



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1169?

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DOA:.....Pawasarat, BB0230 - Milwaukee County pension obligation fund  
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

D-NOTE

Today if possible.  
(Thursday)

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1 AN ACT ...; relating to: the Milwaukee County unfunded pension liability  
2 financing.

*Analysis by the Legislative Reference Bureau*

↓ LOCAL GOVERNMENT

This bill authorizes Milwaukee County to issue appropriation obligations, on a one-time basis, to pay all or any part of the county's unfunded liability or unfunded prior service liability with respect to an employee retirement system of the county. "Appropriation obligations" 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 the various sources, including the following:

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

Before the county may issue appropriation obligations, however, the county must enact an ordinance to implement a five-year strategic and financial planning process related to the payment of unfunded employee retirement benefits. The ordinance must include a financial plan that ensures that future annual pension obligations are funded on a current basis, and the financial plan must contain quantifiable benchmarks to ensure compliance with the plan and the planning process. Annually, the county board must report to the legislature and the governor

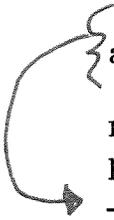


on a number of issues related to the appropriation obligations, including the county's progress in meeting the benchmarks.

The bill states that Milwaukee County is not generally liable for appropriation obligations, and appropriation obligations are not a debt of the county for any purpose whatsoever. Appropriation obligations, 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.

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.



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

1 SECTION 1. 59.605 (1) (a) of the statutes is amended to read:

2 59.605 (1) (a) "Debt levy" means the county purpose levy for debt service on  
3 loans under subch. II of ch. 24, bonds issued under s. 67.05 and, promissory notes  
4 issued under s. 67.12 (12), and appropriation obligations issued under s. 59.85, less  
5 any revenues that abate the levy.

History: 1993 a. 16, 490; 1999 a. 150 s. 568; Stats. 1999 s. 59.605; 1999 a. 182 s. 207.

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

7 **59.85 Appropriation obligations for payment of employee retirement**  
8 **system liability in populous counties.** (1) DEFINITIONS. In this section:

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

12 1. Moneys annually appropriated by law for debt service due with respect to  
13 such obligation in that year.

14 2. Proceeds of the sale of such appropriation obligations.

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

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

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

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

      \*\*\*\*NOTE: To avoid repetition of "bond, note, or other obligation", I've so defined  
"bond" here in par. (c).

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

8           (e) "Refunding obligation" means an appropriation obligation issued to fund or  
9 refund all or any part of one or more outstanding appropriation obligations.

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

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

22          (c) The initial issuance of appropriation obligations under par. (b) may occur  
23 only once.

1 (d) 1. Before a county may issue appropriation obligations under par. (b), its  
 2 board shall enact an ordinance that implements a <sup>5</sup>~~five~~-year strategic and financial  
 3 planning process related to the payment of all or any part of the county's unfunded  
 4 liability or unfunded prior service liability with respect to an employee retirement  
 5 system of the county established under county ordinances. The ordinance shall  
 6 include a financial plan that ensures that future annual pension obligations are  
 7 funded on a current basis. The financial plan shall contain quantifiable benchmarks  
 8 to ensure compliance with the plan and the planning process.

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

- 12 a. The county's progress in meeting the benchmarks in the financial plan.
- 13 b. Any proposed modifications to the plan or the planning process.
- 14 c. The status of any stabilization fund that is established under s. 59.87 (3).
- 15 d. Any updates to the actuarial assumptions related to the county's employee  
 16 retirement system.

17 <sup>CS</sup> TERMS (3) (a) A county may borrow money <sup>S</sup> and issue appropriation obligations in  
 18 evidence of the borrowing pursuant to one or more written authorizing resolutions  
 19 under sub. (4). Unless otherwise provided in an authorizing resolution, the county  
 20 may issue appropriation obligations at any time, in any specific amounts, at any  
 21 rates of interest, for any term, payable at any intervals, at any place, in any manner,  
 22 and having any other terms or conditions that the board considers necessary or  
 23 desirable. Appropriation obligations may bear interest at variable or fixed rates,  
 24 bear no interest, or bear interest payable only at maturity or upon redemption prior  
 25 to maturity.

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

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

7 (d) All money<sup>s</sup> borrowed by a county that is evidenced by appropriation  
8 obligations issued under this section shall be lawful money<sup>✓</sup> of the United States, and  
9 all appropriation obligations shall be payable in such money<sup>✓</sup>.

10 (e) All appropriation obligations owned or held by a fund of the county are  
11 outstanding in all respects and the board or other governing body controlling the  
12 fund shall have the same rights with respect to an appropriation obligation as a  
13 private party, but if any sinking fund acquires appropriation obligations that gave  
14 rise to such fund, the obligations are considered paid for all purposes and no longer  
15 outstanding and shall be canceled as provided in sub. (7) (e). All appropriation  
16 obligations owned by any county fund shall be registered to the fullest extent  
17 registrable.

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

23 (4) PROCEDURES. (a) No appropriation obligations may be issued by a county  
24 unless the issuance is pursuant to a written authorizing resolution adopted by a  
25 majority of a quorum of the board. The resolution may be in the form of a resolution

1 or trust indenture, and shall set forth the aggregate principal amount of  
2 appropriation obligations authorized thereby, the manner of their sale, and the form  
3 and terms thereof.

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

8 (5) FORM. (a) As determined by the board, appropriation obligations may be  
9 in the form of bonds and may be issued in book-entry form or in certificate form.  
10 Notwithstanding s. 403.104 (1), every evidence of appropriation obligation is a  
11 negotiable instrument.

\*\*\*\*NOTE: This paragraph is drafted as requested, but I think it would make more  
sense to just say "As determined by the board, appropriation obligations may be issued  
in book-entry form . . ." The term "appropriation obligation" is already defined as "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:" and "bond" is defined as a "bond, note, or other  
obligation" so it seems redundant to word this paragraph as requested -- essentially  
stating that "a bond, note or other obligation may be in the form of a bond, note, or other  
obligation."

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

20 (c) Every appropriation obligation shall be dated not later than the date it is  
21 issued, shall contain a reference by date to the appropriate authorizing resolution,

1 shall state the limitation established in sub. (3) (f), and shall be in accordance with  
2 the appropriate authorizing resolution in all respects.

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

6 (6) REFUNDING OBLIGATIONS. (a) 1. A board may authorize the issuance of  
7 appropriation obligation refunding obligations. Refunding obligations may be  
8 issued, subject to any contract rights vested in owners of the appropriation  
9 obligations being refunded, to refund all or any part of one or more issues of  
10 appropriation obligations notwithstanding that the obligations may have been  
11 issued at different times. The principal amount of the refunding obligations may not  
12 exceed the sum of: the principal amount of the appropriation obligations being  
13 refunded; applicable redemption premiums; unpaid interest on the refunded  
14 appropriation obligations to the date of delivery or exchange of the refunding  
15 obligations; in the event the proceeds are to be deposited in trust as provided in par.  
16 (c), interest to accrue on the appropriation obligations to be refunded from the date  
17 of delivery to the date of maturity or to the redemption date selected by the board,  
18 whichever is earlier; and the expenses incurred in the issuance of the refunding  
19 obligations and the payment of the refunded appropriation obligations.

\*\*\*\*NOTE: Subdivision 1. (and par. (b)) uses only the words "refunded" and  
"refunding" but s. 16.527 (7) (a) 1. (and (b)), the statute on which this subdivision and  
paragraph is based, also uses the words "refinance" and "refinancing." Is this change  
intentional? Does it matter if only one term is used here and 2 terms are used in s. 16.527  
(7) (a) 1. and par. (b)? Also, the word "refinancing" is used in subd. 2. when referring to  
the "refunding" in subd. 1.; s. 16.527 (7) (a) 2. also used "refinancing."

20 2. A determination by the board that a refinancing is advantageous, or that any  
21 of the amounts provided under subd. 1. should be included in the refinancing, shall  
22 be conclusive.

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

14 (c) 1. The principal proceeds from the sale of any refunding obligations shall  
15 be applied either to the immediate payment and retirement of the appropriation  
16 obligations being refunded or, if the obligations have not matured and are not  
17 presently redeemable, to the creation of a trust for, and shall be pledged to the  
18 payment of, the appropriation obligations being refunded.

19 2. If a trust is created, a separate deposit shall be made for each issue of  
20 appropriation obligations being refunded. Each deposit shall be with a bank or trust  
21 company that is a member of the Federal Deposit Insurance Corporation. If the total  
22 amount of any deposit, including money<sup>S</sup> other than sale proceeds but legally  
23 available for such purpose, is less than the principal amount of the appropriation  
24 obligations being refunded and for the payment of which the deposit has been created  
25 and pledged, together with applicable redemption premiums and interest accrued

1 and to accrue to maturity or to the date of redemption, then the application of the sale  
 2 proceeds shall be legally sufficient only if the money<sup>s</sup> deposited<sup>are</sup> is<sup>A</sup> invested in  
 3 securities issued by the United States or one of its agencies, or securities fully  
 4 guaranteed by the United States, and only if the principal amount of the securities  
 5 at maturity and the income therefrom to maturity will be sufficient and available,  
 6 without the need for any further investment or reinvestment, to pay at maturity or  
 7 upon redemption the principal amount of the appropriation obligations being  
 8 refunded together with applicable redemption premiums and interest accrued and  
 9 to accrue to maturity or to the date of redemption. The income from the principal  
 10 proceeds of the securities shall be applied solely to the payment of the principal of  
 11 and interest and redemption premiums on the appropriation obligations being  
 12 refunded, but provision may be made for the pledging and disposition of any surplus.

13 3. Nothing in this paragraph may be construed as a limitation on the duration  
 14 of any deposit in trust for the retirement of appropriation obligations being refunded  
 15 that have not matured and that are not presently redeemable. Nothing in this  
 16 paragraph may be constructed to prohibit reinvestment of the income of a trust if the  
 17 reinvestments will mature at such times that sufficient<sup>moneys</sup> ~~moneys~~ will be available to  
 18 pay interest, applicable premiums, and principal on the appropriation obligations  
 19 being refunded.

\*\*\*NOTE: I changed "subdivision" to "paragraph."

20 (7) FISCAL REGULATIONS. (a) All appropriation obligations shall be registered  
 21 by the county clerk or county treasurer of the county issuing the obligations, or such  
 22 other officers or agents, including fiscal agents, as the board may determine. After  
 23 registration, no transfer of an appropriation obligation is valid unless made by the  
 24 registered owner in person, or by the registered owner's duly authorized attorney, on

1 the records of the county and similarly noted on the appropriation obligation. The  
2 county may treat the registered owner as the owner of the appropriation obligation  
3 for all purposes. Payments of principal and interest shall be by electronic funds  
4 transfer, check, share draft, or other draft to the registered owner at the owner's  
5 address as it appears on the register, unless the board has otherwise provided.  
6 Information in the register is not available for inspection and copying under s.  
7 19.35(1). The board may make any other provision respecting registration as it  
8 considers necessary or desirable.

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

22 (c) If any appropriation obligation is destroyed, lost, or stolen, the county shall  
23 execute and deliver a new appropriation obligation, upon filing with the board  
24 evidence satisfactory to the board that the appropriation obligation has been  
25 destroyed, lost, or stolen, upon providing proof of ownership thereof, and upon

1 furnishing the board with indemnity satisfactory to it and complying with such other  
2 rules of the county and paying any expenses that the county may incur. The board  
3 shall cancel the appropriation obligation surrendered to the county.

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

\*\*\*\*NOTE: Your instructions used the term "evidence of appropriation obligation" which is similar to the term that is used, for the most part, in s. 16.527; but in this draft you have used "appropriation obligation" exclusively up to this point so I did not use "evidence of appropriation." Also, the instructions ~~are~~ don't specify to whom the county treasurer shall deliver a certificate. Should it be delivered to the board? \*

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

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

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

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

18 (9) MORAL OBLIGATION PLEDGE. If the board considers it necessary or desirable  
19 to do so, it may express in a resolution authorizing appropriation obligations its  
20 expectation and aspiration to make timely appropriations sufficient to pay the  
21 principal and interest due with respect to such appropriation obligations, to make  
22 deposits into a reserve fund created under sub. (2) (b) with respect to such

1 appropriation obligations, to make payments under any agreement or ancillary  
 2 arrangement entered into under s. 59.86<sup>✓</sup> with respect to such appropriation  
 3 obligations, to make deposits into any stabilization fund established or continued  
 4 under s. 59.87<sup>✓</sup> with respect to such appropriation obligations, or to pay related  
 5 issuance or administrative expenses.

\*\*\*\*NOTE: The instructions state that the board may "make deposits into any reserve fund created under sub. (2) (b) 3." Not only is there no sub. (2) (b) 3., but sub. (2) (b) does not provide for the creation of a <sup>also</sup> reserve fund. That paragraph merely authorizes a county to make deposits to such a fund. Consequently, I'm not sure what your intent is in this subsection. Also, the moral obligation pledge itself is <sup>is</sup> somewhat weaker than the pledge in s. 16.527 (10). Is this your intent?

6 (10) PENSION STUDY COMMITTEE. The <sup>2</sup>two public members of the pension study  
 7 committee, created by chapter 405, laws of 1965, shall have at least 10 years <sup>of</sup> financial  
 8 experience.

\*\*\*\*NOTE: This qualification is based on the requirements for a local government employee who is appointed to SWIB under s. 15.76 (1r).<sup>✓</sup> Is this specific enough to achieve your intent?

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

10 **59.86 Agreements and ancillary arrangements for certain notes and**  
 11 **appropriation obligations.** At the time of issuance or in anticipation of the  
 12 issuance of appropriation obligations under s. 59.85<sup>✓</sup>, or general obligation  
 13 promissory notes under s. 67.12<sup>✓</sup>(12), to pay unfunded liability or unfunded prior  
 14 service liability with respect to an employee retirement system established under  
 15 county ordinances, or at any time thereafter so long as the appropriation obligations  
 16 or notes are outstanding, a county having a population of 500,000 or more may enter  
 17 into agreements or ancillary arrangements relating to the appropriation obligations  
 18 or notes, including trust indentures, liquidity facilities, remarketing or dealer  
 19 agreements, letters of credit, insurance policies, guaranty agreements,  
 20 reimbursement agreements, indexing agreements, and interest exchange

1 agreements. Any payments made or amounts received with respect to any such  
2 agreement or ancillary arrangement shall be made from or deposited as provided in  
3 the agreement or ancillary arrangement.

\*\*\*\*NOTE: The instructions for this section seem to use the words "and" and "or"  
interchangeably. In most cases, I think that "or" is what best reflects your intent so I've  
changed most uses of "and" to "or." Please check this section carefully to ensure that it  
meets your intent.

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

5 **59.87 Employee retirement system liability financing in populace**  
6 **counties; additional powers. (1) DEFINITIONS.** In this section:

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

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

9 (c) "Pension funding financing" means a plan of finance in which the stated  
10 purpose is to provide funds for the payment of all or part of a county's unfunded  
11 liability or unfunded prior service liability with respect to an employee retirement  
12 system established under county ordinances.

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

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

19 1. A trust.

20 2. A nonstock corporation under ch. 181.

21 3. A limited liability company under ch. 183.

22 4. A special fund or account of the county.

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

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

14 (b) Moneys in a stabilization fund established under this subsection may be  
15 used, subject to annual appropriation by the board, solely to pay principal or interest  
16 on appropriation obligations issued under s. 59.85 and promissory notes under  
17 67.12(12) issued in connection with a pension funding financing, for the redemption  
18 or repurchase of such appropriation obligations or notes, or to make payments under  
19 any agreement or ancillary arrangement entered into under s. 59.86 with respect to  
20 such appropriation obligations or notes. Moneys on deposit in a stabilization fund  
21 may not be subject to any claims, demands, or actions by, or transfers or assignments  
22 to, any creditor of the county, any beneficiary of the county's employee retirement  
23 system, or any other person, on terms other than as may be established in the  
24 resolution or ordinance creating the stabilization fund. Moneys on deposit in a  
25 stabilization fund established under this subsection may be invested and reinvested

1 in the manner directed by the board or pursuant to delegation by the board as  
2 provided under s. 66.0603 (5).

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

4 66.0602 (3) (d) 3. The limit otherwise applicable under this section does not  
5 apply to amounts levied by a county having a population of 500,000 or more for the  
6 payment of debt service on appropriation obligations issued under s. 59.85, including  
7 debt service on appropriation obligations issued to fund or refund outstanding  
8 appropriation obligations of the county, to pay related issuance costs or redemption  
9 premiums, or to make payments with respect to agreements or ancillary  
10 arrangements authorized under s. 59.86.

*s. 66.0602 (3)*

\*\*\*NOTE: I created s. 66.0602 (3) (d) 3. instead of amending ~~par~~ (d) 2.

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

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

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

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

23 3. Moneys appropriated or held by the county to pay debt service on  
24 appropriation obligations or notes described in subd. 2.

1           4. Moneys constituting proceeds of appropriation obligations or notes described  
 2 in subd. 2. that are available for investment before the time they are spent for the  
 3 purposes for which they are borrowed.

\*\*\*\*NOTE: Your pre-drafted materials for created s. 66.0603 (1m) (e) were difficult for me to follow. The paragraph seems to start out as a limitation on how "funds on deposit in a debt service fund for promissory notes issued under s. 67.12 (12)" may be invested, but ends up encompassing funds associated with appropriation obligations issued under s. 59.85. The first phrase in created s. 66.0603 (1m) (e) sets up an introduction, but the list of the types of investments that follow don't seem to have any relationship to the introduction and doesn't seem to follow the introductory clause. I've reorganized this paragraph to make it somewhat more readable, but it still seems confusing and the subdivisions still don't follow the introduction. I'm not sure what your intent is with regard to this paragraph, and I can't determine whether my reorganization achieves your intent. Please review created s. 66.0603 (1m) (e) very carefully and let me know what changes are necessary to achieve your intent.

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

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

- 12           (a) A pension board that is organized under county ordinances.
- 13           (b) A reputable trustee, investment advisor, or investment banking or
- 14 consulting firm.

\*\*\*\*NOTE: Your predrafted version of s. 66.0603 (5) was somewhat confusing to me so I've reorganized the subsection. Is this consistent with your intent? Also, is the "pension board" supposed to be a public entity that is part of Milwaukee County government or can it be a private entity that is merely organized according to county ordinances? The instructions seem unclear to me as to what the pension board's attributes are supposed to be.

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

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

History: 1971 c. 188; 1977 c. 163; 1981 c. 169, 282; 1981 c. 390 s. 252; 1983 a. 24; 1983 a. 189 ss. 74, 75, 329 (7); 1983 a. 207; 1985 a. 29, 187, 225, 332; 1987 a. 197; 1989 a. 56; 1993 a. 399; 1999 a. 150 ss. 621, 672.

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

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

History: 1983 a. 207, 236, 368, 538; 1987 a. 197; 1993 a. 16; 1995 a. 227; 1999 a. 9; 1999 a. 150 s. 672; 2003 a. 78.

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

10           67.045 (1) (g) The debt is issued by a county having a population of 500,000 or  
11           more to pay unfunded liability or unfunded prior service liability with respect to an  
12           employee retirement system established under county ordinances.

\* \*\*\*NOTE: Your instructions had what is now created s. 66.045 (1) (g) as an amendment to s. 66.045 (1) (d), but this material seems to have nothing to do with the debt described in par. (d), so I created this new paragraph. Is this OK?

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

14           67.12 (12) (a) Any municipality may issue promissory notes as evidence of  
15           indebtedness for any public purpose, as defined in s. 67.04 (1) (b), including but not  
16           limited to paying any general and current municipal expense, and refunding any  
17           municipal obligations, including interest on them. Each note, plus interest if any,  
18           shall be repaid within 10 years after the original date of the note, except that notes  
19           issued under this section for purposes of ss. 119.498, 145.245 (12m), 281.58, 281.59,  
20           281.60, and 281.61, or issued to raise funds to pay a portion of the capital costs of a  
21           metropolitan sewerage district, or issued by a county having a population of 500,000  
22           or more to pay unfunded liability or unfunded prior service liability with respect to

- 1 an employee retirement system established under county ordinances shall be repaid
- 2 within 20 years after the original date of the note.

**History:** 1971 c. 49, 144; 1971 c. 152 s. 38; 1971 c. 164, 215; 1973 c. 172, 250; 1975 c. 311; 1977 c. 29; 1977 c. 272 s. 98; 1977 c. 418; 1979 c. 34; 1979 c. 110 s. 60 (13); 1979 c. 221, 297; 1981 c. 20, 254; 1981 c. 282 ss. 29, 45; 1981 c. 314; 1983 a. 24, 27, 192, 207, 368, 538; 1985 a. 101, 225; 1987 a. 197, 391, 399, 403; 1989 a. 31, 56, 192, 336, 366; 1991 a. 32, 49; 1993 a. 399; 1995 a. 27, 227, 232, 358; 1997 a. 35, 286; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 16; 2003 a. 43.

3 (END)

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

LRB-1169/?dn

MES.....  
WJ

Jane Pawasarat:

Please review this bill very carefully. The bulk of created s. 59.85 is based on s. 16.527 of the statutes. If there were inconsistencies between your instructions and s. 16.527, I usually modified the draft to be consistent with current law, and I've noted these changes in embedded "\*\*\*\* NOTES". As we've discussed, some of the instructions in your predrafted materials were confusing and didn't make sense to me. I've attempted to make these parts of the draft more readable and have included embedded notes to explain my concerns and questions.

I have a few other general questions about the instructions. Just to be clear, do you consider appropriation obligations issued by Milwaukee County under this bill to be debt that is subject to the constitutional debt limit?

Throughout the bill, the instructions refer to "an employee retirement system established under county ordinances." Is this reference sufficient, or should it refer to chapter 201, laws of 1937?

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

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

LRB-1169/P1dn  
MES:wlj:jf

January 4, 2007

Jane Pawasarat:

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Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

**Shovers, Marc**

---

**From:** Hoadley, Frank R - DOA  
**Sent:** Friday, January 12, 2007 11:39 AM  
**To:** Shovers, Marc  
**Cc:** Pawasarat, Jane - DOA; reed.groethe@foleylaw.com  
**Subject:** image2007-01-12-084015.PDF  
**Attachments:** image2007-01-12-084015.PDF

Marc -

Attached is a copy of your draft of the Milwaukee pension obligation legislation that has been reviewed at the request of DOA Budget Office/Capital Finance Office by Reed Groethe of Foley & Lardner. You should proceed to redraft, incorporating his comments. You should also feel free to consult with him directly at (414) 297-5764 regarding any issues that need clarification.

Frank Hoadley, Capital Finance Director  
266-2305

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1169/P1dn  
MES:wljf

January 4, 2007

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Marc E. Shovers  
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No. By making the repayment obligation subject to appropriation, the County will keep the obligation from being treated as public debt for constitutional purposes; these obligations will be outside the debt limit.

DOA:.....Pawasarat, BB0230 - Milwaukee County pension obligation fund  
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

refer instead to  
a popular county ?

1 AN ACT ...; relating to: the Milwaukee County unfunded pension liability  
2 financing.

**Analysis by the Legislative Reference Bureau**

**LOCAL GOVERNMENT**

This bill authorizes Milwaukee County to issue appropriation obligations, on a one-time basis, to pay all or any part of the county's unfunded liability or unfunded prior service liability with respect to an employee retirement system of the county. "Appropriation obligations" 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 obligations.
2. Proceeds of the sale of the appropriation obligations.
3. Investment earnings on the items listed above.

Before the county may issue appropriation obligations, however, the county must enact an ordinance to implement a five-year strategic and financial planning process related to the payment of unfunded employee retirement benefits. The ordinance must include a financial plan that ensures that future annual pension obligations are funded on a current basis, and the financial plan must contain quantifiable benchmarks to ensure compliance with the plan and the planning process. Annually, the county board must report to the legislature and the governor

bonds

bonds

or resolution

liabilities

must be designed to provide

measure

this term covers OPERS!

essential

?

on a number of issues related to the appropriation obligations, including the county's progress in meeting the benchmarks

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

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

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), and appropriation obligations issued under s. 59.85, less any revenues that abate the levy.

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

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

(a) "Appropriation bond obligation" 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 obligation in that year.

2. Proceeds of the sale of such appropriation bonds obligations.

*Include a legislative finding (like 16.527(1)) - "moral obligation" - doing so strengthens the*

*2.*

*OPER is an acronym for Other Post Employment Benefits - pension health benefits*

- 1           3. Payments received for that purpose under agreements and ancillary
- 2           arrangements described in s. 59.86.
- 3           4. Investment earnings on amounts in subds. 1. to 3.
- 4           (b) "Board" means the county board of supervisors in any county.
- 5           (c) "Bond" means any bond, note, or other obligation of a county issued under
- 6           this section.

\*\*\*NOTE: To avoid repetition of "bond, note, or other obligation," I've so defined "bond" here in par. (c). *Note: In light of this definition, "appropriation obligation" can be changed to "appropriation bond" (as I have done)*

*Consider making defined term "population of county"*

- (d) "County" means any county having a population of 500,000 or more.
- (e) "Refunding ~~obligation~~ *bond*" means an appropriation ~~obligation~~ *bond* issued to fund or refund all or any part of one or more outstanding appropriation ~~obligations~~ *bonds*.

(2) AUTHORIZATION OF APPROPRIATION ~~OBIGATIONS~~ *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 ~~obligations~~ *bonds* under this section to pay all or any part of the county's unfunded liability or unfunded prior service liability with respect to an employee retirement system of the county established under county ordinances, or to fund or refund outstanding appropriation ~~obligations~~ *bonds* issued under this section. A county may use proceeds of appropriation ~~obligations~~ *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.

*See note on p. 14*

~~Other than refunding bonds under sub. (6), all~~

- (c) The initial issuance of appropriation obligations under par. (b) may occur only once.
  - ① Is "unfunded liability intended to mean something other than "unfunded prior service liability"?"
  - ② Should OPER be included? If so, need to expand beyond "employee retirement system".
  - ③ "established under county ordinances" is unnecessary (but does) distinguish from WRS.

*② This was the instruction*

*I removed - OK?*

bonds must be issued simultaneously,

Not done

1 (d) 1. Before a county may issue appropriation <sup>bonds</sup> obligations under par. (b), its  
 2 board shall enact an ordinance <sup>or adopt a resolution</sup> that <sup>reestablishes</sup> implements a 5-year strategic and financial  
 3 ~~planning process~~ related to the payment of all or any part of the county's unfunded  
 4 liability or unfunded prior service liability with respect to an employee retirement  
 5 system of the county established under county ordinances. The ordinance shall  
 6 <sup>strategic and</sup> include a financial plan <sup>that shall be designed to provide for</sup> that ensures that future annual pension obligations are  
 7 funded on a current basis. The <sup>strategic and</sup> financial plan shall contain quantifiable benchmarks  
 8 to <sup>measure</sup> ensure compliance with the plan and the planning process.

Looking for procedural compliance 2 IS this a requirement or not?

liabilities to be

Bond issuance problem - who decides if plan is adequate - good? Examples - Gov. doesn't know if county board makes a finding. Need to establish compliance to have authority to issue bonds!

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

- 12 a. The county's progress in meeting the benchmarks in the <sup>strategic and</sup> financial plan.
- 13 b. Any proposed modifications to the <sup>strategic and financial</sup> plan or the planning process.
- 14 ~~c. The status of any stabilization fund that is established under s. 59.87 (3).~~
- 15 <sup>The most current actuarial report</sup> d. Any updates to the actuarial assumptions related to the county's employee  
 16 retirement system.

17 (3) TERMS. (a) A county may borrow moneys and issue appropriation

18 <sup>bonds</sup> obligations in evidence of the borrowing pursuant to one or more written authorizing  
 19 resolutions under sub. (4). Unless otherwise provided in an authorizing resolution,  
 20 the county may issue appropriation <sup>bonds</sup> obligations at any time, in any specific amounts,  
 21 at any rates of interest, for any term, payable at any intervals, at any place, in any  
 22 manner, and having any other terms or conditions that the board considers necessary  
 23 or desirable. Appropriation <sup>bonds</sup> obligations may bear interest at variable or fixed rates,  
 24 bear no interest, or bear interest payable only at maturity or upon redemption prior  
 25 to maturity.

Note: Read literally, current text is a tautology. The change gives effect to intended purpose (however, I question whether a "one time" rule is better policy in this case).

1 (b) The board may authorize appropriation ~~obligations~~ <sup>bonds</sup> having any provisions  
2 for prepayment the board considers necessary or desirable, including the payment  
3 of any premium.

4 (c) Interest shall cease to accrue on an appropriation ~~obligation~~ <sup>bond</sup> on the date that  
5 the appropriation ~~obligation~~ <sup>bond</sup> becomes due for payment if payment is made or duly  
6 provided for. *Note = 16,527 included a provision to address cheat -*  
*OK to include or to omit.*

7 (d) All moneys borrowed by a county that is evidenced by appropriation  
8 ~~obligations~~ <sup>bonds</sup> issued under this section shall be lawful money of the United States, and  
9 all appropriation ~~obligations~~ <sup>bonds</sup> shall be payable in such money.

10 (e) All appropriation ~~obligations~~ <sup>bonds</sup> owned or held by a fund of the county are  
11 outstanding in all respects, and the board or other governing body controlling the  
12 fund shall have the same rights with respect to an appropriation ~~obligation~~ <sup>bond</sup> as a  
13 private party, but if any sinking fund acquires appropriation ~~obligations~~ <sup>bonds</sup> that gave  
14 rise to such fund, the ~~obligations~~ <sup>appropriation bonds</sup> are considered paid for all purposes and no longer  
15 outstanding and shall be canceled as provided in sub. (7) (d). All appropriation  
16 ~~obligations~~ <sup>bonds</sup> owned by any county fund shall be registered to the fullest extent  
17 registrable. *Note: Unnecessary because county can only issue registered bonds under this bill.*

18 (f) A county shall not be generally liable on appropriation ~~obligations~~ <sup>bonds</sup>, and  
19 appropriation ~~obligations~~ <sup>bonds</sup> shall not be a debt of the county for any purpose  
20 whatsoever. Appropriation ~~obligations~~ <sup>bonds</sup>, including the principal thereof and interest  
21 thereon, shall be payable only from amounts that the board may, from year to year,  
22 appropriate for the payment thereof.

23 (4) PROCEDURES. (a) No appropriation ~~obligations~~ <sup>bonds</sup> may be issued by a county  
24 unless the issuance is pursuant to a written authorizing resolution adopted by a  
25 majority of a quorum of the board. The resolution may be in the form of a resolution

*Policy issue*

✓

*See p. 9.*

The resolution or trust indenture may establish such funds and accounts, including a reserve fund, as the board ~~deems appropriate~~ determines.

or trust indenture, and shall set forth the aggregate principal amount of <sup>bonds</sup> appropriation obligations authorized thereby, the manner of their sale, and the form and terms thereof.

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

(5) FORM. (a) As determined by the board, appropriation <sup>bonds</sup> obligations may be ~~shall be registered~~ in the form of bonds and may be issued in book-entry form or in certificate form. (d)

Notwithstanding s. 403.104 (1), every evidence of appropriation obligation is a negotiable instrument.

\*\*\*\*NOTE: This paragraph is drafted as requested, but I think it would make more sense just to say "As determined by the board, appropriation obligations may be issued in book-entry form..." The term "appropriation obligation" is already defined as "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:" and "bond" is defined as a "bond, note, or other obligation" so it seems redundant to word this paragraph as requested — essentially stating that "a bond, note, or other obligation may be in the form of a bond, note, or other obligation."

I agree

(b) Every appropriation <sup>bond</sup> obligation 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 <sup>bond</sup> obligation 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 <sup>bond</sup> obligation the person ceased to hold such office.

(c) Every appropriation <sup>bond</sup> obligation shall be dated not later than the date it is issued, shall contain a reference by date to the appropriate authorizing resolution,

or issues of general obligation promissory notes under s. 67.12(12) issued to pay unfinanced prior service liability with respect to an employee retirement system shall state the limitation established in sub. (3) (f), and shall be in accordance with

2 the appropriate authorizing resolution in all respects.

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

6 (6) REFUNDING <sup>BONDS</sup> OBLIGATIONS. (a) 1. A board may authorize the issuance of  
7 ~~appropriation obligation refunding obligations.~~ <sup>appropriation bonds</sup> Refunding obligations may be  
8 issued, subject to any contract rights vested in owners of the appropriation  
9 <sup>bonds</sup> obligations being refunded, to refund all or any part of one or more issues of  
10 appropriation <sup>bonds</sup> obligations, notwithstanding that the <sup>appropriation bonds</sup> obligations may have been

11 issued at different times. The principal amount of the refunding obligations may not  
12 exceed the sum of: the principal amount of the appropriation <sup>bonds</sup> obligations being  
13 refunded; applicable redemption premiums; unpaid interest on the refunded  
14 appropriation <sup>bonds</sup> obligations to the date of delivery or exchange of the refunding  
15 <sup>appropriation bonds</sup> obligations; in the event the proceeds are to be deposited in trust as provided in par.

16 (c), interest to accrue on the appropriation <sup>bonds</sup> obligations to be refunded from the date  
17 of delivery to the date of maturity or to the redemption date selected by the board,  
18 whichever is earlier; and the expenses incurred in the issuance of the refunding  
19 <sup>appropriation bonds</sup> obligations and the payment of the refunded appropriation <sup>bonds</sup> obligations.

or general obligation promissory notes

\*\*\*NOTE: Subdivision 1. and par. (b) use only the words "refunded" and "refunding," but s. 16.527 (7) (a) 1. and (b), the statute on which this subdivision and paragraph are based, also uses the words "refinance" and "refinancing." Is this change intentional? Does it matter if only one term is used here and two terms are used in s. 16.527 (7) (a) 1. and (b)? Also, the word "refinancing" is used in subd. 2. when referring to the "refunding" in subd. 1.; s. 16.527 (7) (a) 2. also uses "refinancing."

use "refund" terms

20 2. A determination by the board that a <sup>refunding</sup> refinancing is advantageous, or that any  
21 of the amounts provided under subd. 1. should be included in the <sup>refunding</sup> refinancing, shall  
22 be conclusive.

This provision makes sense only if there's a requirement that a refunding must be advantageous, and I don't see any such requirement.

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

14 (c) 1. The principal proceeds from the sale of <sup>appropriation bonds</sup> any refunding obligations shall  
 15 be applied either to the immediate payment and retirement of the <sup>bonds</sup> appropriation  
 16 <sup>bonds</sup> obligations being refunded or, if the obligations have not matured and are not  
 17 presently redeemable, to the creation of a trust for, and shall be pledged to the  
 18 payment of, the <sup>bonds</sup> appropriation obligations being refunded.

19 2. If a trust is created, a separate deposit shall be made for each issue of  
 20 <sup>bonds</sup> appropriation obligations being refunded. Each deposit shall be with a bank or trust  
 21 company that is a member of the Federal Deposit Insurance Corporation. If the total  
 22 amount of any deposit, including moneys other than sale proceeds but legally  
 23 available for such purpose, is less than the principal amount of the <sup>bonds</sup> appropriation  
 24 obligations being refunded and for the payment of which the deposit has been created  
 25 and pledged, together with applicable redemption premiums and interest accrued

authorized by the laws of the United States or of a state in which it is located to conduct banking or trust company business.

Note: See p. 7; FDIC insurance is trivial in this situation

or general obligation promissory notes

1 and to accrue to maturity or to the date of redemption, then the application of the sale  
 2 proceeds shall be legally sufficient only if the moneys deposited are invested in  
 3 securities issued by the United States or one of its agencies, or securities fully  
 4 guaranteed by the United States, and only if the principal amount of the securities  
 5 at maturity and the income therefrom to maturity will be sufficient and available,  
 6 without the need for any further investment or reinvestment, to pay at maturity or  
 7 upon redemption the principal amount of the appropriation ~~obligations~~ being  
 8 refunded together with applicable redemption premiums and interest accrued and  
 9 to accrue to maturity or to the date of redemption. The income from the principal  
 10 proceeds of the securities shall be applied solely to the payment of the principal of  
 11 and interest and redemption premiums on the appropriation ~~obligations~~ being  
 12 refunded, but provision may be made for the pledging and disposition of any surplus.

13 3. Nothing in this paragraph may be construed as a limitation on the duration  
 14 of any deposit in trust for the retirement of appropriation ~~obligations~~ being refunded  
 15 that have not matured and that are not presently redeemable. Nothing in this  
 16 paragraph may be constructed to prohibit reinvestment of the income of a trust if the  
 17 reinvestments will mature at such times that sufficient moneys will be available to  
 18 pay interest, applicable premiums, and principal on the appropriation ~~obligations~~  
 19 being refunded.

\*\*\*\*NOTE: I changed "subdivision" to "paragraph." | I agree

20 (7) FISCAL REGULATIONS. (a) All appropriation ~~obligations~~ shall be registered  
 21 by the county clerk or county treasurer of the county issuing the ~~obligations~~, or such  
 22 other officers or agents, including fiscal agents, as the board may determine. After  
 23 registration, no transfer of an appropriation ~~obligation~~ is valid unless made by the  
 24 registered owner in person, or by the registered owner's duly authorized attorney, on

or general  
obligation  
premiums  
notes

bonds

bonds

bonds

bonds

bonds

appropriation bonds

bond

Note: A personal appearance can't really be intended!  
 This was specified in the orig. drafting instr. feed says remove

## SECTION 2

1 the records of the county and similarly noted on the appropriation ~~obligation~~<sup>bond</sup>. The  
2 county may treat the registered owner as the owner of the appropriation ~~obligation~~<sup>bond</sup>  
3 for all purposes. Payments of principal and interest shall be by electronic funds  
4 transfer, check, share draft, or other draft to the registered owner at the owner's  
5 address as it appears on the register, unless the board has otherwise provided.  
6 Information in the register is not available for inspection and copying under s. 19.35  
7 (1). The board may make any other provision respecting registration as it considers  
8 necessary or desirable.

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

22 (c) If any appropriation ~~obligation~~<sup>bond</sup> is destroyed, lost, or stolen, the county shall  
23 execute and deliver a new appropriation ~~obligation~~<sup>bond</sup>, upon filing with the board  
24 evidence satisfactory to the board that the appropriation ~~obligation~~<sup>bond</sup> has been  
25 destroyed, lost, or stolen, upon providing proof of ownership thereof, and upon

1 furnishing the board with indemnity satisfactory to it and complying with such other  
2 rules of the county and paying any expenses that the county may incur. The board  
3 shall cancel the appropriation ~~obligation~~ <sup>bonds</sup> surrendered to the county.

4 (d) Unless otherwise directed by the board, every appropriation ~~obligation~~ <sup>bonds</sup> paid  
5 or otherwise retired shall be marked "canceled" and delivered to the county  
6 treasurer, or to such other fiscal agent as applicable with respect to the appropriation  
7 ~~obligation~~ <sup>bonds</sup>, who shall destroy them and deliver a certificate to that effect, To the county clerk.

\*\*\*\*NOTE: Your instructions used the term "evidence of appropriation obligation, which is similar to the term that is used, for the most part, in s. 16.527; but in this draft you have used "appropriation obligation" exclusively up to this point so I did not use "evidence of appropriation." Also, the instructions don't specify to whom the county treasurer shall deliver a certificate. Should it be delivered to the board?

8 (8) ~~APPROPRIATION OBLIGATIONS~~ <sup>BONDS</sup> AS LEGAL INVESTMENTS. Any of the following may  
9 legally invest any sinking funds, moneys, or other funds belonging to them or under  
10 their control in any appropriation ~~obligations~~ <sup>bonds</sup> issued under this section:

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

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

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

18 (9) MORAL OBLIGATION PLEDGE. If the board considers it necessary or desirable  
19 to do so, it may express in a resolution authorizing appropriation ~~obligations~~ <sup>bonds</sup> its  
20 expectation and aspiration to make timely appropriations sufficient to pay the  
21 principal and interest due with respect to such appropriation ~~obligations~~ <sup>bonds</sup>, to make  
22 deposits into a reserve fund created ~~under sub. (2) (b)~~ <sup>pursuant to sub. (4) (a)</sup> with respect to such

Consider policy Q - why is this appropriate investment for a fiduciary?

1 appropriation <sup>bonds</sup> obligations, to make payments under any agreement or ancillary  
 2 arrangement entered into under s. 59.86 with respect to such appropriation  
 3 <sup>bonds</sup> obligations, ~~to make deposits into any stabilization fund established or continued~~  
 4 ~~under s. 59.87 with respect to such appropriation obligations, or to pay related~~  
 5 issuance or administrative expenses.

\*\*\*\*NOTE: The instructions state that the board may "make deposits into any reserve fund created under sub. (2) (b) 3." Not only is there no sub. (2) (b) 3., but also sub. (2) (b) does not provide for the creation of a reserve fund. That paragraph merely authorizes a county to make deposits to such a fund. Consequently, I'm not sure what your intent is in this subsection. Also, the moral obligation pledge itself is somewhat weaker than the pledge in s. 16.527 (10). Is this your intent?

See new text as p-6

6 <sup>→</sup> Difference occurs because in 16.527 the legislature  
 (10) PENSION STUDY COMMITTEE. The 2 public members of the pension study  
 7 committee, created by chapter 405, laws of 1965, shall have at least 10 years of  
 8 financial experience.

Should this be an uncodified provision of bill?

\*\*\*\*NOTE: This qualification is based on the requirements for a local government employee who is appointed to SWIB under s. 15.76 (1r). Is this specific enough to achieve your intent?

NO-- it will have ongoing effect.

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

59.86 Agreements and ancillary arrangements for certain notes and  
 11 <sup>bonds</sup> appropriation/obligations. At the time of issuance or in anticipation of the  
 12 issuance of appropriation/obligations <sup>bonds</sup> under s. 59.85, or general obligation  
 13 promissory notes under s. 67.12 (12), to pay unfunded liability or unfunded prior  
 14 service liability with respect to an employee retirement system established under  
 15 ~~county ordinances, or at any time thereafter so long as the appropriation/obligations~~  
 16 general obligation promissory or <sup>bonds</sup> notes are outstanding, a county having a population of 500,000 or more may enter  
 17 into agreements or ancillary arrangements relating to the appropriation/obligations <sup>bonds</sup>  
 18 general obligation promissory or notes, including trust indentures, liquidity facilities, remarketing or dealer  
 19 agreements, letters of credit, insurance policies, guaranty agreements,  
 20 reimbursement agreements, indexing agreements, and interest exchange

1 agreements. Any payments made or amounts received with respect to any such  
2 agreement or ancillary arrangement shall be made from or deposited as provided in  
3 the agreement or ancillary arrangement.

\*\*\*\*NOTE: The instructions for this section seem to use the words "and" and "or" interchangeably. In most cases, I think that "or" is what best reflects your intent so I've changed most uses of "and" to "or." Please check this section carefully to ensure that it meets your intent.

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

5 **59.87 Employee retirement system liability financing in <sup>populous</sup> ~~populace~~**  
6 **counties; additional powers. (1) DEFINITIONS.** In this section:

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

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

9 (c) "Pension funding <sup>plan</sup> ~~financing~~" means a <sup>strategic and financial</sup> ~~plan of finance~~ in which the stated  
10 <sup>related to</sup> ~~purpose is to provide funds for the payment of all or part of a county's unfunded~~

11 ~~liability or unfunded prior service liability with respect to an employee retirement~~  
12 ~~system established under county ordinances.~~

13 (d) "Trust" means a common law trust organized under the laws of this state,

14 ~~or a trust organized under the laws of another state,~~ by the county, as settlor,  
15 pursuant to a formal, written, declaration of trust.

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

- 19 1. A trust.
- 20 2. A nonstock corporation under ch. 181.
- 21 3. A limited liability company under ch. 183.
- 22 4. A special fund or account of the county.

It's not clear how this authority might be used, but it's ok to include.

Consider making defined term "populous county"

Note: Conformed to p. 4 requirements

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

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

14 ~~(b) Moneys in a stabilization fund established under this subsection may be  
 15 used, subject to annual appropriation by the board, solely to pay principal or interest  
 16 on appropriation <sup>bonds</sup> obligations issued under s. 59.85 and <sup>general obligation</sup> promissory notes under 67.12  
 17 (12) issued in connection with a pension funding <sup>plan</sup> financing for the redemption or  
 18 repurchase of such appropriation <sup>bonds</sup> obligations or <sup>general obligation promissory</sup> notes, or to make payments under  
 19 any agreement or ancillary arrangement entered into under s. 59.86 with respect to  
 20 such appropriation <sup>bonds</sup> obligations of <sup>general obligation promissory</sup> notes. Moneys on deposit in a stabilization fund  
 21 may not be subject to any claims, demands, or actions by, or transfers or assignments  
 22 to, any creditor of the county, any beneficiary of the county's employee retirement  
 23 system, or any other person, on terms other than as may be established in the  
 24 resolution or ordinance creating the stabilization fund. Moneys on deposit in a  
 25 stabilization fund established under this subsection may be invested and reinvested~~

*Note: Stabilization fund is unnecessary and problematic -  
 please call to discuss.*

1 in the manner directed by the board or pursuant to delegation by the board as  
2 provided under s. 66.0603 (5).

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

4 66.0602 (3) (d) 3. The limit otherwise applicable under this section does not  
5 apply to amounts levied by a county having a population of 500,000 or more for the  
6 payment of debt service on appropriation <sup>bonds</sup> obligations issued under s. 59.85, including  
7 debt service on appropriation <sup>bonds</sup> obligations issued to fund or refund outstanding  
8 appropriation <sup>bonds</sup> obligations of the county, to pay related issuance costs or redemption  
9 premiums, or to make payments with respect to agreements or ancillary  
10 arrangements authorized under s. 59.86.

\*\*\*NOTE: I created s. 66.0602 (3) (d) 3. instead of amending s. 66.0602 (3) (d) 2.

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

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

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

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

23 3. Moneys appropriated or held by the county to pay debt service on  
24 appropriation <sup>bonds</sup> obligations or notes described in sub. 2. <sup>general obligation promissory</sup> notes under s. 67.12(12)

1 4. Moneys constituting proceeds of appropriation <sup>bonds</sup> ~~obligations or~~ <sup>general obligation promissory</sup> notes described  
 2 in subd. 2. that are available for investment before the time they are spent for the  
 3 purposes for which they are borrowed.

Note: This phrase is oblique, given nature of borrowing. Are proceeds

\*\*\*NOTE: Your predrafted materials for created s. 66.0603 (1m) (e) were difficult for me to follow. The paragraph seems to start out as a limitation on how "funds on deposit in a debt service fund for promissory notes issued under s. 67.12 (12)" may be invested, but ends up encompassing funds associated with appropriation obligations issued under s. 59.85. The first phrase in created s. 66.0603 (1m) (e) sets up an introduction, but the list of the types of investments that follow doesn't seem to have any relationship to the introduction and doesn't seem to follow the introductory clause. I've reorganized this paragraph to make it somewhat more readable, but it still seems confusing and the subdivisions still don't follow the introduction. I'm not sure what your intent is with regard to this paragraph, and I can't determine whether my reorganization achieves your intent. Please review created s. 66.0603 (1m) (e) very carefully and let me know what changes are necessary to achieve your intent.

spent for purposes when invested (because purpose is funding liability) or when ultimately spent for, say, retire health insurance costs? (2)

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

5 66.0603 (5) DELEGATION OF INVESTMENT AUTHORITY IN CONNECTION WITH PENSION

6 FINANCING IN POPULOUS COUNTIES. The governing board of a county having a  
 7 population of 500,000 or more may delegate investment authority over any of the  
 8 moneys described in sub. (1m) (e) to any of the following persons, which shall be  
 9 responsible for the general administration and proper operation of the county's  
 10 employee retirement system, subject to the board's finding that such person has  
 11 expertise in the field of investments.

12 (a) A ~~pension~~ <sup>public</sup> board that is organized <sup>by</sup> under county ordinance.

13 (b) A ~~reputable~~ <sup>for such purpose</sup> trustee, investment advisor, or investment banking or  
 14 consulting firm.

Note: Line 10 finding of expertise is objective; "reputable" is subjective.

\*\*\*NOTE: Your predrafted version of s. 66.0603 (5) was somewhat confusing to me so I've reorganized the subsection. Is this consistent with your intent? Also, is the "pension board" supposed to be a public entity that is part of Milwaukee County government or can it be a private entity that is merely organized according to county ordinances? The instructions seem unclear to me as to what the pension board's attributes are supposed to be.

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

1 67.01 (9) (intro.) This chapter is not applicable to appropriation/obligations  
2 issued by a county under s. 59.85 and, except ss. 67.08 (1), 67.09 and 67.10, is not  
3 applicable: Note: It might be better to apply excepted provisions

4 SECTION 9. 67.04 (5) (b) 4. of the statutes is amended to read: bill would need  
5 67.04 (5) (b) 4. To pay unfunded prior service liability contributions under the to be deleted. If they  
6 Wisconsin retirement system, or to pay unfunded liability or unfunded prior service did, the  
7 liability with respect to an employee retirement system established under county ref to approp  
8 ordinances, if all of the proceeds of the note will be used to pay for such contributions, bonds -> 59.85  
9 or payments would just  
10 be  
11 another paragraph  
12 under this  
intro.

9 SECTION 10. 67.045 (1) (g) of the statutes is created to read:  
10 67.045 (1) (g) The debt is issued by a county having a population of 500,000 or  
11 more to pay unfunded liability or unfunded prior service liability with respect to an  
12 employee retirement system established under county ordinances.

\*\*\*NOTE: Your instructions had what is now created s. 66.045 (1) (g) as an amendment to s. 66.045 (1) (d); but this material seems to have nothing to do with the debt described in par. (d), so I created this new paragraph. Is this OK?

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 liability or unfunded prior service liability with respect to

Note: This term should be broad enough to allow to notes to be used to refund appropriation bonds, but express authority in 59.85 would be better.

Clearly, the implications that applies to approp bonds under s. 59.85 because

Note: Despite the many precedents, there is something distortive about using a term associated with short-term financing ("note") to be up to 20 years!

1 an employee retirement system established under county ordinances shall be repaid  
2 within 20 years after the original date of the note.

3 (END)

**Shovers, Marc**

**From:** Groethe, Reed [reed.groethe@foley.com]  
**Sent:** Thursday, January 25, 2007 2:36 PM  
**To:** Shovers, Marc  
**Cc:** Hoadley, Frank R - DOA  
**Subject:** Additional Comments on LRB-1169/P1  
**Attachments:** State of Wisconsin/Bond Counsel/Legislative Language.DOC\$

From the Desk of: Reed Groethe



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[www.foley.com](http://www.foley.com)

Marc: As a follow-up to our recent telephone conversation, I am providing some additional suggestions for the draft bill.



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**MEMORANDUM**

CLIENT-MATTER NUMBER  
015438-0101

**TO:** Marc E. Shovers  
Legislative Reference Bureau

**FROM:** Reed Groethe

**CC:** Frank R. Hoadley  
Capital Finance Office

**DATE:** January 25, 2007

**RE:** Additional Comments on LRB - 1169/P1

*Including this finding & determination  
This was approved  
for inclusion by  
Steve Miller -  
Note - it's  
very similar*

I. Include a Legislative Finding in Support of "Moral Obligation"

Page 3, line 10 — *New section.*

(2) LEGISLATIVE FINDING AND DETERMINATION. Recognizing that a county, by paying all or part 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.

*to the legis,  
finding & deter.  
in Pub. 527(1)*

*Note: This finding does not redundantly state a purpose for creating s. 59.85; rather, its purpose is to provide a legislative determination that an appropriation of public funds to repay appropriation bonds, though not legally required, fulfills a "moral obligation" and thus could not be enjoined by a taxpayer lawsuit. The suggested placement is immediately after the first section (which defines terms for s. 59.85) because the finding uses some of the defined terms.*

II. Specify Who Determines that the County's Plan Meets the Statutory Requirements

Alternative #1

Page 4, lines 1-8 — Rewrite of existing text.

(d) 1. Before a county may issue appropriation bonds under par. (b), its board shall enact an ordinance or adopt a resolution that the board finds and determines both establishes a 5-year strategic and financial plan to provide for future annual pension to be funded on a current basis and contains qualifiable benchmarks to measure compliance with the plan.

Alternative #2

Page 4, line 8 — New sentence

The board shall make a determination that the ordinance or resolution meets the requirements of this paragraph, and absent manifest error, the board's determination shall be conclusive.

*- also send to gov. & clerks  
in orig. plan*

Alternative #3

Page 4, line 8 — New sentence

The county shall submit the ordinance or resolution to the governor, and the governor shall make a written determination whether the ordinance or resolution meets the requirements of this paragraph.

III. Authorize General Obligation Promissory Notes to Refund Appropriation Bonds

Page 7, line 20 — New subparagraph

2. A board may authorize the issuance of general obligation promissory notes to refund appropriation bonds.

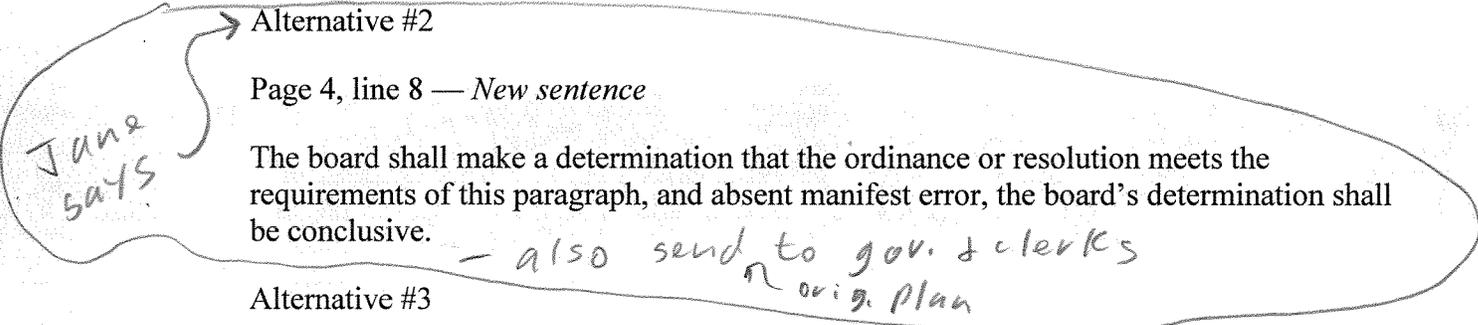
*Note: This provision is proposed for the purpose of clarity. Section 67.12 (12) (a) authorizes the issuance of general obligation promissory notes to refund any "municipal obligations", a term that is broadly defined in chapter 67; however, the amendment to 67.01 (9) made by this bill would make chapter 67 inapplicable to appropriation bonds.*

IV. Clarify the Moneys That May Be Invested under s. 66.0603

Page 16, lines 1-3 — Rewrite of existing text

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 #. 16.527 (1) of the statutes is amended to read:

16.527 (1) LEGISLATIVE FINDING AND DETERMINATION. Recognizing that the state, by prepaying part or all of the state's unfunded prior service liability under s. 40.05 (2) (b) and the state's unfunded liability under s. 40.05 (4) (b), (bc), and (bw) and subch. IX of ch. 40, may reduce its costs and better ensure the timely and full payment of retirement benefits to participants and their beneficiaries under the Wisconsin Retirement System, the legislature finds and determines that it is in the public interest for the state to issue appropriation obligations to obtain proceeds to pay the state's anticipated unfunded prior service liability under s. 40.05 (2) (b) and to pay part or all of the state's unfunded prior service liability under s. 40.05 (2) (b) and the state's unfunded liability under s. 40.05 (4) (b), (bc), and (bw) and subch. IX of ch. 40.

History: 2003 a. 33, 84, 326.