



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2009 Senate Bill 399**

**Assembly Amendment 1**

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### **2009 SENATE BILL 399, AS AMENDED BY SENATE AMENDMENT 2 AND MESSAGED TO THE ASSEMBLY**

#### **Commission Creation, Powers, and Board of Directors**

Generally, **2009 Senate Bill 399**, as amended by Senate Amendment 2 and messaged to the Assembly (the bill, as messaged), authorizes two or more political subdivisions to enter into an agreement to create a commission to issue conduit revenue bonds. A commission created under the bill, as messaged, would be a separate unit of government, with all the powers necessary and convenient to carry out the purposes and provisions prescribed by the bill, as messaged.

The bill, as messaged, enumerates a list of powers given to a commission in addition to the general authority to issue conduit revenue bonds. Included in the list of powers given to the commission is the authority to exercise eminent domain and condemn property.

Before any commission formation agreement may take effect, a proposed agreement shall be submitted and reviewed by the Attorney General. The agreements shall be approved unless the agreement is found to not comply with the state law created by the bill, as messaged. The Attorney General shall also transmit a copy of the agreement to the Governor who shall consult with any state department or agency affected by the agreement. The Governor shall then forward to the Attorney General any comments the Governor may have concerning the agreement.

No commission may be created unless its formation agreement is submitted to the Attorney General before the first day of the fifth month after the effective date of the bill, as messaged.

The bill, as messaged, specifies that, at the time of its creation, all members of a commission shall be political subdivision of the state. Following creation, a political subdivision located in another state may be a member of the commission. At all times, majority of the board members shall be public officials or current or former employees of a Wisconsin political subdivision.

### **Bond Issuance Procedures**

A commission is designed to act as a “conduit” for a developer to obtain bonding. Bonds issued by a commission are not public debt. Unless otherwise expressly provided in the bond resolution, bonds issued by a commission are payable solely from revenues derived by the project to be financed or from a contract entered into in connection with the bonds and pledged to the payment of the bonds. The bonds issued by a commission are not debts of either the state or one of the political subdivisions creating the commission, and neither would be obligated to levy a tax or make an appropriation for the repayment of the bonds.

Whenever a commission issues a bond, the commission shall notify the Department of Revenue. The commission shall also disclose to any bond purchaser that the interest received on the bond may be exempt from taxation, as described below.

Generally, for projects relating to health facilities, economic development, or housing, the commission must receive written approval from the Wisconsin Health and Educational Facilities Authority (WHEFA) or the Wisconsin Housing and Economic Development Authority (WHEDA).

Before a commission may authorize a bond to finance capital improvement projects in Wisconsin, *all* political subdivisions within whose boundaries the project is to be located must approve the financing of the project. Outside the state, a commission may not authorize bonds to finance projects unless a political subdivision where the project is located has approved the financing.

### **Limitations on the Tax Exemption of Bond Interest**

Under the bill, as messaged, interest on bonds issued by a commission is exempt from state income taxation if any of the following apply:

- The bonds could have been issued by WHEDA and are used to fund multi-family affordable housing or elderly housing projects.
- The bonds could have been issued by WHEFA and are used by a health facility to fund the acquisition of information technology hardware or software.
- The bonds could have been issued under s. 66.1201, 66.1333, or 66.1335, Stats., relating to: housing authorities, blight and slum clearance, and housing and community development authorities, respectively.

### **ASSEMBLY AMENDMENT 1**

*Assembly Amendment 1* (AA1) makes the following changes to the bill:

- Eliminates the phrase “investment or program of investment” from the definition of “project.” Under the bill, as messaged, a commission has the power to issue bonds or refunding bonds to finance or refinance a project and AA1 removes the ability to issue the bonds for the financing or refinancing of an investment or program of investment.

- States that the Governor *may* consult with *any* state department or agency when reviewing a commission formation agreement. Under the bill, as messaged, the Governor *shall* consult with any state department or agency only if it is *affected by the agreement*.
- Allows only *one* commission to be created. Under the bill, as messaged, *any number* of commissions may be created, as long as the formation agreement is submitted to the Attorney General before the first day of the fifth month after the effective date of the bill.
- Adds the requirement that any amendment to the formation agreement adding a member to the commission shall be approved by the Attorney General. Under the bill, as messaged, no approval is needed for an amendment unless it is required by the terms of the agreement.
- Adds the requirement that a copy of a commission's budget and audit<sup>1</sup> shall be filed with the Secretary of the *Department of Administration and the Legislative Audit Bureau*. Under the bill, as messaged, a copy of the budget and audit only need to be sent to the *governing body of each political subdivision that is a party to the agreement that created the commission*.
- Makes technical changes to ensure that that interest on the bonds issued by a commission is only exempt from state income tax in the three enumerated situations described above in the previous section.

### **LEGISLATIVE HISTORY**

On March 4, 2010, the Senate passed the bill, as amended by Senate Amendment 2, by a voice vote and immediately messaged it to the Assembly. On March 22, 2010, Representative Seidel introduced AA1. On March 29, 2010, the Assembly Committee on Urban and Local Affairs voted to adopt AA1 by a vote of Ayes, 7; Noes, 0; Absent, 2; and to recommend passage of the bill, as messaged and amended by AA1, by a vote of Ayes, 7; Noes, 0; Absent, 2.

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<sup>1</sup> Under the bill, an audit must be conducted annually, or every two years if the commission votes unanimously to do so.