, 18.74, 18.75
3 (2), 18.75 (4), 20.866 (intro.) and 20.866 (1) (u); **to repeal and recreate** 20.866
4 (1) (u); and **to create** 18.06 (8) (a) 1., 18.06 (8) (a) 2., 18.06 (8) (am), 18.06 (8)
5 (d), 18.08 (1) (a) 2. and 18.73 (5) of the statutes; **relating to:** agreements and
6 ancillary arrangements relating to public debt and other obligations.

and making an appropriation ✓

Analysis by the Legislative Reference Bureau

Currently, the Building Commission (commission) may enter into agreements and ancillary arrangements relating to public debt. This bill provides that, at the time of entering into the agreements or ancillary arrangements, or in anticipation thereof, the commission must determine, if applicable, whether the payment will be deposited into, and whether the payment will be made from, the bond security and redemption fund or the capital improvement fund.

The bill also establishes a number of conditions relating to such agreements and ancillary arrangements. These include all of the following:

1. The commission must contract with an independent financial consulting firm to determine if the terms and conditions of the agreement or ancillary arrangement reflect a fair market value, as of the proposed date of the execution of the agreement or ancillary arrangement. Under the bill, the commission may not enter into an agreement or ancillary arrangement until the firm determines that the

BILL

terms and conditions of the agreement or ancillary arrangement reflect such a fair market value.

2. The total notional amounts that are contracted under the agreements and ancillary arrangements may not exceed 20 percent of the sum of the state's outstanding public debt and operating notes.

3. No agreement or ancillary arrangement may have a notional principal amount with a maturity exceeding the maturity of the related public debt on which the amount is based. The authorizing resolution for any agreement or ancillary arrangement must identify the related public debt on which the agreement is based.

4. No counterparty to an agreement or ancillary arrangement may have a credit rating from any nationally recognized rating agency that is lower than the rating assigned the state by that nationally recognized rating agency on its public debt at the time that the commission enters into the agreement or ancillary arrangement. In addition, every agreement or ancillary arrangement must require that, if the credit rating of a counterparty is downgraded by any nationally recognized rating agency during the term of the agreement or ancillary arrangement, the counterparty must be collateralized by bonds or securities issued by the federal government for the remainder of the agreement or ancillary arrangement or until such time that the credit rating of the counterparty is upgraded to at least the credit rating assigned the state by any nationally recognized credit rating agency on its public debt at the time that the commission entered into the agreement or ancillary arrangement, whichever occurs first, in an amount required to maintain the credit rating assigned the counterparty at the time of entering into the agreement or ancillary arrangement.

5. Before entering into any agreement or ancillary arrangement, the commission must establish guidelines relating to the conditions under which the commission may enter into the agreements and ancillary arrangements; the methods by which the commission may solicit and procure the agreements and ancillary arrangements; the form and content of the agreements and ancillary arrangements; the aspects of risk exposure associated with the agreements and ancillary arrangements; the standards and procedures for counterparty selection; the standards for the procurement of credit enhancement, liquidity facilities, and the setting aside of reserves in connection with the agreements and ancillary arrangements; the provisions for collateralization or other requirements for securing the financial interest under the agreements and ancillary arrangements; the long-term financial implications of entering into the agreements and ancillary arrangements; the methods to be used to provide an accounting for the agreements and ancillary arrangements in any state financial statements; and a system for financial monitoring and periodic assessment of the agreements and ancillary arrangements.

Finally, the bill requires the Department of Administration to issue a semiannual report that includes a description of each agreement and ancillary arrangement, including a summary of its terms and conditions, rates, maturity, and the estimated market value of each agreement or ancillary arrangement; an accounting of amounts that were required to be paid and received on each agreement

BILL

and ancillary arrangement; any credit enhancement, liquidity facility, or reserves, including an accounting of all such costs and expenses incurred by the state; a description of the counterparty to each agreement and ancillary arrangement; and an assessment of the counterparty risk, the termination risk, and other risks associated with each agreement and ancillary arrangement.

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.** 18.01 (4) (intro.) of the statutes is amended to read:

2 18.01 (4) (intro.) “Public debt” or “debt” means every voluntary, unconditional
3 undertaking by the state, other than an operating note ~~or an interest exchange~~
4 ~~agreement~~, to repay a sum certain:

5 **SECTION 2.** 18.06 (8) (a) of the statutes is renumbered 18.06 (8) (a) (intro.) and
6 amended to read:

7 18.06 (8) (a) (intro.) The Subject to par. (am), at the time of, or in anticipation
8 of, contracting public debt and at any time thereafter while the public debt is
9 outstanding, the commission may enter into agreements and ancillary
10 arrangements ~~for~~ relating to the public debt, including liquidity facilities,
11 remarketing or dealer agreements, letter of credit agreements, insurance policies,
12 guaranty agreements, reimbursement agreements, indexing agreements, or interest
13 exchange agreements. At the time of contracting for any such agreement or ancillary
14 arrangement, the commission shall determine all of the following, if applicable:

15 **SECTION 3.** 18.06 (8) (a) 1. of the statutes is created to read:

16 18.06 (8) (a) 1. For any payment to be received with respect to the agreement
17 or ancillary arrangement, whether the payment will be deposited into the bond
18 security and redemption fund or the capital improvement fund.

BILL

1 **SECTION 4.** 18.06 (8) (a) 2. of the statutes is created to read:

2 18.06 (8) (a) 2. For any payment to be made with respect to the agreement or
3 ancillary arrangement, whether the payment will be made from the bond security
4 and redemption fund or the capital improvement fund and the timing of any transfer
5 of funds.

6 **SECTION 5.** 18.06 (8) (am) of the statutes is created to read:

7 18.06 (8) (am) With respect to any agreement or ancillary arrangement
8 specified in par. (a) (intro.), all of the following shall apply:

9 1. The commission shall contract with an independent financial consulting firm
10 to determine if the terms and conditions of the agreement or ancillary arrangement
11 reflect a fair market value, as of the proposed date of the execution of the agreement
12 or ancillary arrangement. The commission may not enter into an agreement or
13 ancillary arrangement until the firm determines that the terms and conditions of the
14 agreement or ancillary arrangement reflect such a fair market value.

15 2. The total notional amounts that are contracted under the agreements and
16 ancillary arrangements may not exceed 20 percent of the sum of the state's
17 outstanding public debt and operating notes, as defined in s. 18.71 (4).

18 3. No agreement or ancillary arrangement may have a notional principal
19 amount with a maturity exceeding the maturity of the related public debt on which
20 the amount is based. The authorizing resolution for any agreement or ancillary
21 arrangement must identify the related public debt on which the agreement is based.

22 4. No counterparty to an agreement or ancillary arrangement may have a
23 credit rating from any nationally recognized rating agency that is lower than the
24 rating assigned the state by that nationally recognized rating agency on its public
25 debt at the time that the commission enters into the agreement or ancillary

BILL

1 arrangement. Every agreement or ancillary arrangement shall require that, if the
2 credit rating of a counterparty is downgraded by any nationally recognized rating
3 agency during the term of the agreement or ancillary arrangement, the counterparty
4 must be collateralized by bonds or securities issued by the federal government for the
5 remainder of the agreement or ancillary arrangement or until such time that the
6 credit rating of the counterparty is upgraded to at least the credit rating assigned the
7 state by any nationally recognized credit rating agency on its public debt at the time
8 that the commission entered into the agreement or ancillary arrangement,
9 whichever occurs first, in an amount required to maintain the credit rating assigned
10 the counterparty at the time of entering into the agreement or ancillary
11 arrangement. Every agreement or ancillary arrangement shall also specify that any
12 such collateral amounts must be deposited in the state treasury or in a distinct fund
13 outside the state treasury, in an account maintained by a trustee.

14 5. Before entering into any agreement or ancillary arrangement, the
15 commission shall establish guidelines for any such agreement or ancillary
16 arrangement, including specifically all of the following:

17 a. The conditions under which the commission may enter into the agreements
18 and ancillary arrangements.

19 b. The methods by which the commission may solicit and procure the
20 agreements and ancillary arrangements.

21 c. The form and content of the agreements and ancillary arrangements.

22 d. The aspects of risk exposure associated with the agreements and ancillary
23 arrangements.

24 e. The standards and procedures for counterparty selection.

BILL

1 f. The standards for the procurement of credit enhancement, liquidity facilities,
2 and the setting aside of reserves in connection with the agreements and ancillary
3 arrangements.

4 g. The provisions for collateralization or other requirements for securing the
5 financial interest under the agreements and ancillary arrangements.

6 h. The long-term financial implications of entering into the agreements and
7 ancillary arrangements relating to the costs of borrowing, historical trends, use of
8 capacity for variable rate bonds and related credit enhancements, any potential
9 impact on the future ability to call public debt, including the opportunities to refund
10 related public debt, and similar considerations.

11 i. The methods to be used to provide an accounting for the agreements and
12 ancillary arrangements in any state financial statements.

13 j. A system for financial monitoring and periodic assessment of the agreements
14 and ancillary arrangements.

15 **SECTION 6.** 18.06 (8) (d) of the statutes is created to read:

16 18.06 (8) (d) Semiannually, during any year in which the state is a party to an
17 agreement or ancillary arrangement specified in par. (a) (intro.), the department of
18 administration shall submit a report to the commission and to the cochairpersons of
19 the joint committee on finance listing all such agreements and ancillary
20 arrangements. The report shall include all of the following:

21 1. A description of each agreement and ancillary arrangement, including a
22 summary of its terms and conditions, rates, maturity, and the estimated market
23 value of each agreement or ancillary arrangement.

24 2. An accounting of amounts that were required to be paid and received on each
25 agreement and ancillary arrangement.

BILL

1 3. Any credit enhancement, liquidity facility, or reserves, including an
2 accounting of all such costs and expenses incurred by the state.

3 4. A description of the counterparty to each agreement and ancillary
4 arrangement.

5 5. An assessment of the counterparty risk, the termination risk, and other risks
6 associated with each agreement and ancillary arrangement.

7 **SECTION 7.** 18.08 (1) (a) of the statutes is renumbered 18.08 (1) (a) (intro.) and
8 amended to read:

9 18.08 (1) (a) (intro.) All moneys resulting from the contracting of public debt
10 or any payment to be received with respect to any agreement or ancillary
11 arrangement entered into under s. 18.06 (8) (a) with respect to any such public debt
12 shall be credited to a separate and distinct fund, established in the state treasury,
13 designated as the capital improvement fund, except that such:

14 1. Such moneys which represent ~~premium and~~ accrued interest on bonds or
15 notes issued, or are for purposes of funding or refunding bonds pursuant to s. 18.06
16 (5), shall be credited to one or more of the sinking funds of the bond security and
17 redemption fund or to the state building trust fund; and

18 **SECTION 8.** 18.08 (1) (a) 2. of the statutes is created to read:

19 18.08 (1) (a) 2. Any such moneys that represent premium or any payments
20 received pursuant to any agreement or ancillary arrangement entered into under s.
21 18.06 (8) (a) with respect to any such public debt may be credited to one or more of
22 the sinking funds of the bond security and redemption fund or to the capital
23 improvement fund, as determined by the commission.

24 **SECTION 9.** 18.08 (2) of the statutes is amended to read:

BILL

1 18.08 (2) The capital improvement fund may be expended, pursuant to
2 appropriations, only for the purposes and in the amounts for which the public debts
3 have been contracted, for the payment of principal and interest on loans or on notes,
4 for the payment due, if any, under an agreement or ancillary arrangement entered
5 into under s. 18.06 (8) (a) with respect to any such public debt, for the purposes
6 identified under s. 20.867 (2) (v) and (4) (q), and for expenses incurred in contracting
7 public debt.

8 **SECTION 10.** 18.08 (4) of the statutes is amended to read:

9 18.08 (4) If at any time it appears that there will not be on hand in the capital
10 improvement fund sufficient moneys for the payment of principal and interest on
11 loans or on notes or for the payment due, if any, under an agreement or ancillary
12 arrangement entered into under s. 18.06 (8) (a) with respect to any public debt, the
13 department of administration shall transfer to such fund, out of the appropriation
14 made pursuant to s. 20.866, a sum sufficient which, together with any available
15 money on hand in such fund, is sufficient to make such payment.

16 **SECTION 11.** 18.09 (2) of the statutes is amended to read:

17 18.09 (2) Each sinking fund shall be expended, and all moneys from time to
18 time on hand therein are irrevocably appropriated, in sums sufficient, only for the
19 payment of principal and interest on the bonds giving rise to it ~~and~~, premium, if any,
20 due upon ~~refunding~~ redemption of any such bonds, and payment due, if any, under
21 an agreement or ancillary arrangement entered into under s. 18.06 (8) (a) with
22 respect to any such bonds.

23 **SECTION 12.** 18.55 (5) of the statutes is amended to read:

24 18.55 (5) EXERCISE OF AUTHORITY. Money may be borrowed and evidences of
25 revenue obligation issued therefor pursuant to one or more authorizing resolutions,

BILL

1 unless otherwise provided in the resolution or in this subchapter, at any time and
2 from time to time, for any combination of purposes, in any specific amounts, at any
3 rates of interest, for any term, payable at any intervals, at any place, in any manner
4 and having any other terms or conditions deemed necessary or useful. Revenue
5 obligation bonds may bear interest at variable or fixed rates, bear no interest or bear
6 interest payable only at maturity or upon redemption prior to maturity. Unless
7 sooner exercised or unless a ~~shorter~~ different period is provided in the resolution,
8 every authorizing resolution, except as provided in s. 18.59 (1), shall expire one year
9 after the date of its adoption.

10 **SECTION 13.** 18.61 (5) of the statutes is amended to read:

11 18.61 (5) The legislature may provide, with respect to any specific issue of
12 revenue obligations, prior to their issuance, that if the special fund income or the
13 enterprise or program income pledged to the payment of the principal of and interest
14 of on the issue is insufficient for that purpose, or is insufficient to replenish a reserve
15 fund, if applicable, it will consider supplying the deficiency by appropriation of funds,
16 from time to time, out of the treasury. If the legislature so provides, the commission
17 may make the necessary provisions therefor in the authorizing resolution and other
18 proceedings of the issue. Thereafter, if the contingency occurs, recognizing its moral
19 obligation to do so, the legislature hereby expresses its expectation and aspiration
20 that it shall make such appropriation.

21 **SECTION 14.** 18.70 of the statutes is amended to read:

22 **18.70 Provisions applicable.** The following sections apply to this
23 subchapter, except that all references to “public debt”, “debt” or “revenue obligation”
24 are deemed to refer to “operating notes”, all references to “evidence of indebtedness”
25 are deemed to refer to “evidence of operating note”, and all references to “evidences

BILL

1 of indebtedness” are deemed to refer to “evidences of operating notes”: ss. 18.03,
2 ~~18.06 (8)~~, 18.07, 18.10 (1), (2), (4) to (9) and (11), 18.17, 18.52 (1), ~~18.58 (2)~~ (1m), 18.61
3 (1), 18.62 and 18.63.

4 **SECTION 15.** 18.73 (5) of the statutes is created to read:

5 **18.73 (5) AGREEMENTS AND ARRANGEMENTS; DELEGATION; USE OF OPERATING NOTES.**

6 (a) At the time of, or in anticipation of, contracting operating notes and at any time
7 thereafter while the operating notes are outstanding, the commission may enter into
8 agreements and ancillary arrangements relating to the operating notes, including
9 liquidity facilities, remarketing or dealer agreements, letter of credit agreements,
10 insurance policies, guaranty agreements, reimbursement agreements, indexing
11 agreements, or interest exchange agreements. Any payment received pursuant to
12 any such agreements or ancillary arrangements shall be deposited in, and any
13 payments made pursuant to any such agreements or ancillary arrangements will be
14 made from, the general fund or the operating note redemption fund, as determined
15 by the commission.

16 (b) The commission may delegate to other persons the authority and
17 responsibility to take actions necessary and appropriate to implement agreements
18 and ancillary arrangements under par. (a).

19 (c) Any operating notes may include operating notes contracted to fund
20 interest, accrued or to accrue, on the operating notes.

21 **SECTION 16.** 18.74 of the statutes is amended to read:

22 **18.74 Application of operating note proceeds.** All moneys resulting from
23 the contracting of operating notes or any payment to be received under an agreement
24 or ancillary arrangement entered into under s. 18.73 (5) with respect to any such
25 operating notes shall be credited to the general fund, except that moneys which

BILL

1 represent premium and accrued interest on operating notes, or moneys for purposes
2 of funding or refunding operating notes pursuant to s. 18.72 (1) shall be credited to
3 the operating note redemption fund.

4 **SECTION 17.** 18.75 (2) of the statutes is amended to read:

5 18.75 (2) The operating note redemption fund shall be expended and all
6 moneys from time to time on hand therein are irrevocably appropriated, in sums
7 sufficient, only for the payment of principal and interest on operating notes giving
8 rise to it and premium, if any, due upon refunding or early redemption of such
9 operating notes, and for the payment due, if any, under an agreement or ancillary
10 arrangement entered into under s. 18.73 (5) with respect to such operating notes.

11 **SECTION 18.** 18.75 (4) of the statutes is amended to read:

12 18.75 (4) There shall be transferred, under s. 20.855 (1) (a), a sum sufficient
13 for the payment of the principal, interest and premium due, if any, and for the
14 payment due, if any, under an agreement or ancillary arrangement entered into
15 pursuant to s. 18.73 (5) with respect to such operating notes on the operating notes
16 giving rise to it as the same falls due. Such transfers shall be so timed that there is
17 at all times on hand in the fund an amount not less than the amount to be paid out
18 of it during the ensuing 30 days or such other period if so provided for in the
19 authorizing resolution. The commission may pledge the deposit of additional
20 amounts at periodic intervals and the secretary of the department may impound
21 moneys of the general fund, including moneys temporarily reallocated from other
22 funds under s. 20.002 (11), in accordance with the pledge of revenues in the
23 authorizing resolution, and all such impoundments are deemed to be payments for
24 purposes of s. 16.53 (10), but no such impoundment may be made until the amounts

BILL

1 to be paid into the bond security and redemption fund under s. 18.09 during the
2 ensuing 30 days have been deposited in the bond security and redemption fund.

3 **SECTION 19.** 20.866 (intro.) of the statutes is amended to read:

4 **20.866 Public debt.** (intro.) There are irrevocably appropriated to the bond
5 security and redemption fund and to the capital improvement fund, as a first charge
6 upon all revenues of this state, sums sufficient for payment of principal, interest and,
7 premium due, if any, ~~on~~ and payment due, if any, under an agreement or ancillary
8 arrangement entered into under s. 18.06 (8) (a) with respect to any public debt
9 contracted under subchs. I and IV of ch. 18.

10 **SECTION 20.** 20.866 (1) (u) of the statutes, as affected by 2003 Wisconsin Act
11 33, is amended to read:

12 20.866 (1) (u) *Principal repayment and interest.* A sum sufficient from moneys
13 appropriated under sub. (2) (zp) and ss. 20.115 (2) (d) and (7) (b) and (f), 20.190 (1)
14 (c), (d), (i), and (j), 20.225 (1) (c) and (i), 20.245 (1) (e) and (j), 20.250 (1) (c) and (e),
15 20.255 (1) (d), 20.285 (1) (d), (db), (fh), (ih), (je), (jq), (kd), (km), and (ko) and (5) (i),
16 20.320 (1) (c) and (t) and (2) (c), 20.370 (7) (aa), (ac), (ag), (aq), (ar), (at), (au), (bq), (ca),
17 (cb), (cc), (cd), (ce), (cf), (cg), (ea), (eq), and (er), 20.395 (6) (af), (aq), (ar), and (at),
18 20.410 (1) (e), (ec), and (ko) and (3) (e), 20.435 (2) (ee) and (6) (e), 20.465 (1) (d), 20.485
19 (1) (f) and (go), (3) (t) and (4) (qm), 20.505 (4), (es), (et), (ha), and (hb) and (5) (c), (g)
20 and (kc), 20.855 (8) (a) and 20.867 (1) (a) and (b) and (3) (a), (b), (bm), (bp), (br), (bt),
21 (g), (h), (i), and (q) for the payment of principal and, interest ~~on~~, premium due, if any,
22 and payment due, if any, under an agreement or ancillary arrangement entered into
23 pursuant to s. 18.06 (8) (a) with respect to any public debt contracted under subchs.
24 I and IV of ch. 18.

Champagne, Rick

From: Hoadley, Frank
Sent: Friday, April 23, 2004 3:13 PM
To: Champagne, Rick
Subject: LRB 4353/2

Rick -

There is still indication this matter will be taken up, so we are continuing to try to get it in shape.

The attached e-mail has comments from F&L on the swap "conditions" provisions. They had not previously seen or commented on this language. I agree with their mark-up's to the draft (their attachment). With regard to the "value" items in the body of Dave Ryan's e-mail, we need to ponder those a little more before we make changes.

Thanks,

Frank Hoadley



LRB 4353

Champagne, Rick

From: Ryan, David B. [dryan@foley.com]
Sent: Thursday, April 22, 2004 5:08 PM
To: Hoadley, Frank
Cc: Dallia, Larry; Wolff, Michael; Erdman, David; Brinson, Ed; Geisler, Jeffrey; Groethe,
Subject: LRB 4353
Frank:

I have attached a mark-up of 4353/2. My proposed revisions would:

- limit the protections designed to ensure fair agreements to swaps (as opposed to applying to credit and liquidity facilities as well). I don't believe they are really intended to be more extensive than that, and many of them make no sense in any context other than a swap.
- provide for the commission (rather than the consultant) to make the ultimate determination of the fairness of the agreement. I don't think it would be cost effective to require a fairness opinion for each swap. It seems to me that it should be sufficient to make sure the commission is adequately advised, then trust them to do the right thing. (There is no requirement for a third party opinion that bonds are appropriately priced.)
- allow for swaps where a guarantor rather than the counterparty is a rated entity, and
- revises the collateralization requirement to make them less burdensome (and thus more likely to be obtainable without making the swap uneconomic)

Those changes were those that I thought necessary to make it workable. As we discussed, there are other possible revisions, the value of which I'll leave for you to determine:

- the requirement for the counterparty rating is that it be equal to the State's. (This seems arbitrary to me. It would make more sense to determine what level of risk is acceptable -- A or investment grade, for example -- rather than say if the State gets to be a AAA, that is the only acceptable risk, while if the State gets downgraded to junk, that would be an acceptable counterparty risk.)
- the collateralization requirement could be made optional, and evaluated in determining on an overall basis whether collateralization requirement is worthwhile. It is certainly not the case that every instance where the State is exposed to credit risk, is has a requirement for collateral if its debtor is downgraded. Why should it be a hard-and-fast requirement only for a swap?

- the itemized requirement for the guidelines you must establish (confirm that you are comfortable with each of them), especially "the form and content of the agreements" (unless you intend simply to refer to "ISDA forms or other industry standards").

Please also note:

1. The building commission is authorized to determine whether payments should go into the Capital Improvement Fund or the Bond Security and Redemption Fund. Maybe this flexibility can only be a good thing, though we're not sure why it wouldn't go to Bond Security and Redemption.
2. One of the required guideline items refers specifically to credit and liquidity facilities, though I think that is not necessary. That would be removed by my proposed revisions.
3. The subchapter III provisions for swaps do not incorporate the protections from subchapter I. I assume that is how you prefer it. They also do not incorporate the change in subchapter I regarding the deposit of premium.

Please call if you want to discuss these.

David B. Ryan
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
phone: (414) 297-5761
fax: (414) 297-4900
e-mail: dryan@foley.com

<<LRB 4353>>

IMPORTANT NOTICE: The preceding message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error. Then destroy it. Thank you.