

1973 Assembly Bill 1354

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CHAPTER 265, Laws of 1973

AN ACT to renumber 66.521 (1); to amend 66.521 (2) (e) and (4) (title) and (a) to (d), 551.22 (1), 889.23 (2) and 946.13 (5); to repeal and recreate 66.521 (2) (b), (c) and (f), (3) (title) and (a) to (d) and (5) to (10); and to create 66.521 (1) (b) and (g) to (L), (3) (f), (g) and (h) and (11) to (13) and 946.13 (8) of the statutes,

relating to municipal industrial development bonds and granting rule-making authority.

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

SECTION 1. 66.521 (1) of the statutes is renumbered 66.521 (1) (a).

SECTION 2. 66.521 (1) (b) of the statutes is created to read:

66.521 (1) (b) It is found and declared that the control of pollution of the environment of this state, the provision of medical, safe employment, telephone and telegraph, research, industrial park, dock, wharf, airport, recreational, convention center, trade center, headquarters and mass transit facilities in this state, and the furnishing of electric energy, gas and water in this state, are necessary to retain existing industry in, and attract new industry to, this state, and to protect the health, welfare and safety of the citizens of this state.

SECTION 3. 66.521 (2) (e) of the statutes is amended to read:

66.521 (2) (e) "Equip" means to install or place on or in any building or improvements or the site thereof equipment of any kind, including, without limiting the generality of the foregoing, machinery, utility service connections, pollution control facilities, building service equipment, fixtures, heating equipment and air conditioning equipment.

SECTION 4. 66.521 (2) (b), (c) and (f) of the statutes are repealed and recreated to read:

66.521 (2) (b) "Project" and "industrial project" mean any of the following:

1. Assembling, fabricating, manufacturing, mixing or processing facilities for any products of agriculture, forestry, mining or manufacture, even though such products may require further treatment before delivery to the ultimate consumer;
2. Generating, manufacturing or distributing facilities for electric energy, gas or water;
3. Telephone and telegraph facilities;
4. Pollution control facilities, including any environmental studies and monitoring systems connected therewith;
5. Sewage and solid and liquid waste disposal facilities;
6. Printing facilities;
7. Hospital, clinic or nursing home facilities;
8. Industrial park facilities;
9. Dock, wharf, airport or mass transit facilities;
10. National or regional headquarters facilities;
11. Recreational facilities, convention centers and trade centers;
12. Facilities to provide service activities, including but not limited to warehousing, storage, distribution, research and data processing, used in conjunction with the projects enumerated in this subdivision;
13. Facilities required for compliance with a lawful order of the U.S. occupational safety and health administration or any similar governmental agency; and

14. In addition to subd. 12, warehouse facilities used primarily for:

- a. The storage or distribution of industrial materials, components and equipment used in assembling, fabricating, manufacturing and processing products described under subd. 1; or
- b. The storage or distribution of products described under subd. 1 which remain, while in such warehouse facilities, under the control of the person assembling, fabricating, manufacturing or processing such products.

15. Facilities for compliance with a lawful order of any state or federal governmental agency controlling the use of land with respect to any of the industries, activities or facilities enumerated in this paragraph.

(c) "Improve", "improving", "improvements" and "facilities" embrace any real or personal property or mixed property of any kind of whatever useful life that can be used or that will be useful in an industrial project including, but not limited to, sites for buildings, equipment or other improvements, rights-of-way, roads, streets, sidings, foundations, tanks, structures, pipes, pipelines, reservoirs, lagoons, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, improvements, instrumentalities, pollution control facilities, and other real, personal or mixed property of every kind.

(f) "Eligible participant" includes any person who enters into a revenue agreement with a municipality with respect to an industrial project. If more than one eligible participant is a party to a revenue agreement, the undertaking of each shall be either several or joint and several as the revenue agreement provides. An eligible participant need not be directly or indirectly a user of the project.

SECTION 5. 66.521 (2) (g) to (L) of the statutes are created to read:

66.521 (2) (g) "Initial resolution" means a resolution of the governing body expressing an intention, which may be subject to conditions therein stated, to issue revenue bonds under this section in an amount stated, or a sum not to exceed a stated amount, on behalf of a specified eligible participant, for a stated purpose.

(h) "Pollution control facilities" include, without limitation because of enumeration, any facilities, temporary or permanent, which are reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

(i) "Indenture" means an instrument under which bonds may be issued and the rights and security of the bondholders are defined, whether such instrument is in the form of an indenture of trust, deed of trust, resolution of the governing body, mortgage, security agreement, instrument of pledge or assignment or any similar instrument or any combination of the foregoing and whether or not such instrument creates a lien on property.

(j) "Revenue bonds" and "bonds" means bonds, notes or any other contract or instrument evidencing a debt or providing for the payment of money entered into or issued in connection with a revenue agreement.

(k) "Revenue agreement" includes any lease, sublease, instalment or direct sales contract, service contract, take or pay contract, loan agreement or similar agreement wherein an eligible participant agrees to pay the municipality an amount of funds

sufficient to provide for the prompt payment of the principal of, and interest on, the revenue bonds and agrees to cause the project to be constructed.

(L) "Trustee" means any corporation, bank or other entity authorized under any law of the United States or of any state to exercise trust powers or any natural person, or any one or more of them, acting as trustee, cotrustee or successor trustee under an indenture pursuant to designation of the governing body.

SECTION 6. 66.521 (3) (title) and (a) to (d) of the statutes are repealed and recreated to read:

66.521 (3) (title) POWERS. (a) Construct, equip, reequip, acquire by gift, lease or purchase, install, reconstruct, rebuild, rehabilitate, improve, supplement, replace, maintain, repair, enlarge, extend or remodel industrial projects.

(b) Borrow money and issue revenue bonds:

1. To finance all or any part of the costs of the construction, equipping, reequipping, acquisition, purchase, installation, reconstruction, rebuilding, rehabilitation, improving, supplementing, replacing, maintaining, repairing, enlarging, extending or remodeling of industrial projects and the improvement of sites therefor;

2. To fund the whole or any part of any revenue bonds theretofore issued by such municipality, including any premium payable with respect thereto and any interest accrued or to accrue thereon; or

3. For any combination of the purposes under subd. 1 or 2.

(c) Enter into revenue agreements with eligible participants with respect to industrial projects.

(d) Mortgage all or any part of the industrial project or assign the revenue agreements in favor of the holders of the bonds issued therefor and in connection therewith may irrevocably waive any rights it would otherwise have to redeem the mortgage premises in the event of foreclosure.

SECTION 7. 66.521 (3) (f), (g) and (h) of the statutes are created to read:

66.521 (3) (f) Finance an industrial project which is located entirely within the geographic limits of the municipality or some contiguous part of which is located within and some contiguous part outside the geographic limits of the municipality; or, finance an industrial project which is located entirely outside the geographic limits of the municipality, but only if the revenue agreement with respect to such project also relates to another project of the same eligible participant some part of which is located within such limits. Exercise of the power granted by this subsection shall not give rise to any power on the part of such municipality to annex, tax, zone or exercise any other municipal power with respect to that part of such project located outside of the geographic limits of such municipality.

(g) Consent, whenever it deems it necessary or desirable in fulfillment of the purposes of this section, to a modification of a rate of interest, a time of payment of any instalment of principal or interest or any other term of the revenue agreement, indenture or bonds.

(h) Provide for any type of insurance against any risk including, without limitation, insurance on the revenues to be derived pursuant to the revenue agreement or on the obligation to make payment of the principal of or interest on the bonds.

SECTION 8. 66.521 (4) (title) and (a) to (d) of the statutes are amended to read:

66.521 (4) (title) BONDS. (a) All bonds issued by a municipality, under the authority of this section shall be limited obligations of the municipality. The principal of and interest on such bonds shall be payable solely out of the revenues derived ~~from the leasing of pursuant to the revenue agreement pertaining to the project to be financed by the bonds so issued under this section, or, in the event of default of such agreement and to the extent that the municipality so provides in the proceedings of the governing body whereunder the bonds are authorized to be issued, out of any revenues derived from the sale, releasing or other disposition of the project, or out of any collateral securing the revenue agreement, or out of the proceeds of the sale of bonds.~~ Bonds and interest coupons issued under authority of this section shall never constitute an indebtedness of the municipality, within the meaning of any state constitutional provision or statutory limitation, and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of each such bond.

(b) The bonds may be executed and delivered at any time; be in such form and denominations, without limitation as to the denomination of any bond, any other law to the contrary notwithstanding; be of such tenor; be fully registered, registrable as to principal or in bearer form; be ~~transferrable~~ transferable; be payable in ~~such one or more~~ instalments and at such time ~~or times~~, not exceeding ~~30~~ 35 years from their date; be payable prior to maturity on such terms and conditions; be payable both with respect to principal and interest at such place ~~or places~~ in or out of this state; bear interest at such rate ~~or rates, payable at such place or places in or out of this state,~~ either fixed or variable in accordance with such formula; be evidenced in such manner; and may contain other provisions not inconsistent herewith, all as shall be provided in respect of the foregoing or other matters in the proceedings of the governing body whereunder the bonds are authorized to be issued.

(c) Unless otherwise expressly or implicitly provided in the proceedings of the governing body whereunder the bonds are authorized to be issued, bonds issued under this section shall be subject to the general provisions of law, not inconsistent with this section, presently existing or that may hereafter be enacted, respecting the authorization, execution and delivery of the bonds of a such municipality ~~and respecting the retaining of options of redemption in proceedings authorizing the issuance of municipal securities.~~

(d) Any bonds, issued under the authority of this section, may be sold at public or private sale in such manner, at such price and at such time ~~or times~~ as may be determined by the governing body ~~to be most advantageous~~. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof.

SECTION 9. 66.521 (5) to (10) of the statutes are repealed and recreated to read:

66.521 (5) PLEDGE OF REVENUES AND PROCEEDINGS FOR ISSUANCE OF BONDS. (a) The principal of, and interest on, any bonds issued under authority of this section shall be secured by a pledge of the revenues out of which such bonds shall be made payable. They may, but need not, be secured by any one or more of the following:

1. A real estate mortgage or a security interest covering all or any part of the project from which the revenues so pledged may be derived;

2. A pledge of the revenue agreement; or
3. An assignment of the revenue agreement and any security given therefor.

(b) The proceedings under which the bonds are authorized to be issued under this section, and any indenture given to secure the same, may contain any agreements and provisions customarily contained in instruments securing bonds, including, but not limited to:

1. Provisions respecting custody of the proceeds from the sale of the bonds including their investment and reinvestment until used to defray the cost of the project;
2. Provisions respecting the fixing and collection of the proceeds under the revenue agreement pertaining to any project covered by such proceedings or indenture;
3. The terms to be incorporated in the revenue agreement pertaining to such project;
4. The maintenance and insurance of such project;
5. The creation, maintenance, custody, investment and reinvestment and use of special funds from the revenues of such project; and
6. The rights and remedies available in case of a default to the bondholders or to any trustee for the bondholders.

(c) A municipality may provide that proceeds from the sale of bonds and special funds from the revenues of the project and any funds held in reserve or sinking funds shall be invested and reinvested in such securities and other investments as are provided in the proceedings under which the bonds are authorized to be issued. The municipality may also provide that such proceeds or funds or investments and the revenues derived pursuant to the revenue agreement shall be received, held and disbursed by one or more banks or trust companies located in or out of this state. A municipality may also provide that the project and improvements shall be constructed or installed by the municipality, the eligible participant or the eligible participant's designee or anyone or more of them on real estate owned by the municipality, 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 such agreements or provisions, a municipality shall not obligate itself, except with respect to the project and the application of the revenues therefrom, and shall not incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(d) The proceedings authorizing any bonds under this section, or any indenture securing such bonds, may provide that if there is a default in the payment of the principal of, or the interest on, such bonds or in the performance of any agreement contained in such proceedings or indenture, the payment and performance may be enforced by the appointment of a receiver with power to charge, collect and apply the revenues from the project in accordance with such proceedings or the provisions of such indenture.

(e) Any indenture made under this section to secure bonds and which constitutes a lien on property may also provide that if there is a default in the payment thereof or a violation of any agreement contained therein, it may be foreclosed and the collateral sold under proceedings in any manner permitted by law. Such indenture may also provide that any trustee thereunder or any pledgee or assignee thereof or the holder of

any bonds secured thereby may become the purchaser at any foreclosure sale if he is the highest bidder therefor.

(f) The revenue agreement may include such provisions as the municipality deems appropriate to effect the financing of the project, including a provision for payments thereunder to be made in instalments and the securing of the obligation for any such 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.

(6) DETERMINATION OF REVENUE PAYMENT. (a) Prior to the execution of a revenue agreement with respect to any project, the governing body must determine:

1. The amount necessary in each year to pay the principal of, and the interest on, the bonds proposed to be issued to finance such project;

2. The amount necessary to be paid each year into any reserve funds which the governing body deems advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and

3. Unless the terms of the revenue agreement provide that the eligible participant shall provide for maintenance of the project and the carrying of all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

(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 foregoing amounts 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. Prior to the issuance of the bonds authorized by this section the municipality shall enter into a revenue agreement providing for payment to the municipality or to the trustee for the account of the municipality of such amounts as, upon the basis of such determination and findings, will be sufficient to pay the principal of, and interest on, the bonds issued to finance the project; to build up and maintain any reserves deemed advisable by the governing body, in connection therewith; and, unless the revenue agreement obligates the eligible participant to provide for the maintenance of and insurance on the project, to pay the costs of maintaining the project in good repair and keeping it properly insured.

(7) APPLICATION OF PROCEEDS LIMITED. The proceeds from the sale of any bonds, issued under this section, shall be applied only for the purpose for which the bonds were issued and if, for any reason, any portion of such proceeds are not needed for the purpose for which the bonds were issued, such unneeded portion of said proceeds shall be applied, directly or indirectly, to the payment of the principal or the interest on the bonds. The following costs may be financed as part of any bond issue:

(a) The actual cost of the construction of any part of a project which may be constructed including but not limited to, permit and license fees, preparation of cost estimates, feasibility studies, consultants, architects', engineers' and similar fees;

(b) The purchase price and installation cost of any part of a project that may be acquired by purchase;

(c) The costs of environmental studies and monitoring systems in connection with the industrial project;

(d) The costs of moving to the situs of the project property previously owned or leased by an eligible participant;

(e) The current fair market value of any real property and improvements thereto acquired as a part of the project and any costs directly related to such real property;

(f) The current fair market value of any personal property acquired as a part of the project;

(g) All expenses in connection with the authorization, sale and issuance of the bonds; and

(h) The interest on such bonds, or on any debt which is replaced by the proceeds of such bonds, for a reasonable time prior to construction or acquisition, during construction or acquisition and for not exceeding 6 months after completion of construction or acquisition.

(8) **PURCHASE.** The municipality may, by or with the consent of the eligible participant, accept any bona fide offer to purchase the project which is sufficient to pay all the outstanding bonds, interest, taxes, special levies and other costs that have been incurred. The municipality may also, by or with the consent of the eligible participant, accept any bona fide offer to purchase any unimproved land which is a part of the project, if the purchase price is not less than the cost of such land to the municipality computed on a prorated basis and if such purchase price is applied directly or indirectly to the payment of the principal or interest on the bonds.

(9) **PAYMENT OF TAXES.** When any industrial project acquired by a municipality under this section is used by a private person as a lessee, sublessee or in any capacity other than owner, that person shall be subject to taxation in the same amount and to the same extent as though that person were the owner of the property. Taxes shall be assessed to such private person using the real property and collected in the same manner as taxes assessed to owners of real property. When due, the taxes shall constitute a debt due from such private person to the taxing unit and shall be recoverable as provided by law, and such unpaid taxes shall become a lien against the property with respect to which they were assessed, superior to all other liens and shall be placed on their tax roll when there has been a conveyance of the property in the same manner as are other taxes assessed against real property.

(10) **PROCEDURE.** (a) Any action required or permitted by this section to be taken by a governing body may be taken at any lawful meetings thereof. A simple majority of a quorum of such governing body shall be sufficient for any such action. The ayes and noes need not be taken with respect to any such action and such action need not be officially read prior to adoption. Failure to publish any such action shall not affect the validity thereof.

(b) Upon the adoption of an initial resolution under this section, public notice of such adoption shall be given to the electors of the municipality prior to the issuance of the bonds therein described, by publication as a class 1 notice, under ch. 985. The notice need not set forth the full contents of the resolution, but shall state the maximum amount of the bonds, the name of the eligible participant, the purpose thereof, and that the resolution was adopted under this section. No other public notice of the authorization, issuance or sale of bonds under this section is required.

(c) A copy of the initial resolution together with a copy of the public notice of its adoption shall be filed with the secretary of business development within 10 days following publication of notice. Prior to the closing of the bond issue, the secretary may require additional information from the eligible participant or the municipality. After the closing of the bond issue, the secretary shall be notified of the closing date, any substantive changes made to documents previously filed with the secretary and the principal amount of the financing.

(d) The governing body may issue bonds under this section without submitting the proposition to the electors of the municipality for approval unless within 30 days from the date of publication of notice of adoption of the initial resolution for such bonds, a petition, signed by not less than 5% of the registered electors of the municipality, or, if there is no registration of electors in the municipality, by 10% of the number of electors of the municipality voting for the office of governor at the last general election as determined under s. 115.01 (13), is filed with the clerk of the municipality requesting a referendum upon the question of the issuance of the bonds. If such a petition is filed, the bonds shall not be issued until approved by a majority of the electors of the municipality voting thereon at a general or special election.

SECTION 10. 66.521 (11) to (13) of the statutes are created to read:

66.521 (11) CERTAIN LAWS NOT APPLICABLE. With respect to the enforcement of any construction lien or other lien under ch. 289 arising out of the construction of projects financed under this section, no deficiency judgment or judgment for costs may be entered against the municipality. Projects financed under this section shall not be deemed to be public works, public improvements or public construction within the meaning of ss. 59.08, 62.15, 289.14, 289.15 and 289.155 and contracts for the construction of such projects shall not be deemed to be public contracts within the meaning of ss. 59.08 and 66.29 unless factors such as and including municipal control over the costs, construction and operation of the project and the beneficial ownership of the project warrant such conclusion.

(12) VALIDATION OF CERTAIN BONDS AND PROCEEDINGS. Notwithstanding this section or any other law:

(a) In the absence of fraud, all bonds heretofore issued purportedly pursuant to this section, and all proceedings heretofore taken purportedly pursuant to this section for the authorization and issuance of such bonds or of bonds not yet issued, and the sale, execution and delivery of such bonds heretofore issued, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power, however patent, other than constitutional, of the issuing municipality or the governing body or officer thereof, to authorize and issue such bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities, however patent, other than constitutional, in such proceeding or in such sale, execution or delivery of such bonds heretofore issued. All such bonds heretofore issued are binding, legal obligations in accordance with their terms.

(b) Any proceedings for the authorization and issuance of bonds pursuant to this section now in process may be continued under this section as it heretofore existed or as it is now constituted. All such continued proceedings are hereby validated, ratified, approved and confirmed; and all bonds hereafter issued as a result of such proceedings are binding, legal obligations in accordance with their terms.

(13) COST OF INDUSTRIAL PROJECT ELIGIBLE FOR FINANCING. (a) In this subsection:

1. "Placed into service" means having become a completed part of a facility which is in fact operational at the level of pollution control for which it was designed.

2. "Substantially" refers to an expenditure of more than 50% of the financed cost of acquiring the property involved.

(b) This section may be used to finance all or any part of the cost, tangible or intangible, whenever incurred, of providing an industrial project under this section, whether or not such industrial project is in existence on the date of adoption of the initial resolution or of issuance of the bonds; whether new or previously used; whether

or not previously owned by the eligible participant, the eligible participant's designee or a party affiliated with either; and notwithstanding that this section was not in effect or did not permit such financing on the date of such adoption or at the time such ownership was acquired, except as follows:

1. No part of the costs of constructing or acquiring personal property owned by the eligible participant, the eligible participant's designee or a party affiliated with either at any time prior to the date of adoption of the initial resolution may be so financed except such costs for:

a. Pollution control facilities which have not been placed into service on the date of adoption of the initial resolution; or

b. Personal property which will either be substantially reconstructed, rehabilitated, rebuilt or repaired in connection with the financing or which represents less than 10% of the entire financing. Personal property shall be deemed owned only after 50% of the acquisition cost thereof has been paid and such property has been delivered and installed.

2. No part of the costs of acquiring real property or of acquiring or constructing improvements thereto may be so financed except such costs:

a. For pollution control facilities which have not been placed into service on the date of adoption of the initial resolution;

b. For real property which will be substantially improved in connection with the project or which represents less than 10% of the entire financing;

c. For acquiring improvements which will themselves be substantially improved in connection with the project, which represent less than 10% of the entire financing, or the cost of which is less than 33% of the cost of the real property to which they are appurtenant which is also being acquired; or

d. As are incurred after the date of adoption of the initial resolution for constructing improvements.

SECTION 11. 551.22 (1) of the statutes is amended to read:

551.22 (1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but ~~this exemption shall not include~~ any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise is exempted subject to such rules as the commissioner may establish.

SECTION 12. 893.23 (2) of the statutes is amended to read:

893.23 (2) An action or proceeding to contest the validity of any state or municipal bond or other financing, or bond issued under s. 66.521, other than a bond certified as described in sub. (1), must be commenced within 30 days after the date on which the issuer thereof publishes in the issuer's official newspaper, or, if none exists, in a newspaper having general circulation within the issuer's boundaries, a class 1 notice, under ch. 985, authorized by the governing body of such issuer, and setting forth the name of the issuer, that the notice is given pursuant to this section of the statutes, the amount of the bond issue or other financing and the anticipated date of closing of such bond or other financing and that a copy of proceedings had to date of the notice are on file and available for inspection in a therein designated office of the

issuer. Such notice may not be published until after the issuer has entered into a contract for sale of the bond or other financing.

SECTION 13. 946.13 (5) of the statutes, as affected by chapter 50, laws of 1973, is amended to read:

946.13 (5) Subsection (1) (b) shall not apply to a public officer or public employe by reason of his holding not more than 2% of the outstanding capital stock of a corporate body involved in such contract ~~or to contracts and transactions made or consummated and bonds issued under s. 66.521.~~

SECTION 14. 946.13 (8) of the statutes is created to read:

946.13 (8) Subsection (1) shall not apply to contracts or transactions made or consummated or bonds issued under s. 66.521.
