



1997 ASSEMBLY BILL 919

March 17, 1998 - Introduced by Representatives F. LASEE, GARD, HUTCHISON, PORTER, OWENS, HOVEN, OTT, RYBA, VANDER LOOP, GREEN, KELSO, LADWIG, AINSWORTH, ZIEGELBAUER and VRAKAS, cosponsored by Senators COWLES, DRZEWIECKI, A. LASEE, SHIBILSKI and ROESSLER. Referred to Committee on Environment.

1 **AN ACT** *to renumber and amend* 196.01 (5); *to amend* 32.05 (intro.), 32.05 (1)
2 (a), 32.07 (2), 70.11 (2), 71.26 (1) (b) and 196.52 (3) (b) 1.; and *to create* 66.0735,
3 77.54 (9a) (em) and 196.01 (5) (b) of the statutes; **relating to:** permitting the
4 creation of joint local water authorities and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill authorizes the creation of a joint local water authority (an "authority"). The bill specifies how an authority may be organized, what powers the authority has, and how an authority is regulated:

Organization

Under the bill, a local governmental unit in the state may contract with one or more local governmental units in this state, or with state or federally recognized Indian tribes or bands in this state, to establish an authority. Under the bill, local governmental unit is defined to mean a city, village, town, county, town sanitary district, water utility district or certain public inland lake protection and rehabilitation districts. At least 30 days before entering into a contract to establish or join a joint local water authority, a local governmental unit shall hold a public hearing on the proposed agreement. An authority established by this contract is a governmental entity that is separate from the contracting powers and is a separate political subdivision and body public and corporate of this state. The authority is exempt from state sales, property and income taxes.

In order to create an authority, the contracting parties must file a copy of the contract with the secretary of state, who is required to record the contract and issue

ASSEMBLY BILL 919

a certificate of incorporation stating the name of the authority and the date and fact of incorporation. The contract filed with the secretary of state must include certain specified information including the name of the authority; the number of directors, their terms and compensation; voting requirements; the manner of selecting officers; the manner in which other local governmental units or Indian tribes or bands may join the authority; provisions for the disposition of property upon dissolution; the term of the contract; and provisions governing dispute resolution. Each contracting party is required to have an equal number of directors, although the directors may be given different voting power, if the formula for determining voting power is specified in the contract. The term of the contract may be for a definite period or may be until the contract is rescinded or terminated. The contract may not be rescinded or terminated as long as the authority has bonds outstanding, unless provision for the full payment of the bonds is made pursuant to the terms of the bonds or the resolution, trust indenture or security instrument securing the bonds.

Powers

The bill grants an authority a range of powers, but does not give the authority to tax. In general, an authority may do all of the following: 1) construct, operate and manage facilities in this state for the production treatment, storage, transmission and sale of water, either solely or in conjunction with others; 2) act as agent in constructing, operating or managing these facilities; 3) buy or sell interests in or rights in these facilities; 4) produce, treat, store, transmit, purchase and sell water, except that the authority may not sell water to persons other than contracting parties, except pursuant to emergency services agreements; 5) buy and sell property; 6) acquire property using condemnation procedures; 7) install and maintain, without compensation to the state, facilities under river beds and land covered by navigable waters of the state; 8) enter on other public property for the purpose of installing, maintaining and operating the authority's facilities; 9) require contracting parties to purchase water from the authority and to connect its distribution system with the authority's distribution system; 10) employ agents and employees; and 11) exercise any other power that the board of directors considers necessary and convenient to effectuate the purposes of the authority. The authority may invest its funds in the obligations, securities and other investments that authority deems proper, subject to the investment restrictions that are generally applicable to local governmental units.

In addition to these express powers, the bill contains language specifically authorizing the authority to enter into particular types of purchase agreements with the contracting parties. These purchase agreements may include: 1) provisions requiring the purchaser to make payments in amounts that are sufficient to enable the authority to meet expenses, interest and principal payments; 2) provisions requiring the purchaser to pay for water regardless of whether water is delivered to the purchaser or whether any project contemplated by the agreement is completed; and 3) provisions requiring that, if one or more of the purchasers defaults in the payment of its obligations under a purchase agreement, the remaining purchasers are required to accept and pay for, water that was to have been purchased by the defaulting purchaser. In addition, the contracting parties may agree to pay the

ASSEMBLY BILL 919

authority for commodities procured or services rendered by the authority. This agreement may also provide for payments to the authority in the form of contributions.

Lastly, the authority is given the power to incur debts, liabilities or obligations, including the issuance of secured or unsecured bonds. The authority may issue the types of bonds it determines, subject only to any agreement with bond holders. The principal and interest on the bonds are payable exclusively from all or a portion of the revenues of the authority. The bonds of the authority is not a debt of the contracting parties and the contracting parties are not liable for the payment of the bonds. The bonds of the authority are required to state these restrictions on liability on the face of the bonds. The bonds may be sold at public or private sales and may have the dates, mature at the times, bear interest at the rates, be in the denominations and have the rank or priority specified by the bond resolution, trust indenture or other security instrument. The authority is given broad authority to make covenants in connection with the issuance of bonds. The authority may also issue refunding bonds, subject generally to the provisions governing the issuance of other bonds of the authority. The bonds may be invested in by the state and its political subdivisions, insurance companies, certain financial institutions and trustees and other fiduciaries.

Regulation

The authority may not sell water at retail and is not generally subject to regulation as a public utility. Under the bill, arrangements between public utilities and authorities are not subject to provisions in current law which govern transactions between public utilities and their affiliated interests. The authority may not issue bonds for the construction of a project until the public service commission (PSC) has certified that public convenience and necessity require the project. No such certification is needed if no bonds are issued by the authority for the project. The PSC may refuse to certify a project if the PSC determines that the project will: 1) substantially impair the efficiency of the service of a contracting party's public utility; 2) provide facilities unreasonably in excess of probable future requirements; or 3) add to the cost of service without proportionately increasing the value or available quantity of service.

The bill generally requires the authority to comply with all local ordinances, unless the authority's board of directors determines that the ordinance imposes unreasonable requirements, costs or delays on the authority's ability to carry out its responsibilities. If the board of directors of an authority make this determination, the board is required to pass a resolution specifying the ordinance, indicating why it is unreasonable and how the authority intends to deviate from the ordinance. The bill provides for notice to the county or municipality whose ordinance is identified in the resolution and for a 90-day period in which to challenge the authority's determination. If the determination of the authority either is not challenged or is upheld, the authority may deviate from the local ordinance in the manner specified in the resolution. The bill does not authorize the authority to deviate from floodplain or shoreland zoning ordinances.

ASSEMBLY BILL 919

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and 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:

1 **SECTION 1.** 32.05 (intro.) of the statutes is amended to read:

2 **32.05 Condemnation for sewers and transportation facilities.** (intro.)

3 In this section, “mass transit facility” includes, without limitation because of
4 enumeration, exclusive or preferential bus lanes if those lanes are limited to
5 abandoned railroad rights-of-way or existing expressways constructed before May
6 17, 1978, highway control devices, bus passenger loading areas and terminal
7 facilities, including shelters, and fringe and corridor parking facilities to serve bus
8 and other public mass transportation passengers, together with the acquisition,
9 construction, reconstruction and maintenance of lands and facilities for the
10 development, improvement and use of public mass transportation systems for the
11 transportation of passengers. This section does not apply to town highways created
12 or altered under ch. 80 except as to jury trials on appeals under ss. 80.24 and 80.25,
13 nor to proceedings in 1st class cities under subch. II. In any city, condemnation for
14 housing under ss. 66.40 to 66.404, or for urban renewal under s. 66.431, may proceed
15 under this section or under s. 32.06 at the option of the condemning authority.
16 Condemnation by a local exposition district under subch. II of ch. 229 for any
17 exposition center or exposition center facility may proceed under this section or
18 under s. 32.06 at the option of the local exposition district. All other condemnation
19 of property for public alleys, streets, highways, airports, mass transit facilities, or
20 other transportation facilities, gas or leachate extraction systems to remedy

ASSEMBLY BILL 919

1 environmental pollution from a solid waste disposal facility, or storm sewers and
2 sanitary sewers or, watercourses or water transmission and distribution facilities
3 shall proceed as follows:

4 **SECTION 2.** 32.05 (1) (a) of the statutes is amended to read:

5 32.05 (1) (a) Except as provided under par. (b), the county board of supervisors
6 (or the county highway committee when so authorized by the county board) of
7 supervisors, city council, village board, town board, sewerage commission governing
8 metropolitan sewerage district created by ss. 66.22 or 66.88 to 66.918, secretary of
9 transportation, a commission created by contract under s. 66.30, a joint local water
10 authority created by contract under s. 66.0375, housing authority under ss. 66.40 to
11 66.404, local exposition district created under subch. II of ch. 229, redevelopment
12 authority under s. 66.431 or community development authority under s. 66.4325
13 shall make an order providing for the laying out, relocation and improvement of the
14 public highway, street, alley, storm and sanitary sewers, watercourses, water
15 transmission and distribution facilities, mass transit facilities, airport, or other
16 transportation facilities, gas or leachate extraction systems to remedy
17 environmental pollution from a solid waste disposal facility, housing project,
18 redevelopment project, exposition center or exposition center facilities which shall
19 be known as the relocation order. This order shall include a map or plat showing the
20 old and new locations and the lands and interests required. A copy of the order shall,
21 within 20 days after its issue, be filed with the county clerk of the county wherein the
22 lands are located.

23 **SECTION 3.** 32.07 (2) of the statutes is amended to read:

24 32.07 (2) The petitioner shall determine necessity if application is by the state
25 or any commission, department, board or other branch of state government or by a

ASSEMBLY BILL 919**SECTION 3**

1 city, village, town, county, school district, board, commission, public officer,
2 commission created by contract under s. 66.30, joint local water authority under s.
3 66.0735, redevelopment authority created under s. 66.431, local exposition district
4 created under subch. II of ch. 229, housing authority created under ss. 66.40 to
5 66.404 or for the right-of-way of a railroad up to 100 feet in width, for a telegraph,
6 telephone or other electric line, for the right-of-way for a gas pipeline, main or
7 service or for easements for the construction of any elevated structure or subway for
8 railroad purposes.

9 **SECTION 4.** 66.0735 of the statutes is created to read:

10 **66.0735 Joint local water authorities. (1) FINDING AND DECLARATION OF**
11 **NECESSITY.** It is declared that the operation of water utility systems by local
12 governmental units of this state and the improvement of the systems through joint
13 action in the production, treatment, storage, transmission, distribution, purchase,
14 sale and exchange of water is in the public interest and a matter of statewide concern;
15 that there is a need in order to ensure the stability and continued viability of the local
16 systems to provide for a means by which local governmental units which operate the
17 systems may act jointly, including development of coordinated water production,
18 treatment, storage, transmission and distribution; and that, the necessity in the
19 public interest for the provisions of this section is declared as a matter of legislative
20 determination.

21 **(2) DEFINITIONS.** As used in this section, unless the context clearly indicates
22 otherwise:

23 (a) "Authority" means a joint local water authority.

24 (b) "Bonds" means any bonds, interim certificates, notes, debentures or other
25 obligations of an authority issued under this section.

ASSEMBLY BILL 919

1 (c) "Commission" means the public service commission.

2 (d) "Contracting party" means a local governmental unit in this state, or a
3 federally recognized Indian tribe or band located in this state, that contracts to
4 establish or to join an authority under this section.

5 (e) "Local governmental unit" means any city, village, town, county, town
6 sanitary district, water utility district, or a public inland lake protection and
7 rehabilitation district that has town sanitary district powers under s. 33.22 (3).

8 (f) "Local water authority" means a public corporation created by contract
9 between 2 or more contracting parties.

10 (g) "Project" means any plant, works, system, facilities and real and personal
11 property of any nature, together with all parts and appurtenances, that are used or
12 useful in the production, treatment, storage, transmission, distribution, purchase,
13 sale, or exchange of water. "Project" includes any interest in, or right to the capacity
14 of, the plant, works, system, facilities or property. "Project" also includes the
15 acquisition of water and the acquisition, construction or operation of facilities for
16 producing, treating, storing, transmitting, or distributing water.

17 **(3) CREATION OF AN AUTHORITY.** (a) *Creation by contract.* Any local governmental
18 unit in this state may contract with one or more local governmental units in this state
19 or federally recognized Indian tribes or bands located in the state to establish a
20 separate governmental entity, to be known as a joint local water authority, to jointly
21 produce, treat, store, transmit, distribute, purchase, sell or exchange water, in whole
22 or in part for the benefit of the contracting parties. The parties to the contract may
23 amend the contract as provided in the contract.

24 (am) *Hearing requirements.* At least 30 days before becoming a contracting
25 party by entering into a contract under this subsection, a local governmental unit

ASSEMBLY BILL 919**SECTION 4**

1 shall hold a public hearing on the proposed contract. Notice of the hearing shall be
2 published as a class 3 notice under ch. 985.

3 (b) *Filing requirements.* The parties entering into a contract under this
4 subsection shall file a copy of the contract with the secretary of state. Upon receipt,
5 the secretary of state shall record the contract and issue a certificate of incorporation
6 stating the name of the authority and the date and fact of incorporation. The
7 corporate existence of the authority begins upon issuance of the certificate.

8 (4) **CONTRACT.** A contract establishing an authority under sub. (3) shall specify
9 all of the following:

10 (a) The name and purpose of the authority and the functions or services to be
11 provided by the authority. The name shall refer to the authority as an agency,
12 authority or district.

13 (b) The establishment and organization of a board of directors, in which all
14 powers of the authority shall be vested. The contract may permit the board of
15 directors to create an executive committee of the board of directors to which the board
16 of directors may delegate any of its powers and duties, as specified by the board.

17 (c) The number of directors, the manner of their appointment, the terms of their
18 office, their compensation, if any, and the procedure for filling vacancies on the board
19 of directors. The contracting parties shall appoint the members of the board of
20 directors. Each contracting party shall be entitled to appoint an equal number of
21 directors to the board of directors and may remove those directors at will.

22 (d) The weight given to each director's vote. Unless specifically provided
23 otherwise, each director's vote shall be given equal weight. If the contract provides
24 for differing weights to be given to each director's vote, the contract shall specify the
25 manner of calculating the weight to be given to each director's vote.

ASSEMBLY BILL 919

1 (e) The manner of selection of the officers of the authority and their duties.

2 (f) The voting requirements for action by the board of directors. Unless
3 specifically provided otherwise, a majority of the authorized directors constitutes a
4 quorum of the board of directors. Unless specifically provided otherwise, a majority
5 of the voting power present is necessary for any action to be taken by the board of
6 directors.

7 (g) The duties of the board of directors, including the obligation to comply with
8 this section and the laws of this state and with the terms of the contract under this
9 subsection.

10 (h) The manner in which additional local governmental units and Indian tribes
11 or bands located in the state may become parties to the contract by amendment.

12 (i) Provisions for the disposition, division or distribution of any property or
13 assets of the authority on dissolution.

14 (j) The term of the contract and the method, if any, of terminating or rescinding
15 the contract. The term of the contract may be a definite period or it may be until
16 rescinded or terminated. The contract may not be rescinded or terminated so long
17 as the authority has bonds outstanding, unless provision for full payment of such
18 bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or
19 the resolution, trust indenture or security instrument securing the bonds.

20 (k) The manner in which the contracting parties shall resolve any disputes.

21 **(5) POWERS.** The authority may do all of the following:

22 (a) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of,
23 participate in, maintain, repair, extend or improve one or more projects within the
24 state, either solely or in conjunction with any other person.

25 (b) Act as agent in conducting an activity under par. (a).

ASSEMBLY BILL 919**SECTION 4**

1 (c) Buy or sell interest in, or rights to the capacity of, projects.

2 (d) Produce, treat, store, transmit, distribute, purchase, sell or exchange water
3 in such amounts as the board of directors determines to be necessary and
4 appropriate, subject to the limitations in this paragraph. An authority may not sell
5 water at retail. An authority may not sell any water to a person other than a
6 contracting party, except pursuant to an emergency services contract. An authority
7 may enter into an emergency services contract to sell water at wholesale to a person
8 other than a contracting party in emergency situations, to be specified in the
9 contract.

10 (e) Acquire, own, hold, use, lease as lessor or lessee, sell or otherwise dispose
11 of, mortgage, pledge, or grant a security interest in any real or personal property,
12 commodity or service.

13 (f) Acquire property by condemnation using the procedure under s. 32.05 or
14 32.06 for the purposes set forth in this section.

15 (g) Enter upon any state, county or municipal street, road or alley, or any public
16 highway for the purpose of installing, maintaining and operating the authority's
17 facilities. The authority may construct in the street, road or alley or public highway
18 necessary facilities without a permit or a payment of a charge. Whenever the work
19 is to be done in a state, county or municipal highway, the public authority having
20 control thereof shall be duly notified, and the highway shall be restored to as good
21 a condition as existed before the commencement of the work with all costs incident
22 to the work to be borne by the authority.

23 (h) Install and maintain, without compensation to the state, any part of the
24 authority's facilities over, upon or under any part of the bed of any river or of any land
25 covered by any of the navigable waters of the state, the title to which is held by the

ASSEMBLY BILL 919

1 state, and over, upon or under canals or through waterways. This paragraph does
2 not relieve the authority of its obligation to obtain any permits or approvals
3 otherwise required by law.

4 (i) Require contracting parties to purchase water from the authority and to
5 connect any contracting party's distribution system with the authority's distribution
6 system.

7 (j) Fix, maintain and revise fees, rates, rents and charges for functions,
8 services, facilities or commodities provided by the authority.

9 (k) Make, and from time to time amend and repeal, bylaws, rules and
10 regulations to carry into effect the powers and purposes of the authority.

11 (L) Join an organization, if the board of directors determines that membership
12 is beneficial to accomplishment of the authority's purposes.

13 (m) Sue and be sued in its own name.

14 (n) Have and use a corporate seal.

15 (o) Employ agents and employes.

16 (p) Incur debts, liabilities or obligations including the borrowing of money and
17 the issuance of bonds, secured or unsecured, under sub. (9) (b).

18 (q) Invest any funds held in reserve or sinking funds, or any funds not required
19 for immediate disbursement, including the proceeds from the sale of any bonds, in
20 such obligations, securities and other investments as the authority deems proper in
21 accordance with s. 66.04 (2).

22 (r) Do and perform any acts and things authorized by this section under,
23 through or by means of an agent or by contracts with any person.

24 (s) Exercise any other powers that the board of directors considers necessary
25 and convenient to effectuate the purposes of the authority.

ASSEMBLY BILL 919**SECTION 4**

1 **(6) PUBLIC CHARACTER.** An authority is a political subdivision and body public
2 and corporate of the state, exercising public powers, separate from the contracting
3 parties. It has the duties, privileges, immunities, rights, liabilities and disabilities
4 of a public body but does not have taxing power.

5 **(7) PAYMENTS.** (a) *Definition.* In this subsection, “purchase of water” includes
6 any right to capacity or interest in any project.

7 (b) *Payments for commodities and services.* The contracting parties may agree
8 to pay the authority funds for commodities to be procured or services to be rendered
9 by the authority. The agreement may also provide for payments in the form of
10 contributions to defray the cost of any purpose set forth in the contract under sub.
11 (4) or the agreement and, subject to repayment by the authority, for advances for any
12 purpose set forth in the contract under sub. (4) or the agreement.

13 (c) *Purchase agreements.* The contracting parties may enter into purchase
14 agreements with the authority for the purchase of water. Purchase agreements may
15 include the following provisions:

16 1. A provision requiring the purchaser to make payments in amounts that are
17 sufficient to enable the authority to meet its expenses, interest and principal
18 payments, whether at maturity or upon debt service fund redemption, for its bonds,
19 reasonable reserves for debt service, operation and maintenance and renewals and
20 replacements and the requirements of any rate covenant with respect to debt service
21 coverage contained in any resolution, trust indenture or other security instrument.

22 2. A provision requiring the purchaser to pay for water regardless of whether
23 water is delivered to the purchaser or whether any project contemplated by any such
24 agreement is completed, operable or operating, and notwithstanding suspension,
25 interruption, interference, reduction or curtailment of the output of the project.

ASSEMBLY BILL 919

1 3. A provision requiring that, if one or more of the purchasers defaults in the
2 payment of its obligations under a purchase agreement, the remaining purchasers
3 shall accept and pay for, and shall be entitled proportionately to use or otherwise
4 dispose of, the water that was to have been purchased by the defaulting purchaser.

5 4. A provision providing for a term for the purchase agreement. The term may
6 be for the life of a project, for an indefinite period or for any other term.

7 5. Other terms and conditions that the authority and the purchasers
8 determine.

9 (d) *Status of obligations under a purchase agreement.* To the extent that a
10 purchase agreement with an authority provides that the obligations of a contracting
11 party under the purchase agreement are special obligations of the contracting party,
12 payable solely from the revenues and other moneys derived by the contracting party
13 from its water utility, these obligations are not debt of the contracting party and shall
14 be treated as operation and maintenance expenses of a water utility.

15 **(8) REGULATION.** (a) An authority may not issue bonds for the construction of
16 a project until the commission has certified that public convenience and necessity
17 require the project. A project need not be certified as being required by public
18 convenience and necessity if no bonds are issued for the project. The commission may
19 promulgate rules regarding the making of certifications of public convenience and
20 necessity under this subsection.

21 (b) The commission may refuse to certify a project under par. (a) if it appears
22 that the completion of the project will do any of the following:

23 1. Substantially impair the efficiency of the service of a contracting party's
24 public utility.

ASSEMBLY BILL 919**SECTION 4**

1 2. Provide facilities unreasonably in excess of the probable future
2 requirements.

3 3. When placed in operation, add to the cost of service without proportionately
4 increasing the value or available quantity of service.

5 (c) The commission may issue a certificate for the construction of a project or
6 for any part of the project if the project complies with the requirements of par. (b).
7 The commission may attach to the issuance of its certificate terms and conditions
8 that will ensure that the construction of the project meets the requirements of par.
9 (b).

10 **(9) BONDS; GENERALLY.** (a) *Types of bonds.* An authority may issue the types
11 of bonds it determines, subject only to any agreement with the holders of particular
12 bonds. An authority may issue bonds, the principal and interest on which are
13 payable exclusively from all or a portion of the revenues from one or more projects,
14 or from one or more revenue producing contracts made by the authority or from its
15 revenues generally. The authority may secure its bonds by a pledge of any grant,
16 subsidy, or contribution from any contracting party, or by a pledge of any income or
17 revenues, funds, or moneys of the authority from any source whatsoever.

18 (b) *Purposes of bonds.* An authority may issue bonds in such principal amounts
19 as the authority deems necessary to provide sufficient funds to carry out any of its
20 corporate purposes and powers, including the establishment or increase of reserves,
21 interest accrued during construction of a project and for a period not exceeding one
22 year after the completion of construction of a project, and the payment of all other
23 costs or expenses of the authority incident to and necessary or convenient to carry
24 out its corporate purposes and powers.

ASSEMBLY BILL 919

1 (c) *Liability on the bonds.* 1. Neither the members of the board of directors of
2 an authority nor any person executing the bonds is personally liable on the bonds by
3 reason of the issuance of the bonds.

4 2. The bonds of an authority is not a debt of the contracting parties. Neither
5 the contracting parties nor the state are liable for the payment of the bonds. The
6 bonds of any authority shall be payable only out of funds or properties of the
7 authority. The bonds of the authority shall state the restrictions contained in this
8 paragraph on the face of the bonds.

9 **(10) ISSUANCE OF BONDS.** (a) Bonds of an authority shall be authorized by
10 resolution of the board of directors. The bonds may be issued under such a resolution
11 or under a trust indenture or other security instrument. The bonds may be issued
12 in one or more series and may be in the form of coupon bonds or registered bonds
13 under s. 67.09. The bonds shall bear the dates, mature at the times, bear interest
14 at the rates, be in the denominations, have the rank or priority, be executed in the
15 manner, be payable in the medium of payment, at the places, and be subject to the
16 terms of redemption, with or without premium, as the resolution, trust indenture or
17 other security instrument provides.

18 (b) The authority may sell the bonds at public or private sales at the price or
19 prices determined by the authority.

20 (c) If an officer whose signatures appear on any bonds or coupons ceases to be
21 an officer of the authority before the delivery of such obligations, the officer's
22 signature shall, nevertheless, be valid for all purposes as if the officer had remained
23 in office until delivery of the bonds.

24 **(11) COVENANTS.** An authority may do all of the following in connection with
25 the issuance of bonds:

ASSEMBLY BILL 919**SECTION 4**

1 (a) Covenant as to the use of any or all of its property, real or personal.

2 (b) Redeem the bonds, or covenant for the redemption of the bonds, and provide
3 the terms and conditions of the redemption.

4 (c) Covenant as to charge fees, rates, rents and charges sufficient to meet
5 operating and maintenance expenses, renewals and replacements to a project,
6 principal and debt service on bonds, creation and maintenance of any reserves
7 required by a bond resolution, trust indenture or other security instrument and to
8 provide for any margins or coverages over and above debt service on the bonds that
9 the board of directors considers desirable for the marketability of the bonds.

10 (d) Covenant as to the events of default on the bonds and the terms and
11 conditions upon which the bonds shall become or may be declared due before
12 maturity, as to the terms and conditions upon which this declaration and its
13 consequences may be waived, and as to the consequences of default and the remedies
14 of bondholders.

15 (e) Covenant as to the mortgage or pledge of, or the grant of a security interest
16 in, any real or personal property and all or any part of the revenues from any project
17 or any revenue producing contract made by the authority to secure the payment of
18 bonds, subject to any agreements with the bondholders.

19 (f) Covenant as to the custody, collection, securing, investment and payment
20 of any revenues, assets, moneys, funds or property with respect to which the
21 authority may have any rights or interest.

22 (g) Covenant as to the purposes to which the proceeds from the sale of any bonds
23 may be applied, and as to the pledge of such proceeds to secure the payment of the
24 bonds.

ASSEMBLY BILL 919

1 (h) Covenant as to limitations on the issuance of any additional bonds, the
2 terms upon which additional bonds may be issued and secured, and the refunding
3 of outstanding bonds.

4 (i) Covenant as to the rank or priority of any bonds with respect to any lien or
5 security.

6 (j) Covenant as to the procedure by which the terms of any contract with or for
7 the benefit of the holders of bonds may be amended or abrogated, the amount of
8 bonds, the holders of which must consent thereto, and the manner in which such
9 consent may be given.

10 (k) Covenant as to the custody and safekeeping of any of its properties or
11 investments, the insurance to be carried on the property or investments and the use
12 and disposition of insurance proceeds.

13 (L) Covenant as to the vesting in one or more trustees, within or outside the
14 state, of those properties, rights, powers and duties in trust as the authority
15 determines.

16 (m) Covenant as to the appointing of, and providing for the duties and
17 obligations of, one or more paying agent or other fiduciaries within or outside the
18 state.

19 (n) Make all other covenants and do any act that may be necessary or
20 convenient or desirable in order to secure its bonds, or in the absolute discretion of
21 the authority, tend to make the bonds more marketable.

22 (o) Execute all instruments necessary or convenient in the exercise of the
23 powers granted under this section or in the performance of covenants or duties,
24 which may contain such covenants and provisions, as a purchaser of the bonds of the
25 authority may reasonably require.

ASSEMBLY BILL 919**SECTION 4**

1 **(12) REFUNDING BONDS.** An authority may issue refunding bonds for the
2 purpose of paying any of its bonds at or prior to maturity or upon acceleration or
3 redemption. An authority may issue refunding bonds at such time prior to the
4 maturity or redemption of the refunded bonds as the authority deems to be in the
5 public interest. The refunding bonds may be issued in sufficient amounts to pay or
6 provide the principal of the bonds being refunded, together with any redemption
7 premium on the bonds, any interest accrued or to accrue to the date of payment of
8 the bonds, the expenses of issue of the refunding bonds, the expenses of redeeming
9 the bonds being refunded, and such reserves for debt service or other capital or
10 current expenses from the proceeds of such refunding bonds as may be required by
11 the resolution, trust indenture or other security instruments. To the extent
12 applicable, refunding bonds are subject to subs. (10) and (11).

13 **(13) BONDS ELIGIBLE FOR INVESTMENT.** Public officers and agencies of the state,
14 political subdivisions, insurance companies, trust companies, banks, savings banks,
15 savings and loan associations, investment companies, personal representatives,
16 executors, administrators, trustees and other fiduciaries may properly and legally
17 invest funds, including capital in their control or belonging to them, in bonds of the
18 authority. The authority's bonds are securities that may properly and legally be
19 deposited with and received by any officer or agency of the state or any political
20 subdivision for any purpose for which the deposit of bonds or obligation of the state
21 or any political subdivision is authorized by law.

22 **(14) BUDGETS; RATES AND CHARGES; AUDIT.** An authority shall adopt a calendar
23 year as its fiscal year for accounting purposes. The board of directors of the authority
24 shall annually prepare a budget for the authority. Rates and other charges received
25 by the authority shall be used for the general expenses and capital expenditures of

ASSEMBLY BILL 919

1 the authority and to pay interest, amortization, and retirement charges on bonds.
2 The authority shall maintain an accounting system in accordance with generally
3 accepted accounting principles and shall have its financial statements and debt
4 covenants audited annually by an independent certified public accountant.

5 (15) COMPLIANCE WITH LOCAL ORDINANCES; DEVIATIONS. The authority shall,
6 except as provided in sub. (5) (g), comply with all local ordinances, unless the
7 authority's board of directors determines that the ordinance imposes unreasonable
8 requirements, costs or delays on the authority's ability to carry out its
9 responsibilities. If the board of directors determines that an ordinance imposes
10 unreasonable requirements, costs or delays, the board of directors shall pass a
11 resolution specifying the ordinance, indicating why it is unreasonable and how the
12 authority intends to deviate from the ordinance. If the board of directors passes a
13 resolution under this subsection, the authority shall serve a copy of the resolution
14 by certified mail upon the clerk of the county or municipality whose ordinance is
15 specified in the resolution. The copy shall be accompanied by a statement that the
16 authority's determination is subject to review only for a period of 90 days from the
17 date of the postmark. Any aggrieved person may commence an action in the circuit
18 court of the county, or in the circuit county in which the municipality is located, to
19 challenge the authority's determination. The action must be commenced within 90
20 days of the postmark of the copy served on the county or municipality. An action
21 under this subsection is the only manner by which the authority's determination to
22 deviate from a ordinance may be challenged. The circuit court give the matter
23 precedence over other matters not accorded similar precedence by law. Failure to
24 commence an action within 90 days from the date of the postmark bars the person
25 from objecting to the authority's determination to deviate from the local ordinance.

ASSEMBLY BILL 919**SECTION 4**

1 If the determination of the authority either is not challenged or is upheld, the
2 authority may deviate from the ordinance in the manner specified in the resolution,
3 except that this subsection does not authorize the authority to deviate from
4 floodplain or shoreland zoning ordinances.

5 (16) OTHER STATUTES. This section does not limit the powers of local
6 governmental units to enter into intergovernmental cooperation or contracts or to
7 establish separate legal entities under s. 66.30 or any other applicable law, or
8 otherwise to carry out their powers under applicable statutory provisions.

9 (17) CONSTRUCTION. This section shall be interpreted liberally to effect the
10 purposes set forth in this section.

11 SECTION 5. 70.11 (2) of the statutes, as affected by 1997 Wisconsin Act 35, is
12 amended to read:

13 70.11 (2) MUNICIPAL PROPERTY AND PROPERTY OF CERTAIN DISTRICTS, EXCEPTION.
14 Property owned by any county, city, village, town, school district, technical college
15 district, public inland lake protection and rehabilitation district, metropolitan
16 sewerage district, municipal water district created under s. 198.22, joint local water
17 authority created under s. 66.0735 or town sanitary district; lands belonging to cities
18 of any other state used for public parks; land tax-deeded to any county or city before
19 January 2; but any residence located upon property owned by the county for park
20 purposes which is rented out by the county for a nonpark purpose shall not be exempt
21 from taxation. Except as to land acquired under s. 59.84 (2) (d), this exemption shall
22 not apply to land conveyed after August 17, 1961, to any such governmental unit or
23 for its benefit while the grantor or others for his or her benefit are permitted to occupy
24 the land or part thereof in consideration for the conveyance. Leasing the property

ASSEMBLY BILL 919

1 exempt under this subsection, regardless of the lessee and the use of the leasehold
2 income, does not render that property taxable.

3 **SECTION 6.** 71.26 (1) (b) of the statutes is amended to read:

4 71.26 (1) (b) *Political units.* Income received by the United States, the state
5 and all counties, cities, villages, towns, school districts, technical college districts,
6 joint local water authorities created under s. 66.0735 or other political units of this
7 state.

8 **SECTION 7.** 77.54 (9a) (em) of the statutes is created to read:

9 77.54 (9a) (em) Any joint local water authority created under s. 66.0735.

10 **SECTION 8.** 196.01 (5) of the statutes is renumbered 196.01 (5) (a) (intro.) and
11 is amended to read:

12 196.01 (5) (a) (intro.) “Public utility” means, except as provided in par. (b), every
13 corporation, company, individual, association, their lessees, trustees or receivers
14 appointed by any court, and every sanitary district, town, village or city that may
15 own, operate, manage or control any toll bridge or all or any part of a plant or
16 equipment, within the state, for the production, transmission, delivery or furnishing
17 of heat, light, water or power either directly or indirectly to or for the public. “Public
18 utility” ~~does not include a cooperative association organized under ch. 185 for the~~
19 ~~purpose of producing or furnishing heat, light, power or water to its members only.~~

20 “Public utility” includes any all of the following:

21 1. Any person engaged in the transmission or delivery of natural gas for
22 compensation within this state by means of pipes or mains and any person, except
23 a governmental unit, who furnishes services by means of a sewerage system either
24 directly or indirectly to or for the public. ~~“Public utility” includes a~~

ASSEMBLY BILL 919**SECTION 8**

1 ~~2. A telecommunications utility. "Public utility" does not include a holding~~
2 ~~company, as defined in s. 196.795 (1) (h), unless the holding company furnishes,~~
3 ~~directly to the public, telecommunications or sewer service, heat, light, water or~~
4 ~~power or, by means of pipes or mains, natural gas. "Public utility" does not include~~
5 ~~any company, as defined in s. 196.795 (1) (f), which owns, operates, manages or~~
6 ~~controls a telecommunications utility unless the company furnishes, directly to the~~
7 ~~public, telecommunications or sewer service, heat, light, water or power or, by means~~
8 ~~of pipes or mains, natural gas. "Public utility" does not include a cellular mobile radio~~
9 ~~telecommunications utility.~~

10 **SECTION 9.** 196.01 (5) (b) of the statutes is created to read:

11 196.01 (5) (b) "Public utility" does not include any of the following:

12 1. A cooperative association organized under ch. 185 for the purpose of
13 producing or furnishing heat, light, power or water to its members only.

14 2. A holding company, as defined in s. 196.795 (1) (h), unless the holding
15 company furnishes, directly to the public, telecommunications or sewer service, heat,
16 light, water or power or, by means of pipes or mains, natural gas.

17 3. Any company, as defined in s. 196.795 (1) (f), which owns, operates, manages
18 or controls a telecommunications utility unless the company furnishes, directly to
19 the public, telecommunications or sewer service, heat, light, water or power or, by
20 means of pipes or mains, natural gas.

21 4. A cellular mobile radio telecommunications utility.

22 5. A joint local water authority under s. 66.0735.

23 **SECTION 10.** 196.52 (3) (b) 1. of the statutes is amended to read:

24 196.52 (3) (b) 1. The requirement for written approval under par. (a) shall not
25 apply to any contract or arrangement if the amount of consideration involved is not

ASSEMBLY BILL 919

1 in excess of \$25,000 or 5% of the equity of the public utility, whichever is smaller, ~~and~~
2 The requirement under par. (a) also does not apply to a telecommunications utility
3 contract or arrangement or to contracts or arrangements with joint local water
4 authorities under s. 66.0735. Regularly recurring payments under a general or
5 continuing arrangement which aggregate a greater annual amount may not be
6 broken down into a series of transactions to come within the exemption under this
7 paragraph. Any transaction exempted under this paragraph shall be valid or
8 effective without commission approval under this section.

9 (END)