2009 DRAFTING REQUEST

Senate Amendment (SA-SB440)

Received: **01/25/2010**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Chris in Seidel's ofc**

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

Drafter: **mshovers**

May Contact:

Addl. Drafters: **csundber**

Subject: **Local Gov't - bonding**
Local Gov't - counties
Local Gov't - munis generally
Econ. Development - misc.

Extra Copies: **TKK, EVM**

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

City and county waiver of allocation of federal bond authority

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Instructions:

draft a1349/1 for SB 440

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers 01/25/2010	nnatzke 01/25/2010		_____ _____			
/1			rschluet 01/25/2010	_____ _____	mbarman 01/25/2010	mbarman 01/25/2010	

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/?	mshovers	/1 nwn 1/25					
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FE Sent For:

<END>

State of Wisconsin
2009 – 2010 LEGISLATURE

a1351/1
LRB~~a1349/1~~
MES&CTS:nwn&bjk:ph

RMR

SENATE
~~ASSEMBLY~~ AMENDMENT ,

TO 2009 ~~ASSEMBLY~~ BILL ~~643~~ 440

WANTED: today early p.m.

At the locations indicated, amend the bill as follows:

1. Page 1, line 2: before "waiving" insert "granting authority to any county to issue industrial development revenue bonds and".

2. Page 3, line 6: after that line insert:

"**SECTION 1e.** 66.1103 (1) (a) of the statutes is amended to read:

66.1103 **(1)** (a) It is found and declared that industries located in this state have been induced to move their operations in whole or in part to, or to expand their operations in, other states to the detriment of state, county and municipal revenue raising through the loss or reduction of income and franchise taxes, real estate and other local taxes causing an increase in unemployment; that such conditions now exist in certain areas of the state and may well arise in other areas; that economic insecurity due to unemployment is a serious menace to the general welfare of not only the people of the affected areas but of the people of the entire state; that

1 unemployment results in obligations to grant public assistance and in the payment
2 of unemployment insurance; that the absence of new economic opportunities has
3 caused workers and their families to migrate elsewhere to find work and establish
4 homes, which has resulted in a reduction of the tax base of counties, cities and other
5 local governmental jurisdictions impairing their financial ability to support
6 education and other local governmental services; that security against
7 unemployment and the preservation and enhancement of the tax base can best be
8 provided by the promotion, attraction, stimulation, rehabilitation and revitalization
9 of commerce, industry and manufacturing; and that there is a need to stimulate a
10 larger flow of private investment funds from banks, investment houses, insurance
11 companies and other financial institutions. It is therefore the policy of this state to
12 promote the right to gainful employment, business opportunities and general
13 welfare of its inhabitants and to preserve and enhance the tax base by authorizing
14 municipalities <u>and counties</u> to acquire industrial buildings and to finance the
15 acquisition through the issuance of revenue bonds for the purpose of fulfilling the
16 aims of this section. These purposes are declared to be public purposes for which
17 public money may be spent and the necessity in the public interest for the provisions
18 of this section is declared a matter of legislative determination.

19 **SECTION 1f.** 66.1103 (1) (c) of the statutes is amended to read:

20 66.1103 **(1)** (c) It is found and declared that the revitalization of <u>counties and</u>
21 <u>of</u> the central business districts of the municipalities of this state is necessary to
22 retain existing industry in, and attract new industry to, this state and to protect the
23 health, welfare and safety of residents of this state.

24 **SECTION 1g.** 66.1103 (2) (a) of the statutes is amended to read:

1 66.1103 **(2)** (a) "Authorized developer" means a corporation organized under
2 ch. 180 or 181 which the governing body designates as an authorized developer after
3 making a finding that the principal purpose of the corporation is the general
4 promotion of business development in the municipality <u>or county</u> or in the local area
5 containing the municipality <u>or county</u>.

6 **SECTION 1h.** 66.1103 (2) (as) of the statutes is created to read:

7 66.1103 **(2)** (as) "County" means any county in this state.

8 **SECTION 1i.** 66.1103 (2) (c) of the statutes is amended to read:

9 66.1103 **(2)** (c) "Eligible participant" includes any person, other than the state
10 or any other governmental unit, who enters into a revenue agreement with a
11 municipality <u>or county</u> with respect to an industrial project. If more than one eligible
12 participant is a party to a revenue agreement, the undertaking of each shall be either
13 several or joint and several as the revenue agreement provides. An eligible
14 participant need not be directly or indirectly a user of the project.

15 **SECTION 1j.** 66.1103 (2) (e) of the statutes is amended to read:

16 66.1103 **(2)** (e) "Governing body" means the board, council or other body in
17 which the legislative powers of the municipality <u>or county</u> are vested.".

18 **3.** Page 3, line 11: after that line insert:

19 "**SECTION 2ae.** 66.1103 (2) (L) of the statutes is amended to read:

20 66.1103 **(2)** (L) "Revenue agreement" includes any lease, sublease, installment
21 or direct sales contract, service contract, take or pay contract, loan agreement or
22 similar agreement providing that an eligible participant agrees to pay the
23 municipality <u>or county</u> an amount of funds sufficient to provide for the prompt

payment of the principal of, and interest on, the revenue bonds and agrees to construct the project.

SECTION 2am. 66.1103 (3) (intro.) of the statutes is amended to read:

66.1103 **(3)** POWERS. (intro.) A municipality or county may:

SECTION 2as. 66.1103 (3) (b) 2. of the statutes is amended to read:

66.1103 **(3)** (b) 2. To fund the whole or part of any revenue bonds issued by the municipality or county, including any premium payable with respect to the bonds and any interest accrued or to accrue on the bonds; or

SECTION 2bm. 66.1103 (3) (f) of the statutes is amended to read:

66.1103 **(3)** (f) Finance an industrial project which is located entirely within the geographic limits of the municipality or county or some contiguous part of which is located within and some contiguous part outside the geographic limits of the municipality or county; or, finance an industrial project which is located entirely outside the geographic limits of the municipality or county, but only if the revenue agreement for the project also relates to another project of the same eligible participant, part of which is located within the geographic limits of the municipality or county. The power granted by this paragraph does not include the power to annex, tax, zone or exercise any other municipal or county power with respect to that part of the project located outside of the geographic limits of the municipality or county.

SECTION 2c. 66.1103 (4) (a) (intro.) of the statutes is amended to read:

66.1103 **(4)** (a) (intro.) Bonds issued by a municipality or county under this section are limited obligations of the municipality or county. The principal of and interest on the bonds are payable solely out of the revenues derived under the revenue agreement pertaining to the project to be financed by the bonds, or, if there is a default of the agreement and to the extent that the municipality or county

1 provides in the proceedings of the governing body authorizing the bonds to be issued,
2 out of any revenues derived from the sale, releasing or other disposition of the
3 project, or out of any collateral securing the revenue agreement, or out of the
4 proceeds of the sale of bonds. Bonds and interest coupons issued under this section
5 are not an indebtedness of the municipality or county, within the meaning of any
6 state constitutional provision or statutory limitation. Bonds and interest coupons
7 issued under this section are not a charge against the municipality's or county's
8 general credit or taxing powers or a pecuniary liability of the municipality or county
9 or a redevelopment authority under s. 66.1333, including but not limited to:

10 **SECTION 2cm.** 66.1103 (4) (a) 2. of the statutes is amended to read:

11 66.1103 **(4)** (a) 2. Any liability in connection with the issuance or sale of bonds,
12 for representations made, or for the performance of the obligation of any person who
13 is a party to a related transaction or agreement except as specifically provided in this
14 section or by an express provision of the bond or a related written agreement to which
15 the municipality or county is a party.

16 **SECTION 2d.** 66.1103 (4) (d) of the statutes is amended to read:

17 66.1103 **(4)** (d) Unless otherwise expressly or implicitly provided in the
18 proceedings of the governing body authorizing the bonds to be issued, bonds issued
19 under this section are subject to the general provisions of law, not inconsistent with
20 this section, respecting the authorization, execution and delivery of the bonds of the
21 municipality or county.

22 **SECTION 2dm.** 66.1103 (4) (e) of the statutes is amended to read:

23 66.1103 **(4)** (e) Bonds issued under this section may be sold at public or private
24 sale in the manner, at the price and at the time determined by the governing body.
25 The municipality or county may pay all expenses, premiums and commissions which

the governing body considers necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

SECTION 2e. 66.1103 (4m) (a) of the statutes is amended to read:

66.1103 **(4m)** (a) A municipality or county may not enter into a revenue agreement with any person unless all of the following apply:

1. The person, at least 30 days prior to entering into the revenue agreement, has given a notice of intent to enter into the agreement, on a form prescribed under s. 560.034 (1), to the department of commerce and to any collective bargaining agent in this state with whom the person has a collective bargaining agreement~~; and~~.

2. The municipality or county has received an estimate issued under s. 560.034 (5) (a), and the department of commerce has estimated whether the project which the municipality or county would finance under the revenue agreement is expected to eliminate, create or maintain jobs on the project site and elsewhere in this state and the net number of jobs expected to be eliminated, created or maintained as a result of the project.

SECTION 2em. 66.1103 (4m) (b) of the statutes is amended to read:

66.1103 **(4m)** (b) Any revenue agreement which an eligible participant enters into with a municipality or county to finance a project shall require the eligible participant to submit to the department of commerce within 12 months after the project is completed or 2 years after a revenue bond is issued to finance the project, whichever is sooner, on a form prescribed under s. 560.034 (1), the net number of jobs eliminated, created or maintained on the project site and elsewhere in this state as a result of the project.

SECTION 2f. 66.1103 (4m) (c) of the statutes is amended to read:

1 66.1103 **(4m)** (c) Nothing in this subsection requires a person with whom a
2 municipality or county has entered into a revenue agreement to satisfy an estimate
3 under par. (a) 2.

4 **SECTION 2fm.** 66.1103 (4s) (b) (intro.) of the statutes is amended to read:

5 66.1103 **(4s)** (b) (intro.) A municipality or county may not enter into a revenue
6 agreement with any employer that employs individuals in this state at a site other
7 than a project site unless the employer certifies that the project is not expected to
8 result in any lost jobs or the employer agrees to all of the following:

9 **SECTION 2g.** 66.1103 (4s) (b) 3. of the statutes is amended to read:

10 66.1103 **(4s)** (b) 3. The employer shall certify compliance with this subsection
11 to the department, to the governing body of each municipality or county within which
12 a lost job exists and to any collective bargaining agent in this state with which the
13 employer has a collective bargaining agreement at the project site or at a site where
14 a lost job exists.

15 **SECTION 2gm.** 66.1103 (5) (c) of the statutes is amended to read:

16 66.1103 **(5)** (c) A municipality or county may provide that proceeds from the
17 sale of bonds and special funds from the revenues of the project and any funds held
18 in reserve or debt service funds shall be invested and reinvested in securities and
19 other investments as provided in the proceedings under which the bonds are
20 authorized to be issued. The municipality or county may also provide that the
21 proceeds or funds or investments and the revenues derived pursuant to the revenue
22 agreement shall be received, held and disbursed by one or more banks or trust
23 companies located in or out of this state. A municipality or county may also provide
24 that the project and improvements shall be constructed or installed by the
25 municipality or county, the eligible participant or the eligible participant's designee

or any one or more of them on real estate owned by the municipality or county, the eligible participant or the eligible participant's designee and that the bond proceeds shall be disbursed by the trustee bank or trust company during construction upon the estimate, order or certificate of the eligible participant or the eligible participant's designee. In making agreements or provisions under this paragraph, a municipality or county may not obligate itself, except with respect to the project and the application of the revenues from the project, and may not incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

SECTION 2h. 66.1103 (5) (f) of the statutes is amended to read:

66.1103 **(5)** (f) The revenue agreement may include any provisions that the municipality or county considers appropriate to effect the financing of the project, including a provision for payments to be made in installments and the securing of the obligation for any payments by lien or security interest in the undertaking either senior or junior to, or ranking equally with, any lien, security interest or rights of others.

SECTION 2hm. 66.1103 (6) (b) of the statutes is amended to read:

66.1103 **(6)** (b) The determination and findings of the governing body shall be embodied in the proceedings under which the proposed bonds are to be issued; but the amounts specified in par. (a) need not be expressed in dollars and cents in the revenue agreement and proceedings under which the bonds are authorized to be issued, but may be set forth in the form of a formula. Before the issuance of the bonds authorized by this section the municipality or county shall enter into a revenue agreement providing for payment to the municipality or county, or to the trustee for the account of the municipality or county, of those amounts, based upon the determination and findings, that will be sufficient to pay the principal of, and

1 interest on, the bonds issued to finance the project; to build up and maintain any
2 reserves considered advisable by the governing body, in connection with the project;
3 and, unless the revenue agreement obligates the eligible participant to provide for
4 the maintenance of and insurance on the project, to pay the costs of maintaining the
5 project in good repair and keeping it properly insured.

6 **SECTION 2i.** 66.1103 (6) (c) of the statutes is amended to read:

7 66.1103 **(6)** (c) A governing body may not adopt an initial resolution authorizing
8 issuance of bonds to finance a project specified under sub. (2) (k) 11. unless the
9 governing body finds and states in the initial resolution that the project will
10 significantly increase the number of persons traveling to the municipality <u>or county</u>
11 for business or recreation. The statement shall be included in the public notice
12 required under sub. (10) (b).

13 **SECTION 2im.** 66.1103 (6m) of the statutes is amended to read:

14 66.1103 **(6m)** NOTIFICATION OF POSITION OPENINGS. A municipality <u>or county</u> may
15 not enter into a revenue agreement with any person who operates for profit unless
16 that person has agreed to notify the department of workforce development and the
17 local workforce development board established under 29 USC 2832, of any position
18 to be filled in that municipality <u>or county</u> within one year after issuance of the
19 revenue bonds. The person shall provide this notice at least 2 weeks before
20 advertising the position. The notice required by this subsection does not affect the
21 offer of employment requirements of sub. (4s).

22 **SECTION 2j.** 66.1103 (8) of the statutes is amended to read:

23 66.1103 **(8)** PURCHASE. The municipality <u>or county</u> may, by or with the consent
24 of the eligible participant, accept any bona fide offer to purchase the project which
25 is sufficient to pay all the outstanding bonds, interest, taxes, special levies and other

1 costs that have been incurred. The municipality or county may also, by or with the
2 consent of the eligible participant, accept any bona fide offer to purchase any
3 unimproved land which is a part of the project, if the purchase price is not less than
4 the cost of the land to the municipality or county computed on a prorated basis and
5 if the purchase price is applied directly or indirectly to the payment of the principal
6 or interest on the bonds.

7 **SECTION 2jm.** 66.1103 (9) of the statutes is amended to read:

8 66.1103 **(9)** PAYMENT OF TAXES. If an industrial project acquired by a
9 municipality or county under this section is used by a private person as a lessee,
10 sublessee or in any capacity other than owner, that person is subject to taxation in
11 the same amount and to the same extent as if that person were the owner of the
12 property. Taxes shall be assessed to the private person using the real property and
13 collected in the same manner as taxes assessed to owners of real property. When due,
14 the taxes constitute a debt due from the private person to the taxing unit and are
15 recoverable as provided by law, and the unpaid taxes become a lien against the
16 property with respect to which they were assessed, superior to all other liens, except
17 a lien under s. 292.31 (8) (i) or 292.81, and shall be placed on the tax roll when there
18 has been a conveyance of the property in the same manner as other taxes assessed
19 against real property.

20 **SECTION 2k.** 66.1103 (10) (b) of the statutes is amended to read:

21 66.1103 **(10)** (b) Upon the adoption of an initial resolution under this section,
22 public notice of the adoption shall be given to the electors of the municipality or
23 county before the issuance of the bonds described in the resolution, by publication
24 as a class 1 notice, under ch. 985. The notice need not set forth the full contents of
25 the resolution, but shall state the maximum amount of the bonds; the name of the

1 eligible participant; the purpose of the bonds; the net number of jobs which the
2 project the municipality or county would finance with the bond issue is expected to
3 eliminate, create or maintain on the project site and elsewhere in this state which
4 is required to be shown by the proposed eligible participant on the form submitted
5 under sub. (4m) (a) 1.; and that the resolution was adopted under this section. A form
6 of the public notice shall be attached to the initial resolution. Prior to adoption of the
7 initial resolution, the open meeting notice given to members of the public under s.
8 19.84 shall indicate that information with respect to the job impact of the project will
9 be available at the time of consideration of the initial resolution. No other public
10 notice of the authorization, issuance or sale of bonds under this section is required.

11 **SECTION 2km.** 66.1103 (10) (c) of the statutes is amended to read:

12 66.1103 **(10)** (c) A copy of the initial resolution together with a statement
13 indicating when the public notice required under par. (b) was published shall be filed
14 with the secretary of commerce within 20 days following publication of notice. Prior
15 to the closing of the bond issue, the secretary may require additional information
16 from the eligible participant or the municipality or county. After the closing of the
17 bond issue, the secretary shall be notified of the closing date, any substantive
18 changes made to documents previously filed with the secretary and the principal
19 amount of the financing.

20 **SECTION 2L.** 66.1103 (10) (d) of the statutes is amended to read:

21 66.1103 **(10)** (d) The governing body may issue bonds under this section
22 without submitting the proposition to the electors of the municipality or county for
23 approval unless within 30 days from the date of publication of notice of adoption of
24 the initial resolution for the bonds, a petition conforming to the requirements of s.
25 8.40, signed by not less than 5% of the registered electors of the municipality or

1 county, or, if there is no registration of electors in the municipality or county, by 10%
2 of the number of electors of the municipality or county voting for the office of governor
3 at the last general election as determined under s. 115.01 (13), is filed with the clerk
4 of the municipality or county and as provided in s. 8.37 requesting a referendum
5 upon the question of the issuance of the bonds. If a petition is filed, the bonds may
6 not be issued until approved by a majority of the electors of the municipality or
7 county voting on the referendum at a general or special election.

8 **SECTION 2Lm.** 66.1103 (10) (e) of the statutes is amended to read:

9 66.1103 **(10)** (e) Members of a governing body and officers and employees of a
10 municipality or county are not personally liable on bonds and are not personally
11 liable for any act or omission related to the authorization or issuance of bonds.

12 **SECTION 2m.** 66.1103 (10) (g) of the statutes is amended to read:

13 66.1103 **(10)** (g) Bonds may not be issued unless prior to adoption of an initial
14 resolution a document which provides a good faith estimate of attorney fees which
15 will be paid from bond proceeds is filed with the clerk of the municipality or county
16 and the department of commerce.

17 **SECTION 2mm.** 66.1103 (11) (a) of the statutes is amended to read:

18 66.1103 **(11)** (a) With respect to the enforcement of any construction lien or
19 other lien under ch. 779 arising out of the construction of projects financed under this
20 section, no deficiency judgment or judgment for costs may be entered against the
21 municipality or county. Projects financed under this section are not public works,
22 public improvements or public construction within the meaning of ss. 59.52 (29),
23 60.47, 61.55, 62.15, 779.14, 779.15 and 779.155 and contracts for the construction of
24 the projects are not public contracts within the meaning of ss. 59.52 (29) and 66.0901
25 unless factors including municipal or county control over the costs, construction and

1 operation of the project and the beneficial ownership of the project warrant the
2 conclusion that they are public contracts.

3 **SECTION 2n.** 66.1103 (11) (b) 2. of the statutes is amended to read:

4 66.1103 **(11)** (b) 2. The governing body of a municipality <u>or county</u> may waive
5 subd. 1. with respect to a particular project by adopting an ordinance or resolution
6 containing a statement of the reasons for the waiver and a description of the project
7 for which waiver is made and publishing it as a class 1 notice under ch. 985.".

8 **4.** Page 3, line 19: after that line insert:

9 "(bm) "Midwestern disaster area bond" means a bond described under 26 USC
10 1400N (a), as modified by P.L. 110–343, title VII, subtitle A, section 702 (d) (intro.)
11 and (1).".

12 **5.** Page 3, line 22: delete the material beginning with that line and ending with
13 page 4, line 10, and substitute:

14 "**(2)** WAIVER. (a) The allocation of a recovery zone bond limitation received by
15 a city or county shall be considered waived on March 1, 2010, except with regard to
16 any amount about which the city or county sends written notice to the department
17 of commerce before that date in which the city or county does one of the following:

18 1. States that recovery zone bonds have been issued pursuant to the city's or
19 county's limitation allocation.

20 2. Identifies the amount of a proposed issuance of recovery zone bonds and the
21 nongovernmental entity that will own or operate the project being financed, together
22 with a letter addressed to the department of commerce from the prospective
23 purchaser of the recovery zone bonds that states the expectation of the prospective
24 purchaser that both an agreement will be executed before May 1, 2010, providing for

1 the purchase of the recovery zone bonds, and that the recovery zone bonds will be
2 issued before June 1, 2010.

3 (b) The allocation of a recovery zone bond limitation received by a city or county
4 shall be considered waived on May 1, 2010, except with regard to any amount about
5 which the city or county sends written notice to the department of commerce before
6 that date in which the city or county states one of the following:

7 1. That recovery zone bonds have been issued pursuant to the city's or county's
8 limitation allocation.

9 2. That an agreement has been executed by the city, county, other local
10 governmental unit, or authority that will issue the recovery zone bonds, and a bond
11 purchaser, providing for the purchase of recovery zone bonds.

12 (c) The allocation of a recovery zone bond limitation received by a city or county
13 shall be considered waived on June 1, 2010, except with regard to any amount about
14 which the city or county sends written notice to the department of commerce before
15 that date in which the city or county states that recovery zone bonds have been issued
16 pursuant to the city's or county's limitation allocation.

17 (d) Any allocation of a recovery zone bond limitation that is considered waived
18 under this subsection may be reallocated by the department of commerce under s.
19 560.033.

20 (e) If a county that is eligible to issue a midwestern disaster area bond waives
21 any portion of its allocation of a recovery zone bond limitation under this subsection
22 before January 1, 2011, the department of commerce, under s. 560.033 (4), shall
23 increase that county's allocation of Midwestern disaster area bond authority by the
24 amount of the county's waived recovery zone bond limitation allocation.".

1 **6.** Page 5, line 6: delete that line and substitute:

2 "**(4)** CONSIDERATION OF ALTERNATIVE FINANCING; REALLOCATION. Before making a".

3 **7.** Page 5, line 11: after "sought" insert ", and shall ensure that sufficient

4 unallocated bonding authority remains to comply with s. 66.1104 (2) (e)".

5 **8.** Page 5, line 11: after that line insert:

6 "**SECTION 4e.** 560.034 (5) (a) of the statutes is amended to read:

7 560.034 **(5)** (a) Under sub. (2), to the city, village, town, or county which will

8 issue the bonds to finance the project which is the subject of the estimate.".

9 **(END)**