State of Wisconsin
2007 - 2008 LEGISLATURE

LRB–2608/~~3~~4
MES:wlj&jld:jf

RMR

2007 BILL

Ed, LPS - only changes are on p. 2 & p. 5

WANTED: SOON

regen

AN ACT ***to amend*** 59.605 ~~(1)~~ (a), 67.01 (9) (intro.), 67.04 (5) (b) 4. and 67.12 (12) (a); and ***to create*** 59.85, 59.86, 59.87, 66.0602 (3) (d) 3., 66.0603 (1m) (e), 66.0603 (5) and 67.045 (1) (g) of the statutes; **relating to:** unfunded pension liability financing in populous counties and membership on the pension study committee.

Analysis by the Legislative Reference Bureau

This bill authorizes a county with a population of 500,000 or more (currently only Milwaukee County) to issue appropriation bonds on a one–time basis, other than refunding bonds, to pay all or any part of the county's unfunded prior service liability with respect to an employee retirement system of the county. "Appropriation bonds" are defined as any bond, note, or other obligation of a county issued as provided in the bill to evidence the county's obligation to repay borrowed money that is payable from various sources, including the following:

1. Moneys annually appropriated by the county for debt service due with respect to the appropriation bonds.
2. Proceeds of the sale of the appropriation bonds.
3. Investment earnings on the items listed above.

Before the county may issue appropriation bonds, however, the county must enact an ordinance to implement a five–year strategic and financial plan related to the payment of unfunded employee retirement benefits. The financial plan shall provide that future annual pension liabilities are funded on a current basis, and the

the lower of either the

or or the normal cost for that year

financial plan must contain quantifiable benchmarks to measure compliance with the plan. Annually, the county board must report to the legislature, the Department of Revenue (DOR), the Department of Administration, and the governor on a number of issues related to the appropriation bonds, including the county's progress in meeting the benchmarks, whether the county fully funds the normal cost contribution for its employee retirement system and the amount that the actuary determines is the county's required contribution to that system. If the county does not fully fund ~~its~~ required cost contribution for a particular year, DOR must reduce and withhold from the county's shared revenue payments the difference between its ~~normal~~ cost contribution and the amount the county actually contributes to the system for that year. DOR must deposit the withheld amount into the county's employee retirement system.

required

The bill states that a populous county is not generally liable for appropriation bonds, and appropriation bonds are not a debt of the county for any purpose whatsoever. Appropriation bonds, including the principal and interest payments, are payable only from amounts that the county board may, from year to year, appropriate.

For further information see the ***local*** 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. 59.605 (1) (a) of the statutes is amended to read:

59.605 **(1)** (a) "Debt levy" means the county purpose levy for debt service on loans under subch. II of ch. 24, bonds issued under s. 67.05 ~~and~~, promissory notes issued under s. 67.12 (12), <u>and appropriation bonds issued under s. 59.85,</u> less any revenues that abate the levy.

SECTION 2. 59.85 of the statutes is created to read:

59.85 Appropriation bonds for payment of employee retirement system liability in populous counties. (1) DEFINITIONS. In this section:

(a) "Appropriation bond" means a bond issued by a county to evidence its obligation to repay a certain amount of borrowed money that is payable from all of the following:

1. Moneys annually appropriated by law for debt service due with respect to such appropriation bond in that year.

2. Proceeds of the sale of such appropriation bonds.

3. Payments received for that purpose under agreements and ancillary arrangements described in s. 59.86.

4. Investment earnings on amounts in subds. 1. to 3.

(b) "Board" means the county board of supervisors in any county.

(c) "Bond" means any bond, note, or other obligation of a county issued under this section.

(d) "County" means any county having a population of 500,000 or more.

(e) "Refunding bond" means an appropriation bond issued to fund or refund all or any part of one or more outstanding pension–related bonds.

(1m) LEGISLATIVE FINDING AND DETERMINATION. Recognizing that a county, by prepaying part or all of the county's unfunded prior service liability with respect to an employee retirement system of the county, may reduce its costs and better ensure the timely and full payment of retirement benefits to participants and their beneficiaries under the employee retirement system, the legislature finds and determines that it is in the public interest for the county to issue appropriation bonds to obtain proceeds to pay its unfunded prior service liability.

(2) AUTHORIZATION OF APPROPRIATION BONDS. (a) A board shall have all powers necessary and convenient to carry out its duties, and to exercise its authority, under this section.

(b) Subject to pars. (c) and (d), a county may issue appropriation bonds under this section to pay all or any part of the county's unfunded prior service liability with respect to an employee retirement system of the county, or to fund or refund outstanding appropriation bonds issued under this section. A county may use proceeds of appropriation bonds to pay issuance or administrative expenses, to make deposits to reserve funds, to pay accrued or funded interest, to pay the costs of credit enhancement, to make payments under other agreements entered into under s. 59.86, or to make deposits to stabilization funds established under s. 59.87.

(c) Other than refunding bonds issued under sub. (6), all bonds must be issued simultaneously.

(d) 1. Before a county may issue appropriation bonds under par. (b), its board shall enact an ordinance that establishes a 5-year strategic and financial plan related to the payment of all or any part of the county's unfunded prior service liability with respect to an employee retirement system of the county. The strategic and financial plan shall provide that future annual pension liabilities are funded on a current basis. The strategic and financial plan shall contain quantifiable benchmarks to measure compliance with the plan. The board shall make a determination that the ordinance meets the requirements of this subdivision and, absent manifest error, the board's determination shall be conclusive. The board shall submit to the governor and to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a copy of the strategic and financial plan.

2. Annually, the county shall submit to the governor, the department of revenue, and the department of administration, and to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report that includes all of the following:

a. The county's progress in meeting the benchmarks in the strategic and financial plan.

b. Any proposed modifications to the plan.

c. The status of any stabilization fund that is established under s. 59.87 (3).

d. The most current actuarial report related to the county's employee retirement system.

e. The amount, if any, by which the county's contributions to the employee retirement system for the prior year is less than the normal cost contribution for that year as specified in the initial actuarial report for the county's employee retirement system for that year.

f. The amount that the actuary determines is the county's required contribution to the employee retirement system for that year.

(2m) PENALTY FOR INADEQUATE CONTRIBUTION. If the county's contributions to the employee retirement system for the prior year is less than the lower of the required contribution for that year, as described in sub. (2) (d) 2. f., or the normal cost for that year, the department of revenue shall reduce and withhold the amount of the shared revenue payments to the county under subch. I of ch. 79, in the following year, by an amount equal to the difference between the ~~normal~~ required cost contribution for that prior year and the county's actual contribution in that prior year. The department of revenue shall deposit the amount of the reduced and withheld shared revenue payment into the county's employee retirement system.

(3) TERMS. (a) A county may borrow moneys and issue appropriation bonds in evidence of the borrowing pursuant to one or more written authorizing resolutions under sub. (4). Unless otherwise provided in an authorizing resolution, the county may issue appropriation bonds at any time, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner, and having any other terms or conditions that the board considers necessary or desirable.

Appropriation bonds may bear interest at variable or fixed rates, bear no interest, or bear interest payable only at maturity or upon redemption prior to maturity.

(b) The board may authorize appropriation bonds having any provisions for prepayment the board considers necessary or desirable, including the payment of any premium.

(c) Interest shall cease to accrue on an appropriation bond on the date that the appropriation bond becomes due for payment if payment is made or duly provided for.

(d) All moneys borrowed by a county that is evidenced by appropriation bonds issued under this section shall be lawful money of the United States, and all appropriation bonds shall be payable in such money.

(e) All appropriation bonds owned or held by a fund of the county are outstanding in all respects and the board or other governing body controlling the fund shall have the same rights with respect to an appropriation bond as a private party, but if any sinking fund acquires appropriation bonds that gave rise to such fund, the appropriation bonds are considered paid for all purposes and no longer outstanding and shall be canceled as provided in sub. (7) (d).

(f) A county shall not be generally liable on appropriation bonds, and appropriation bonds shall not be a debt of the county for any purpose whatsoever. Appropriation bonds, including the principal thereof and interest thereon, shall be payable only from amounts that the board may, from year to year, appropriate for the payment thereof.

(4) PROCEDURES. (a) No appropriation bonds may be issued by a county unless the issuance is pursuant to a written authorizing resolution adopted by a majority of a quorum of the board. The resolution may be in the form of a resolution or trust indenture, and shall set forth the aggregate principal amount of appropriation bonds authorized thereby, the manner of their sale, and the form and terms thereof. The resolution or trust indenture may establish such funds and accounts, including a reserve fund, as the board determines.

(b) Appropriation bonds may be sold at either public or private sale and may be sold at any price or percentage of par value. All appropriation bonds sold at pubic sale shall be noticed as provided in the authorizing resolution. Any bid received at pubic sale may be rejected.

(5) FORM. (a) As determined by the board, appropriation bonds may be issued in book–entry form or in certificated form. Notwithstanding s. 403.104 (1), every evidence of appropriation bond is a negotiable instrument.

(b) Every appropriation bond shall be executed in the name of and for the county by the chairperson of the board and county clerk, and shall be sealed with the seal of the county, if any. Facsimile signatures of either officer may be imprinted in lieu of manual signatures, but the signature of at least one such officer shall be manual. An appropriation bond bearing the manual or facsimile signature of a person in office at the same time the signature was signed or imprinted shall be fully valid notwithstanding that before or after the delivery of such appropriation bond the person ceased to hold such office.

(c) Every appropriation bond shall be dated not later than the date it is issued, shall contain a reference by date to the appropriate authorizing resolution, shall state the limitation established in sub. (3) (f), and shall be in accordance with the appropriate authorizing resolution in all respects.

(d) An appropriation bond shall be substantially in such form and contain such statements or terms as determined by the board, and may not conflict with law or with the appropriate authorizing resolution.

(6) REFUNDING BONDS. (a) 1. A board may authorize the issuance of refunding appropriation bonds. Refunding appropriation bonds may be issued, subject to any contract rights vested in owners of the appropriation bonds being refunded, to refund all or any part of one or more issues of appropriation bonds notwithstanding that the appropriation bonds may have been issued at different times or issues of general obligation promissory notes under s. 67.12 (12) were issued to pay unfunded prior service liability with respect to an employee retirement system. The principal amount of the refunding appropriation bonds may not exceed the sum of: the principal amount of the appropriation bonds or general obligation promissory notes being refunded; applicable redemption premiums; unpaid interest on the refunded appropriation bonds or general obligation promissory notes to the date of delivery or exchange of the refunding appropriation bonds; in the event the proceeds are to be deposited in trust as provided in par. (c), interest to accrue on the appropriation bonds or general obligation promissory notes to be refunded from the date of delivery to the date of maturity or to the redemption date selected by the board, whichever is earlier; and the expenses incurred in the issuance of the refunding appropriation bonds and the payment of the refunded appropriation bonds or general obligation promissory notes.

2. A board may authorize the issuance of general obligation promissory notes under s. 67.12 (12) (a) to refund appropriation bonds, notwithstanding s. 67.01 (9) (intro.).

(b) If a board determines to exchange refunding appropriation bonds, they may be exchanged privately for, and in payment and discharge of, any of the outstanding appropriation bonds being refunded. Refunding appropriation bonds may be exchanged for such principal amount of the appropriation bonds being exchanged therefor as may be determined by the board to be necessary or desirable. The owners of the appropriation bonds being refunded who elect to exchange need not pay accrued interest on the refunding appropriation bonds if and to the extent that interest is accrued and unpaid on the appropriation bonds being refunded and to be surrendered. If any of the appropriation bonds to be refunded are to be called for redemption, the board shall determine which redemption dates are to be used, if more than one date is applicable and shall, prior to the issuance of the refunding appropriation bonds, provide for notice of redemption to be given in the manner and at the times required by the resolution authorizing the appropriation bonds to be refunded.

(c) 1. The principal proceeds from the sale of any refunding appropriation bonds shall be applied either to the immediate payment and retirement of the appropriation bonds or general obligation promissory notes being refunded or, if the bonds or general obligation promissory notes have not matured and are not presently redeemable, to the creation of a trust for, and shall be pledged to the payment of, the appropriation bonds or general obligation promissory notes being refunded.

2. If a trust is created, a separate deposit shall be made for each issue of appropriation bonds or general obligation promissory notes being refunded. Each deposit shall be with a bank or trust company authorized by the laws of the United States or of a state in which it is located to conduct banking or trust company business. If the total amount of any deposit, including moneys other than sale

proceeds but legally available for such purpose, is less than the principal amount of the appropriation bonds or general obligation promissory notes being refunded and for the payment of which the deposit has been created and pledged, together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption, then the application of the sale proceeds shall be legally sufficient only if the moneys deposited are invested in securities issued by the United States or one of its agencies, or securities fully guaranteed by the United States, and only if the principal amount of the securities at maturity and the income therefrom to maturity will be sufficient and available, without the need for any further investment or reinvestment, to pay at maturity or upon redemption the principal amount of the appropriation bonds or general obligation promissory notes being refunded together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption. The income from the principal proceeds of the securities shall be applied solely to the payment of the principal of and interest and redemption premiums on the appropriation bonds or general obligation promissory notes being refunded, but provision may be made for the pledging and disposition of any surplus.

3. Nothing in this paragraph may be construed as a limitation on the duration of any deposit in trust for the retirement of appropriation bonds or general obligation promissory notes being refunded that have not matured and that are not presently redeemable. Nothing in this paragraph may be constructed to prohibit reinvestment of the income of a trust if the reinvestments will mature at such times that sufficient moneys will be available to pay interest, applicable premiums, and principal on the appropriation bonds or general obligation promissory notes being refunded.

(7) FISCAL REGULATIONS. (a) All appropriation bonds shall be registered by the county clerk or county treasurer of the county issuing the appropriation bonds, or such other officers or agents, including fiscal agents, as the board may determine. After registration, no transfer of an appropriation bond is valid unless made by the registered owner's duly authorized attorney, on the records of the county and similarly noted on the appropriation bond. The county may treat the registered owner as the owner of the appropriation bond for all purposes. Payments of principal and interest shall be by electronic funds transfer, check, share draft, or other draft to the registered owner at the owner's address as it appears on the register, unless the board has otherwise provided. Information in the register is not available for inspection and copying under s. 19.35 (1). The board may make any other provision respecting registration as it considers necessary or desirable.

(b) The board may appoint one or more trustees or fiscal agents for each issue of appropriation bonds. The county treasurer may be designated as the trustee and the sole fiscal agent or as cofiscal agent for any issue of appropriation bonds. Every other fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to conduct banking or trust company business. There may be deposited with a trustee, in a special account, moneys to be used only for the purposes expressly provided in the resolution authorizing the issuance of appropriation bonds or an agreement between the county and the trustee. The board may make other provisions respecting trustees and fiscal agents as the board considers necessary or desirable and may enter into contracts with any trustee or fiscal agent containing such terms, including compensation, and conditions in regard to the trustee or fiscal agent as the board considers necessary or desirable.

(c) If any appropriation bond is destroyed, lost, or stolen, the county shall execute and deliver a new appropriation bond, upon filing with the board evidence satisfactory to the board that the appropriation bond has been destroyed, lost, or stolen, upon providing proof of ownership thereof, and upon furnishing the board with indemnity satisfactory to it and complying with such other rules of the county and paying any expenses that the county may incur. The board shall cancel the appropriation bond surrendered to the county.

(d) Unless otherwise directed by the board, every appropriation bond paid or otherwise retired shall be marked "canceled" and delivered to the county treasurer, or to such other fiscal agent as applicable with respect to the appropriation bond, who shall destroy them and deliver a certificate to that effect to the county clerk.

(8) APPROPRIATION 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 any appropriation bonds issued under this section:

(a) The state, the investment board, public officers, 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.

(9) MORAL OBLIGATION PLEDGE. If the board considers it necessary or desirable to do so, it may express in a resolution authorizing appropriation bonds its expectation and aspiration to make timely appropriations sufficient to pay the principal and interest due with respect to such appropriation bonds, to make deposits into a reserve fund created under sub. (4) (a) with respect to such appropriation bonds, to make payments under any agreement or ancillary arrangement entered into under s. 59.86 with respect to such appropriation bonds, to make deposits into any stabilization fund established or continued under s. 59.87 with respect to such appropriation bonds, or to pay related issuance or administrative expenses.

(10) PENSION STUDY COMMITTEE. The 2 public members of the pension study committee, created by chapter 405, laws of 1965, shall have at least 10 years of financial experience.

SECTION 3. 59.86 of the statutes is created to read:

59.86 Agreements and ancillary arrangements for certain notes and appropriation bonds. At the time of issuance or in anticipation of the issuance of appropriation bonds under s. 59.85, or general obligation promissory notes under s. 67.12 (12), to pay unfunded prior service liability with respect to an employee retirement system, or at any time thereafter so long as the appropriation bonds or general obligation promissory notes are outstanding, a county having a population of 500,000 or more may enter into agreements or ancillary arrangements relating to the appropriation bonds or general obligation promissory notes, including trust indentures, liquidity facilities, remarketing or dealer agreements, letters of credit, insurance policies, guaranty agreements, reimbursement agreements, indexing agreements, and interest exchange agreements. Any payments made or amounts received with respect to any such agreement or ancillary arrangement shall be made from or deposited as provided in the agreement or ancillary arrangement.

SECTION 4. 59.87 of the statutes is created to read:

59.87 Employee retirement system liability financing in populous counties; additional powers. (1) DEFINITIONS. In this section:

(a) "Board" means the county board of supervisors in any county.

(b) "County" means any county having a population of 500,000 or more.

(c) "Pension funding plan" means a strategic and financial plan related to the payment of all or part of a county's unfunded prior service liability with respect to an employee retirement system.

(d) "Trust" means a common law trust organized under the laws of this state, by the county, as settlor, pursuant to a formal, written, declaration of trust.

(2) SPECIAL FINANCING ENTITIES, FUNDS, AND ACCOUNTS. (a) To facilitate a pension funding plan and in furtherance thereof, a board may create one or more of the following:

1. A trust.

2. A nonstock corporation under ch. 181.

3. A limited liability company under ch. 183.

4. A special fund or account of the county.

(b) An entity described under par. (a) has all of the powers provided to it under applicable law and the documents pursuant to which it is created and established. The powers shall be construed broadly in favor of effectuating the purposes for which the entity is created. A county may appropriate funds to such entities and to such funds and accounts, under terms and conditions established by the board, consistent with the purposes for which they are created and established.

(3) STABILIZATION FUNDS. (a) To facilitate a pension funding plan a board may establish a stabilization fund. Any such fund may be created as a trust, a special fund or account of the county established by a separate resolution or ordinance, or a fund or account created under an authorizing resolution or trust indenture in connection with the authorization and issuance of appropriation bonds under s. 59.85 or general obligation promissory notes under s. 67.12 (12). A county may appropriate funds for deposit to a stabilization fund established under this subsection.

(b) Moneys in a stabilization fund established under this subsection may be used, subject to annual appropriation by the board, solely to pay principal or interest on appropriation bonds issued under s. 59.85 and general obligation promissory notes under s. 67.12 (12) issued in connection with a pension funding plan, for the redemption or repurchase of such appropriation bonds or general obligation promissory notes, to make payments under any agreement or ancillary arrangement entered into under s. 59.86 with respect to such appropriation bonds or general obligation promissory notes, or to pay annual pension costs other than normal costs. Moneys on deposit in a stabilization fund may not be subject to any claims, demands, or actions by, or transfers or assignments to, any creditor of the county, any beneficiary of the county's employee retirement system, or any other person, on terms other than as may be established in the resolution or ordinance creating the stabilization fund. Moneys on deposit in a stabilization fund established under this subsection may be invested and reinvested in the manner directed by the board or pursuant to delegation by the board as provided under s. 66.0603 (5).

SECTION 5. 66.0602 (3) (d) 3. of the statutes is created to read:

66.0602 **(3)** (d) 3. The limit otherwise applicable under this section does not apply to amounts levied by a county having a population of 500,000 or more for the payment of debt service on appropriation bonds issued under s. 59.85, including debt service on appropriation bonds issued to fund or refund outstanding appropriation bonds of the county, to pay related issuance costs or redemption premiums, or to make payments with respect to agreements or ancillary arrangements authorized under s. 59.86.

SECTION 6. 66.0603 (1m) (e) of the statutes is created to read:

66.0603 **(1m)** (e) Subject to s. 67.11 (2) with respect to funds on deposit in a debt service fund for general obligation promissory notes issued under s. 67.12 (12), a county having a population of 500,000 or more, or a person to whom the county has delegated investment authority under sub. (5), may invest and reinvest in the same manner as is authorized for investments and reinvestments under s. 881.01, any of the following:

1. Moneys held in any stabilization fund established under s. 59.87 (3).

2. Moneys held in a fund or account, including any reserve fund, created in connection with the issuance of appropriation bonds under s. 59.85 or general obligation promissory notes under s. 67.12 (12) issued to provide funds for the payment of all or a part of the county's unfunded prior service liability.

3. Moneys appropriated or held by the county to pay debt service on appropriation bonds or general obligation promissory notes under s. 67.12 (12).

4. Moneys constituting proceeds of appropriation bonds or general obligation promissory notes described in subd. 2. that are available for investment until they are spent.

5. Moneys held in an employee retirement system of the county.

SECTION 7. 66.0603 (5) of the statutes is created to read:

66.0603 **(5)** DELEGATION OF INVESTMENT AUTHORITY IN CONNECTION WITH PENSION FINANCING IN POPULOUS COUNTIES. The governing board of a county having a population of 500,000 or more may delegate investment authority over any of the moneys described in sub. (1m) (e) to any of the following persons, which shall be responsible for the general administration and proper operation of the county's employee retirement system, subject to the board's finding that such person has expertise in the field of investments:

(a) A public board that is organized for such purpose under county ordinances.

(b) A trustee, investment advisor, or investment banking or consulting firm.

SECTION 8. 67.01 (9) (intro.) of the statutes is amended to read:

67.01 **(9)** (intro.) This chapter is not applicable to appropriation bonds issued by a county under s. 59.85 and, except ss. 67.08 (1), 67.09 and 67.10, is not applicable:

SECTION 9. 67.04 (5) (b) 4. of the statutes is amended to read:

67.04 **(5)** (b) 4. To pay unfunded prior service liability contributions under the Wisconsin retirement system, or to pay unfunded prior service liability with respect to an employee retirement system, if all of the net proceeds of the note will be used to pay for such contributions or payments.

SECTION 10. 67.045 (1) (g) of the statutes is created to read:

67.045 **(1)** (g) The debt is issued by a county having a population of 500,000 or more to pay unfunded prior service liability with respect to an employee retirement system.

SECTION 11. 67.12 (12) (a) of the statutes is amended to read:

67.12 **(12)** (a) Any municipality may issue promissory notes as evidence of indebtedness for any public purpose, as defined in s. 67.04 (1) (b), including but not limited to paying any general and current municipal expense, and refunding any municipal obligations, including interest on them. Each note, plus interest if any, shall be repaid within 10 years after the original date of the note, except that notes issued under this section for purposes of ss. 119.498, 145.245 (12m), 281.58, 281.59, 281.60, and 281.61, ~~or~~ issued to raise funds to pay a portion of the capital costs of a metropolitan sewerage district, or issued by a county having a population of 500,000 or more to pay unfunded prior service liability with respect to an employee retirement system shall be repaid within 20 years after the original date of the note.

(END)

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1. Moneys annually appropriated by the county for debt service due with respect to the appropriation bonds.
2. Proceeds of the sale of the appropriation bonds.
3. Investment earnings on the items listed above.

Before the county may issue appropriation bonds, however, the county must enact an ordinance to implement a five-year strategic and financial plan related to the payment of unfunded employee retirement benefits. The financial plan shall provide that future annual pension liabilities are funded on a current basis, and the financial plan must contain quantifiable benchmarks to measure compliance with the plan. Annually, the county board must report to the legislature, the Department of Revenue (DOR), the Department of Administration, and the governor on a number of issues related to the appropriation bonds, including the county's progress in meeting the benchmarks, whether the county fully funds the normal cost contribution for its employee retirement system and the amount that the actuary determines is the county's required contribution to that system. If the county does not fully fund the lower of either the required cost contribution for a particular year or the normal cost for that year, DOR must reduce and withhold from the county's shared revenue payments the difference between its required cost contribution and the amount the county actually contributes to the system for that year. DOR must deposit the withheld amount into the county's employee retirement system.

The bill states that a populous county is not generally liable for appropriation bonds, and appropriation bonds are not a debt of the county for any purpose whatsoever. Appropriation bonds, including the principal and interest payments, are payable only from amounts that the county board may, from year to year, appropriate.

For further information see the ***local*** 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:

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59.605 **(1)** (a) "Debt levy" means the county purpose levy for debt service on loans under subch. II of ch. 24, bonds issued under s. 67.05 ~~and~~, promissory notes issued under s. 67.12 (12), <u>and appropriation bonds issued under s. 59.85,</u> less any revenues that abate the levy.

SECTION 2. 59.85 of the statutes is created to read:

59.85 Appropriation bonds for payment of employee retirement system liability in populous counties. (1) DEFINITIONS. In this section:

(a) "Appropriation bond" means a bond issued by a county to evidence its obligation to repay a certain amount of borrowed money that is payable from all of the following:

1. Moneys annually appropriated by law for debt service due with respect to such appropriation bond in that year.

2. Proceeds of the sale of such appropriation bonds.

3. Payments received for that purpose under agreements and ancillary arrangements described in s. 59.86.

4. Investment earnings on amounts in subds. 1. to 3.

(b) "Board" means the county board of supervisors in any county.

(c) "Bond" means any bond, note, or other obligation of a county issued under this section.

(d) "County" means any county having a population of 500,000 or more.

(e) "Refunding bond" means an appropriation bond issued to fund or refund all or any part of one or more outstanding pension-related bonds.

(1m) LEGISLATIVE FINDING AND DETERMINATION. Recognizing that a county, by prepaying part or all of the county's unfunded prior service liability with respect to an employee retirement system of the county, may reduce its costs and better ensure the timely and full payment of retirement benefits to participants and their beneficiaries under the employee retirement system, the legislature finds and determines that it is in the public interest for the county to issue appropriation bonds to obtain proceeds to pay its unfunded prior service liability.

(2) AUTHORIZATION OF APPROPRIATION BONDS. (a) A board shall have all powers necessary and convenient to carry out its duties, and to exercise its authority, under this section.

(b) Subject to pars. (c) and (d), a county may issue appropriation bonds under this section to pay all or any part of the county's unfunded prior service liability with respect to an employee retirement system of the county, or to fund or refund outstanding appropriation bonds issued under this section. A county may use proceeds of appropriation bonds to pay issuance or administrative expenses, to make deposits to reserve funds, to pay accrued or funded interest, to pay the costs of credit enhancement, to make payments under other agreements entered into under s. 59.86, or to make deposits to stabilization funds established under s. 59.87.

(c) Other than refunding bonds issued under sub. (6), all bonds must be issued simultaneously.

(d) 1. Before a county may issue appropriation bonds under par. (b), its board shall enact an ordinance that establishes a 5-year strategic and financial plan related to the payment of all or any part of the county's unfunded prior service liability with respect to an employee retirement system of the county. The strategic and financial plan shall provide that future annual pension liabilities are funded on a current basis. The strategic and financial plan shall contain quantifiable benchmarks to measure compliance with the plan. The board shall make a determination that the ordinance meets the requirements of this subdivision and, absent manifest error, the board's determination shall be conclusive. The board shall submit to the governor and to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a copy of the strategic and financial plan.

2. Annually, the county shall submit to the governor, the department of revenue, and the department of administration, and to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report that includes all of the following:

a. The county's progress in meeting the benchmarks in the strategic and financial plan.

b. Any proposed modifications to the plan.

c. The status of any stabilization fund that is established under s. 59.87 (3).

d. The most current actuarial report related to the county's employee retirement system.

e. The amount, if any, by which the county's contributions to the employee retirement system for the prior year is less than the normal cost contribution for that year as specified in the initial actuarial report for the county's employee retirement system for that year.

f. The amount that the actuary determines is the county's required contribution to the employee retirement system for that year.

(2m) PENALTY FOR INADEQUATE CONTRIBUTION. If the county's contributions to the employee retirement system for the prior year is less than the lower of the required contribution for that year, as described in sub. (2) (d) 2. f., or the normal cost for that year, the department of revenue shall reduce and withhold the amount of the shared revenue payments to the county under subch. I of ch. 79, in the following year, by an amount equal to the difference between the required cost contribution for that prior year and the county's actual contribution in that prior year. The department of revenue shall deposit the amount of the reduced and withheld shared revenue payment into the county's employee retirement system.

(3) TERMS. (a) A county may borrow moneys and issue appropriation bonds in evidence of the borrowing pursuant to one or more written authorizing resolutions under sub. (4). Unless otherwise provided in an authorizing resolution, the county may issue appropriation bonds at any time, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner, and having any other terms or conditions that the board considers necessary or desirable.

Appropriation bonds may bear interest at variable or fixed rates, bear no interest, or bear interest payable only at maturity or upon redemption prior to maturity.

(b) The board may authorize appropriation bonds having any provisions for prepayment the board considers necessary or desirable, including the payment of any premium.

(c) Interest shall cease to accrue on an appropriation bond on the date that the appropriation bond becomes due for payment if payment is made or duly provided for.

(d) All moneys borrowed by a county that is evidenced by appropriation bonds issued under this section shall be lawful money of the United States, and all appropriation bonds shall be payable in such money.

(e) All appropriation bonds owned or held by a fund of the county are outstanding in all respects and the board or other governing body controlling the fund shall have the same rights with respect to an appropriation bond as a private party, but if any sinking fund acquires appropriation bonds that gave rise to such fund, the appropriation bonds are considered paid for all purposes and no longer outstanding and shall be canceled as provided in sub. (7) (d).

(f) A county shall not be generally liable on appropriation bonds, and appropriation bonds shall not be a debt of the county for any purpose whatsoever. Appropriation bonds, including the principal thereof and interest thereon, shall be payable only from amounts that the board may, from year to year, appropriate for the payment thereof.

(4) PROCEDURES. (a) No appropriation bonds may be issued by a county unless the issuance is pursuant to a written authorizing resolution adopted by a majority of a quorum of the board. The resolution may be in the form of a resolution or trust indenture, and shall set forth the aggregate principal amount of appropriation bonds authorized thereby, the manner of their sale, and the form and terms thereof. The resolution or trust indenture may establish such funds and accounts, including a reserve fund, as the board determines.

(b) Appropriation bonds may be sold at either public or private sale and may be sold at any price or percentage of par value. All appropriation bonds sold at pubic sale shall be noticed as provided in the authorizing resolution. Any bid received at pubic sale may be rejected.

(5) FORM. (a) As determined by the board, appropriation bonds may be issued in book–entry form or in certificated form. Notwithstanding s. 403.104 (1), every evidence of appropriation bond is a negotiable instrument.

(b) Every appropriation bond shall be executed in the name of and for the county by the chairperson of the board and county clerk, and shall be sealed with the seal of the county, if any. Facsimile signatures of either officer may be imprinted in lieu of manual signatures, but the signature of at least one such officer shall be manual. An appropriation bond bearing the manual or facsimile signature of a person in office at the same time the signature was signed or imprinted shall be fully valid notwithstanding that before or after the delivery of such appropriation bond the person ceased to hold such office.

(c) Every appropriation bond shall be dated not later than the date it is issued, shall contain a reference by date to the appropriate authorizing resolution, shall state the limitation established in sub. (3) (f), and shall be in accordance with the appropriate authorizing resolution in all respects.

(d) An appropriation bond shall be substantially in such form and contain such statements or terms as determined by the board, and may not conflict with law or with the appropriate authorizing resolution.

(6) REFUNDING BONDS. (a) 1. A board may authorize the issuance of refunding appropriation bonds. Refunding appropriation bonds may be issued, subject to any contract rights vested in owners of the appropriation bonds being refunded, to refund all or any part of one or more issues of appropriation bonds notwithstanding that the appropriation bonds may have been issued at different times or issues of general obligation promissory notes under s. 67.12 (12) were issued to pay unfunded prior service liability with respect to an employee retirement system. The principal amount of the refunding appropriation bonds may not exceed the sum of: the principal amount of the appropriation bonds or general obligation promissory notes being refunded; applicable redemption premiums; unpaid interest on the refunded appropriation bonds or general obligation promissory notes to the date of delivery or exchange of the refunding appropriation bonds; in the event the proceeds are to be deposited in trust as provided in par. (c), interest to accrue on the appropriation bonds or general obligation promissory notes to be refunded from the date of delivery to the date of maturity or to the redemption date selected by the board, whichever is earlier; and the expenses incurred in the issuance of the refunding appropriation bonds and the payment of the refunded appropriation bonds or general obligation promissory notes.

2. A board may authorize the issuance of general obligation promissory notes under s. 67.12 (12) (a) to refund appropriation bonds, notwithstanding s. 67.01 (9) (intro.).

(b) If a board determines to exchange refunding appropriation bonds, they may be exchanged privately for, and in payment and discharge of, any of the outstanding appropriation bonds being refunded. Refunding appropriation bonds may be exchanged for such principal amount of the appropriation bonds being exchanged therefor as may be determined by the board to be necessary or desirable. The owners of the appropriation bonds being refunded who elect to exchange need not pay accrued interest on the refunding appropriation bonds if and to the extent that interest is accrued and unpaid on the appropriation bonds being refunded and to be surrendered. If any of the appropriation bonds to be refunded are to be called for redemption, the board shall determine which redemption dates are to be used, if more than one date is applicable and shall, prior to the issuance of the refunding appropriation bonds, provide for notice of redemption to be given in the manner and at the times required by the resolution authorizing the appropriation bonds to be refunded.

(c) 1. The principal proceeds from the sale of any refunding appropriation bonds shall be applied either to the immediate payment and retirement of the appropriation bonds or general obligation promissory notes being refunded or, if the bonds or general obligation promissory notes have not matured and are not presently redeemable, to the creation of a trust for, and shall be pledged to the payment of, the appropriation bonds or general obligation promissory notes being refunded.

2. If a trust is created, a separate deposit shall be made for each issue of appropriation bonds or general obligation promissory notes being refunded. Each deposit shall be with a bank or trust company authorized by the laws of the United States or of a state in which it is located to conduct banking or trust company business. If the total amount of any deposit, including moneys other than sale

proceeds but legally available for such purpose, is less than the principal amount of the appropriation bonds or general obligation promissory notes being refunded and for the payment of which the deposit has been created and pledged, together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption, then the application of the sale proceeds shall be legally sufficient only if the moneys deposited are invested in securities issued by the United States or one of its agencies, or securities fully guaranteed by the United States, and only if the principal amount of the securities at maturity and the income therefrom to maturity will be sufficient and available, without the need for any further investment or reinvestment, to pay at maturity or upon redemption the principal amount of the appropriation bonds or general obligation promissory notes being refunded together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption. The income from the principal proceeds of the securities shall be applied solely to the payment of the principal of and interest and redemption premiums on the appropriation bonds or general obligation promissory notes being refunded, but provision may be made for the pledging and disposition of any surplus.

3. Nothing in this paragraph may be construed as a limitation on the duration of any deposit in trust for the retirement of appropriation bonds or general obligation promissory notes being refunded that have not matured and that are not presently redeemable. Nothing in this paragraph may be constructed to prohibit reinvestment of the income of a trust if the reinvestments will mature at such times that sufficient moneys will be available to pay interest, applicable premiums, and principal on the appropriation bonds or general obligation promissory notes being refunded.

(7) FISCAL REGULATIONS. (a) All appropriation bonds shall be registered by the county clerk or county treasurer of the county issuing the appropriation bonds, or such other officers or agents, including fiscal agents, as the board may determine. After registration, no transfer of an appropriation bond is valid unless made by the registered owner's duly authorized attorney, on the records of the county and similarly noted on the appropriation bond. The county may treat the registered owner as the owner of the appropriation bond for all purposes. Payments of principal and interest shall be by electronic funds transfer, check, share draft, or other draft to the registered owner at the owner's address as it appears on the register, unless the board has otherwise provided. Information in the register is not available for inspection and copying under s. 19.35 (1). The board may make any other provision respecting registration as it considers necessary or desirable.

(b) The board may appoint one or more trustees or fiscal agents for each issue of appropriation bonds. The county treasurer may be designated as the trustee and the sole fiscal agent or as cofiscal agent for any issue of appropriation bonds. Every other fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to conduct banking or trust company business. There may be deposited with a trustee, in a special account, moneys to be used only for the purposes expressly provided in the resolution authorizing the issuance of appropriation bonds or an agreement between the county and the trustee. The board may make other provisions respecting trustees and fiscal agents as the board considers necessary or desirable and may enter into contracts with any trustee or fiscal agent containing such terms, including compensation, and conditions in regard to the trustee or fiscal agent as the board considers necessary or desirable.

(c) If any appropriation bond is destroyed, lost, or stolen, the county shall execute and deliver a new appropriation bond, upon filing with the board evidence satisfactory to the board that the appropriation bond has been destroyed, lost, or stolen, upon providing proof of ownership thereof, and upon furnishing the board with indemnity satisfactory to it and complying with such other rules of the county and paying any expenses that the county may incur. The board shall cancel the appropriation bond surrendered to the county.

(d) Unless otherwise directed by the board, every appropriation bond paid or otherwise retired shall be marked "canceled" and delivered to the county treasurer, or to such other fiscal agent as applicable with respect to the appropriation bond, who shall destroy them and deliver a certificate to that effect to the county clerk.

(8) APPROPRIATION 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 any appropriation bonds issued under this section:

(a) The state, the investment board, public officers, 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.

(9) MORAL OBLIGATION PLEDGE. If the board considers it necessary or desirable to do so, it may express in a resolution authorizing appropriation bonds its expectation and aspiration to make timely appropriations sufficient to pay the principal and interest due with respect to such appropriation bonds, to make deposits into a reserve fund created under sub. (4) (a) with respect to such appropriation bonds, to make payments under any agreement or ancillary arrangement entered into under s. 59.86 with respect to such appropriation bonds, to make deposits into any stabilization fund established or continued under s. 59.87 with respect to such appropriation bonds, or to pay related issuance or administrative expenses.

(10) PENSION STUDY COMMITTEE. The 2 public members of the pension study committee, created by chapter 405, laws of 1965, shall have at least 10 years of financial experience. (11) Applicability. This section does not apply if a county does not issue appropriation bonds as authorized under sub. (2).

SECTION 3. 59.86 of the statutes is created to read:

59.86 Agreements and ancillary arrangements for certain notes and appropriation bonds. At the time of issuance or in anticipation of the issuance of appropriation bonds under s. 59.85, or general obligation promissory notes under s. 67.12 (12), to pay unfunded prior service liability with respect to an employee retirement system, or at any time thereafter so long as the appropriation bonds or general obligation promissory notes are outstanding, a county having a population of 500,000 or more may enter into agreements or ancillary arrangements relating to the appropriation bonds or general obligation promissory notes, including trust indentures, liquidity facilities, remarketing or dealer agreements, letters of credit, insurance policies, guaranty agreements, reimbursement agreements, indexing agreements, and interest exchange agreements. Any payments made or amounts received with respect to any such agreement or ancillary arrangement shall be made from or deposited as provided in the agreement or ancillary arrangement.

SECTION 4. 59.87 of the statutes is created to read:

59.87 Employee retirement system liability financing in populous counties; additional powers. (1) DEFINITIONS. In this section:

(a) "Board" means the county board of supervisors in any county.

(b) "County" means any county having a population of 500,000 or more.

(c) "Pension funding plan" means a strategic and financial plan related to the payment of all or part of a county's unfunded prior service liability with respect to an employee retirement system.

(d) "Trust" means a common law trust organized under the laws of this state, by the county, as settlor, pursuant to a formal, written, declaration of trust.

(2) SPECIAL FINANCING ENTITIES, FUNDS, AND ACCOUNTS. (a) To facilitate a pension funding plan and in furtherance thereof, a board may create one or more of the following:

1. A trust.

2. A nonstock corporation under ch. 181.

3. A limited liability company under ch. 183.

4. A special fund or account of the county.

(b) An entity described under par. (a) has all of the powers provided to it under applicable law and the documents pursuant to which it is created and established. The powers shall be construed broadly in favor of effectuating the purposes for which the entity is created. A county may appropriate funds to such entities and to such funds and accounts, under terms and conditions established by the board, consistent with the purposes for which they are created and established.

(3) STABILIZATION FUNDS. (a) To facilitate a pension funding plan a board may establish a stabilization fund. Any such fund may be created as a trust, a special fund or account of the county established by a separate resolution or ordinance, or a fund or account created under an authorizing resolution or trust indenture in connection with the authorization and issuance of appropriation bonds under s. 59.85 or general obligation promissory notes under s. 67.12 (12). A county may appropriate funds for deposit to a stabilization fund established under this subsection.

(b) Moneys in a stabilization fund established under this subsection may be used, subject to annual appropriation by the board, solely to pay principal or interest on appropriation bonds issued under s. 59.85 and general obligation promissory notes under s. 67.12 (12) issued in connection with a pension funding plan, for the redemption or repurchase of such appropriation bonds or general obligation promissory notes, to make payments under any agreement or ancillary arrangement entered into under s. 59.86 with respect to such appropriation bonds or general obligation promissory notes, or to pay annual pension costs other than normal costs. Moneys on deposit in a stabilization fund may not be subject to any claims, demands, or actions by, or transfers or assignments to, any creditor of the county, any beneficiary of the county's employee retirement system, or any other person, on terms other than as may be established in the resolution or ordinance creating the stabilization fund. Moneys on deposit in a stabilization fund established under this subsection may be invested and reinvested in the manner directed by the board or pursuant to delegation by the board as provided under s. 66.0603 (5).

SECTION 5. 66.0602 (3) (d) 3. of the statutes is created to read:

66.0602 **(3)** (d) 3. The limit otherwise applicable under this section does not apply to amounts levied by a county having a population of 500,000 or more for the payment of debt service on appropriation bonds issued under s. 59.85, including debt service on appropriation bonds issued to fund or refund outstanding appropriation bonds of the county, to pay related issuance costs or redemption premiums, or to make payments with respect to agreements or ancillary arrangements authorized under s. 59.86.

SECTION 6. 66.0603 (1m) (e) of the statutes is created to read:

66.0603 **(1m)** (e) Subject to s. 67.11 (2) with respect to funds on deposit in a debt service fund for general obligation promissory notes issued under s. 67.12 (12), a county having a population of 500,000 or more, or a person to whom the county has delegated investment authority under sub. (5), may invest and reinvest in the same manner as is authorized for investments and reinvestments under s. 881.01, any of the following:

1. Moneys held in any stabilization fund established under s. 59.87 (3).

2. Moneys held in a fund or account, including any reserve fund, created in connection with the issuance of appropriation bonds under s. 59.85 or general obligation promissory notes under s. 67.12 (12) issued to provide funds for the payment of all or a part of the county's unfunded prior service liability.

3. Moneys appropriated or held by the county to pay debt service on appropriation bonds or general obligation promissory notes under s. 67.12 (12).

4. Moneys constituting proceeds of appropriation bonds or general obligation promissory notes described in subd. 2. that are available for investment until they are spent.

5. Moneys held in an employee retirement system of the county.

SECTION 7. 66.0603 (5) of the statutes is created to read:

66.0603 **(5)** DELEGATION OF INVESTMENT AUTHORITY IN CONNECTION WITH PENSION FINANCING IN POPULOUS COUNTIES. The governing board of a county having a population of 500,000 or more may delegate investment authority over any of the moneys described in sub. (1m) (e) to any of the following persons, which shall be responsible for the general administration and proper operation of the county's employee retirement system, subject to the board's finding that such person has expertise in the field of investments:

(a) A public board that is organized for such purpose under county ordinances.

(b) A trustee, investment advisor, or investment banking or consulting firm.

SECTION 8. 67.01 (9) (intro.) of the statutes is amended to read:

67.01 **(9)** (intro.) This chapter is not applicable to appropriation bonds issued by a county under s. 59.85 and, except ss. 67.08 (1), 67.09 and 67.10, is not applicable:

SECTION 9. 67.04 (5) (b) 4. of the statutes is amended to read:

67.04 **(5)** (b) 4. To pay unfunded prior service liability contributions under the Wisconsin retirement system, or to pay unfunded prior service liability with respect to an employee retirement system, if all of the net proceeds of the note will be used to pay for such contributions or payments.

SECTION 10. 67.045 (1) (g) of the statutes is created to read:

67.045 **(1)** (g) The debt is issued by a county having a population of 500,000 or more to pay unfunded prior service liability with respect to an employee retirement system.

SECTION 11. 67.12 (12) (a) of the statutes is amended to read:

67.12 **(12)** (a) Any municipality may issue promissory notes as evidence of indebtedness for any public purpose, as defined in s. 67.04 (1) (b), including but not limited to paying any general and current municipal expense, and refunding any municipal obligations, including interest on them. Each note, plus interest if any, shall be repaid within 10 years after the original date of the note, except that notes issued under this section for purposes of ss. 119.498, 145.245 (12m), 281.58, 281.59, 281.60, and 281.61, ~~or~~ issued to raise funds to pay a portion of the capital costs of a metropolitan sewerage district, or issued by a county having a population of 500,000 or more to pay unfunded prior service liability with respect to an employee retirement system shall be repaid within 20 years after the original date of the note.

(END)