

CHAPTER 18

STATE DEBT, REVENUE OBLIGATIONS AND OPERATING NOTES

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SUBCHAPTER I

STATE DEBT

18.01 Definitions. In this subchapter unless a different meaning is expressly provided or the context clearly indicates a different meaning:

(1) "Authorizing resolution" means any resolution adopted by the commission pursuant to this subchapter which authorizes the contracting of public debt.

(2) "Commission" means the building commission.

(3) "Evidence of indebtedness" means a bond, a note or any other written promise to pay a public debt.

(4) "Public debt" or "debt" means every voluntary, unconditional undertaking by the state, other than an operating note, to repay a sum certain:

(a) Out of the state treasury, except a loan or advance by any state agency or fund to any other state agency or fund; or

(b) For which any existing asset of the state is pledged, except the pledge of an outstanding evidence of indebtedness without recourse.

History: 1973 c. 90 s. 555m (2); 1977 c. 29 s. 1652; 1979 c. 107; 1981 c. 336; 1983 a. 36 s. 96 (4); 1983 a. 189; 1985 a. 6, 29.

18.02 Scope of subchapter. Public debt may be contracted and evidences of indebtedness issued therefor only to the amounts, for the purposes, by the procedures and with the kinds of evidence of indebtedness specified in this subchapter, except that this subchapter is not applicable:

(1) To public debt, not exceeding in the aggregate \$100,000, incurred for the purpose of defraying extraordinary expenditures of the state.

(2) To public debt incurred to repel invasion, suppress insurrection or defend the state in time of war.

History: 1977 c. 29 s. 1652.

18.03 Commission. (1) Subject to the conditions and limitations contained in this subchapter, the commission shall have supervision over all matters relating to the contracting

of public debt and the issuance of evidences of indebtedness therefor.

(2) (a) The commission shall have all of the powers necessary to carry out its functions.

(b) The commission may interpret the statutes enforced or administered by it as it considers to be necessary to effectuate the purpose of the statutes. The authority granted by this paragraph shall not exceed the authority granted by s. 227.11 (2) (a).

(c) The commission may prescribe such forms and procedures in connection with statutes to be enforced or administered by it as it considers to be necessary to effectuate the purpose of the statutes, but nothing in this paragraph authorizes the imposition of substantive requirements in connection with such forms or procedures.

(3) The department of administration shall assist the commission to carry out its functions and carry out all directives of the commission.

(4) All actions of the commission shall be taken by resolution. Each authorizing resolution shall be reduced to writing. The secretary of the commission shall maintain a full and correct record of each step or proceeding had or taken in the course of authorizing and contracting every public debt.

(5) Upon request of a state department or agency, the commission shall prepare periodic reports describing the current status of indebtedness relevant to the department's or agency's program responsibilities.

(6) Nothing in this subchapter shall be construed to supersede the authority by statute of any state department or agency in carrying out program responsibilities for which public debt has been authorized by the legislature.

History: 1973 c. 90 s. 555m (2); 1977 c. 29 s. 1652; 1983 a. 36; 1985 a. 182 s. 57.

18.04 Purposes of public debt and amounts. (1) The commission may authorize public debt to be contracted and evidences of indebtedness to be issued therefor in an amount sufficient to fund or refund, as provided in s. 18.06 (5), or to fund, refund or acquire for any of the purposes set forth in

sub. (5) and as provided in s. 18.06 (7), the whole or any part of:

(a) Any public debt contracted pursuant to this subchapter.

(b) Any indebtedness incurred prior to January 1, 1972, by the Wisconsin state agencies building corporation, Wisconsin state colleges building corporation, Wisconsin state public building corporation or Wisconsin university building corporation.

(2) The commission shall authorize public debt to be contracted and evidences of indebtedness to be issued therefor up to the amounts specified by the legislature to acquire, construct, develop, extend, enlarge or improve land, waters, property, highways, buildings, equipment or facilities or to make funds available for veterans' housing loans for the classes of public purposes specified by the legislature as the funds are required. Said requirements for funds shall be established by that department or agency head having program responsibilities for which public debt has been authorized by the legislature.

(3) Each purpose enumerated in sub. (1) shall be construed to include any premium payable with respect thereto and the expenses of funding, refunding and acquiring public debt. Each purpose specified by the legislature under subs. (1) and (2) shall be construed to include the expenses of contracting public debt.

(5) Public debt may be contracted under sub. (1) for any of the following purposes:

(a) To acquire public debt contracted to make funds available for veterans' housing loans under sub. (2).

(b) To fund or refund public debt contracted to make funds available for veterans' housing loans under sub. (2).

(c) To acquire public debt, other than public debt that is contracted to make funds available for veterans' housing loans under sub. (2), for the purpose of investment for the veterans primary mortgage loan program under s. 45.79.

(d) To acquire public debt contracted for any of the purposes under pars. (a) to (c).

(6) (a) Public debt may include public debt contracted to fund interest, accrued or to accrue, on the public debt and to fund reserve funds for the public debt.

(b) The commission may direct that moneys resulting from any public debt contracted under this section be deposited in the funds or accounts created or designated by resolution of the commission or established by resolution under s. 45.79 (7), including escrow accounts established under refunding escrow agreements that are authorized by the commission.

(c) Notwithstanding s. 25.17, moneys deposited or held in funds or accounts under par. (b) and all other moneys received under s. 45.79 (7) (a) (intro.) may be invested in any obligations, either through cash purchase or exchange, as specified by resolution of the commission.

(d) Notwithstanding s. 25.17, moneys deposited or held in funds or accounts under par. (b) may be transferred to other funds or accounts or expended as provided by resolution of the commission, except that moneys resulting from public debt contracted for the purpose set forth in sub. (5) (b) and deposited in an escrow account shall be payable solely for the purposes of the bond security and redemption fund and for costs related to the creation and maintenance of the escrow account.

History: 1973 c. 90 s. 555m (2); 1975 c. 26; 1977 c. 29 s. 1652; 1977 c. 317; 1985 a. 6; 1987 a. 27; 1989 a. 31, 46.

18.05 Limitations on aggregate public debt. (1) The aggregate public debt contracted in any calendar year for purposes specified by the legislature pursuant to s. 18.04 (2) shall not exceed an amount equal to the lesser of:

(a) Three-fourths of one per cent of the aggregate value of all taxable property in the state; or

(b) Five per cent of the aggregate value of all taxable property in the state less the sum of:

1. The aggregate public debt contracted pursuant to this subchapter which was outstanding as of January 1 of such calendar year after subtracting therefrom the amount on hand in the bond security and redemption fund and the amounts maintained pursuant to s. 18.09 (3) on January 1 of such calendar year which is applicable exclusively to repayment of such outstanding public debt; and

2. The aggregate net indebtedness outstanding as of January 1 of such calendar year of the Wisconsin state agencies building corporation, Wisconsin state colleges building corporation, Wisconsin state public building corporation and Wisconsin university building corporation.

(2) The last determination made by the department of revenue of the full market value of all general property of the state liable to taxes pursuant to s. 70.575 shall be the aggregate value of all taxable property in the state. The department of revenue shall certify such value when requested for use in connection with the contracting of state debt.

(3) The legislative audit bureau shall annually determine the amounts under sub. (1) (b) 1 and 2 and shall certify such amounts when requested for use in connection with the contracting of state debt. It shall use in making such determination the fair market value of all property on hand in the sinking funds of the bond security and redemption fund. It shall take into account any anticipatory contracts under s. 18.10 (1).

History: 1977 c. 29 s. 1652.

18.06 Procedures. (1) AUTHORIZING RESOLUTION. No public debt may be contracted nor evidence of indebtedness issued by the state except pursuant to an authorizing resolution. Each authorizing resolution shall state each purpose of the debt it authorizes, which need not be more specific but shall not be more general than those purposes in or pursuant to law, and the maximum principal amount of debt authorized for each such purpose. The commission may amend at any time any purpose authorized by a resolution if the amendment does not cause the total amount of debt for that purpose to exceed the statutory limit on the issuance of debt for that purpose.

(2) **LOAN.** An authorizing resolution may authorize the negotiation of a loan or loan agreement of any type, upon any terms, with any bank, savings and loan association or credit union, or with any agency of the United States.

(3) **NOTES.** An authorizing resolution may authorize the issuance and sale of notes. Such a sale may be public or private as provided in the authorizing resolution.

(4) **BONDS.** An authorizing resolution may authorize the issuance and sale of bonds. Except as provided in subs. (5), (7) and (9) and except for any bond authorized and issued under this subchapter and designated by the commission under s. 18.82 as a higher education bond, the sale of bonds shall be public and noticed as provided in the authorizing resolution. Any or all bids received may be rejected and the sale canceled, or the sale of all or any part of the bonds negotiated, after bids at public sale have been rejected.

(5) **FUNDING AND REFUNDING.** An authorizing resolution may authorize, for any one or more of the purposes described in s. 18.04 (1), the issuance and sale of notes as provided in sub. (3) or the issuance and sale of bonds as provided in sub. (4). That sale may be public or private as provided in the

authorizing resolution, and public debt may be exchanged in payment of or for the acquisition of other public debt.

(6) **EXERCISE OF AUTHORITY.** Public debt may be contracted and evidence of indebtedness issued therefor under one or more authorizing resolutions, unless otherwise provided in the resolution, at any time and from time to time, for any combination of purposes, in any specific amounts, at any rates of interest, at any price or percentage of par value, for any term, payable at any intervals, at any place, in any manner and having any other terms or conditions deemed necessary or useful. A resolution authorizing the contracting of public debt may provide that the public debt bear interest at variable or fixed rates, bear no interest, bear interest payable at any time or bear interest payable only at maturity or upon redemption prior to maturity. Unless sooner exercised and unless a shorter period is provided in such resolution, every authorizing resolution shall expire one year after the date of its adoption.

(7) **SPECIAL PROCEDURES.** Notwithstanding subs. (2) to (5), the following procedures apply to public debt contracted for any of the purposes under s. 18.04 (5) or contracted for the purpose of making funds available for veterans' housing loans:

(a) The public debt may be sold at public or private sale.

(b) The public debt may be exchanged publicly or privately in payment of or for the acquisition of other public debt.

(c) The public debt may be sold for par value or at a premium or discount from par value.

(d) The public debt may bear interest at variable or fixed rates as provided in or pursuant to the resolution authorizing the contracting of the public debt or, if the resolution so provides, may bear no interest, bear interest payable at any time or bear interest payable only at maturity or upon redemption prior to maturity.

(8) **VARIABLE RATES.** (a) With regard to public debt that bears variable rates of interest or that is issued in the form of commercial paper, the commission may enter into agreements and ancillary arrangements for the public debt, including liquidity facilities, remarketing or dealer agreements, letter of credit agreements, insurance policies, interest rate guaranty agreements, reimbursement agreements and indexing agreements.

(b) The commission may delegate to other persons the authority and responsibility to take actions necessary and appropriate to implement agreements and ancillary arrangements under par. (a).

(c) Any public debt contracted under this subchapter that bears variable rates of interest or that is issued in the form of commercial paper may include public debt contracted to fund interest, accrued or to accrue, on the public debt.

(9) **CLEAN WATER FUND BONDS.** Notwithstanding sub. (4), the sale of bonds under this subchapter to provide revenue for the clean water fund program may be a private sale to the clean water fund under s. 25.43, if the bonds sold are held or owned by the clean water fund, or a public sale, as provided in the authorizing resolution.

History: 1977 c. 317; 1979 c. 107; 1981 c. 336; 1983 a. 368; 1985 a. 6; 1987 a. 27; 1989 a. 31, 46, 68, 366.

18.07 Form and content of evidence of indebtedness. (1) Any provision of s. 403.104 to the contrary notwithstanding, every evidence of indebtedness and every interest coupon appurtenant thereto is declared to be a negotiable instrument.

(2) Every loan agreement entered into pursuant to s. 18.06 (2) and every evidence of indebtedness given under such a loan agreement shall be executed in the name of and for the state by the secretary of the commission. Every other evidence of indebtedness shall be executed in the name of and

for the state by the governor and by the state treasurer and shall be sealed with the great seal of the state or a facsimile thereof of any size, and every interest coupon appurtenant thereto shall be executed in the name of and for the state by the governor. The facsimile signature of either the governor or state treasurer or both may be imprinted in lieu of the manual signature of such officer, as the commission directs, if approved by such officer, and shall be so imprinted in the case of interest coupons. Evidence of indebtedness and interest coupons appurtenant thereto bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid notwithstanding that before or after the delivery thereof such person ceased to hold such office.

(3) Every evidence of indebtedness shall be dated not later than the date issued, shall contain a reference by date to the appropriate authorizing resolution or resolutions and shall be in accordance therewith and, if issued for any one or more of the purposes described in s. 18.04 (1), shall so state.

(4) An evidence of indebtedness and any interest coupon appurtenant thereto shall be in such form and contain such statements or terms, not in conflict with law or with the appropriate authorizing resolution or resolutions, as the commission directs.

History: 1973 c. 90 s. 555m (2); 1981 c. 20.

18.08 Capital improvement fund. (1) (a) All moneys resulting from the contracting of public debt shall be credited to a separate and distinct fund, established in the state treasury, designated as the capital improvement fund, except that such moneys which represent premium and accrued interest on bonds or notes issued, or are for purposes of funding or refunding bonds pursuant to s. 18.06 (5) shall be credited to one or more of the sinking funds of the bond security and redemption fund or to the state building trust fund.

(b) Moneys within the capital improvement fund shall be segregated into separate and distinct accounts according to the program purposes defined under ch. 20 for which public debt has been authorized by the legislature.

(2) The capital improvement fund may be expended, pursuant to appropriations, only for the purposes and in the amounts for which the debts have been contracted, for the payment of principal and interest on loans or on notes, for the purposes identified under s. 20.867 (2) (v) and (4) (q) and for expenses incurred in contracting debt.

(3) Moneys of the capital improvement fund may be commingled only for the purpose of investment with other public funds, but they shall be invested only as provided in s. 18.04 (6) or 25.17 (3) (b). All such investments shall be the exclusive property of the fund and all earnings on or income from such investments shall be credited to the fund and shall, subject to subs. (5) and (6), become available for any of the purposes under sub. (2). Before October 1, 1983, earnings from that portion created by self-amortizing projects may be transferred by resolution of the commission to the bond security and redemption fund to be used as provided in s. 18.09 (4).

(4) If at any time it appears that there will not be on hand in the capital improvement fund sufficient moneys for the payment of principal and interest on loans or on notes, the department of administration shall transfer to such fund, out of the appropriation made pursuant to s. 20.866, a sum sufficient which, together with any available money on hand in such fund, is sufficient to make such payment.

(5) Before October 31, 1983, there shall be transferred to the bond security and redemption fund the interest earnings accrued to the capital improvement fund before October 1,

1983 due to the investment of moneys from the contracting of public debt under s. 20.866 (2) (u) to (uv). These funds shall be used for meeting periodic principal, interest and premiums due, if any, on principal repayment and interest payments required from the transportation fund on this public debt.

(6) Before October 31, 1983, there shall be transferred to the bond security and redemption fund the interest earnings accrued to the capital improvement fund before October 1, 1983, due to the investment of moneys from the contracting of public debt under s. 20.866 (2) (tm) to (to). These funds shall be used for meeting periodic principal, interest and premiums due, if any, on principal repayment and interest payments required from the general fund on this public debt.

History: 1971 c. 125; 1973 c. 90 ss. 32c, 555m (2); 1973 c. 243; 1975 c. 39; 1977 c. 29 ss. 1652, 1654 (1); 1977 c. 317, 418; 1979 c. 34; 1983 a. 27 ss. 111n, 2202 (5); 1987 a. 27.

18.09 Bond security and redemption fund. (1) When bonds are authorized, there shall be established in the state treasury a bond security and redemption fund separate and distinct from every other fund, which shall contain separate and distinct sinking funds for each particular bond issue.

(2) Each sinking fund shall be expended, and all moneys from time to time on hand therein are irrevocably appropriated, in sums sufficient, only for the payment of principal and interest on the bonds giving rise to it and premium, if any, due upon refunding of any such bonds.

(3) One year after interest has ceased to accrue on all of the bonds giving rise to a sinking fund, all moneys on hand in such sinking fund shall be paid over and transferred to the state building trust fund and the sinking fund shall be closed. An amount equal to the aggregate face value of all outstanding bonds and the accrued interest thereon for which no sinking fund exists shall be maintained in the state building trust fund applicable exclusively to the payment of such bonds and interest.

(4) Moneys of the bond security and redemption fund may be commingled only for the purpose of investment with other public funds, and they may be invested only as provided in s. 18.04 (6) or 25.17 (3) (dr). All such investments shall be the exclusive property of such fund and all earnings on or income from such investments plus any transfers from the capital improvement fund under s. 18.08 (3), (5) or (6) shall be distributed to the respective sinking funds by the department of administration for use in meeting periodic principal and interest payments on bonds issued.

(5) There shall be transferred to each sinking fund a sum sufficient for the payment of the principal, interest and premium due, if any, on the bonds giving rise to it as the same falls due. Such transfers shall be so timed that there is at all times on hand in the sinking fund an amount not less than the aggregate amount of principal, interest and premium, if any, to be paid out of it during the ensuing 15 days. The amount of any transfer scheduled to be made to the sinking fund from an escrow account established under a refunding escrow agreement on or before the due date of any payment of principal, interest or premium shall be treated as an amount on hand in the sinking fund as of the 16th day before the due date or as of the 46th day before the due date if operating notes are outstanding. Notwithstanding the foregoing, no further such transfer need be made after there are on hand in the sinking fund from any source assets sufficient to pay the aggregate face value of all of the bonds giving rise to it outstanding, the amount of any premium payable on such payment and the amount of interest to accrue on such bonds until payment.

History: 1971 c. 125; 1983 a. 27 s. 2202 (5); 1985 a. 6; 1987 a. 27.

Terms of statute in effect at time of bond issue providing for specific transfers of funds to sinking fund are a part of the bond obligation which cannot be

changed by retroactive application of an amendment to that statute 61 Atty. Gen. 93.

18.10 Other fiscal and administrative regulations. (1) ANTI-CIPATORY CONTRACTS. After adoption of an authorizing resolution for a purpose which is to be accomplished wholly or in part through performance of an executory contract by some other contracting party, such contract may be entered into prior to the contracting of the debt authorized by such resolution with like effect as if the funds necessary for payments on the contract were already available. In such cases the debt authorized by such resolution shall be deemed to have been contracted pursuant to such resolution in the amount necessary to make such payments on the date such contract is entered into and the authority of such resolution shall promptly thereafter be exercised.

(2) **LAWFUL MONEY.** All money borrowed by the state shall be lawful money of the United States and all public debt shall be payable in such money.

(3) **MANAGEMENT OF FUNDS AND RECORDS.** The capital improvement fund and the bond security and redemption fund shall be managed as provided by law for other state funds. The department of administration shall maintain full and correct records of each fund. The legislative audit bureau shall audit each such fund as of January 1 of each year reconciling all transactions and showing the fair market value of all property on hand.

(4) **DEBT HELD BY STATE.** All evidence of indebtedness owned or held by any state fund shall be deemed to be outstanding in all respects and the agency having such fund under its control shall have the same rights with respect to such evidence of indebtedness as a private party, but if any sinking fund acquires bonds which gave rise to such fund, such bonds shall be deemed paid for all purposes and no longer outstanding and, together with any interest coupons appurtenant thereto, shall be canceled as provided in sub. (11). All evidence of indebtedness owned by any state fund shall be registered to the fullest extent registrable.

(5) **REGISTRATION.** The state treasurer shall act as registrar for evidence of indebtedness registrable as to principal or interest or both. No transfer of a registered evidence of indebtedness is valid unless made on the register maintained by the state treasurer for that purpose, and the state shall be entitled to treat the registered owner as the owner of such instrument for all purposes. Payments of principal and interest, when registered as to interest, of registered instruments shall be by check, share draft or other draft to the registered owner at the owner's address as it appears on the register, unless the commission has otherwise provided. The commission may make such other provisions respecting registration as it deems necessary or useful. The state treasurer may enter into a contract for the performance of any of his or her functions under this subsection and sub. (7).

(6) **REPLACEMENT OF INSTRUMENTS.** If any bond or note becomes mutilated or is destroyed, lost or stolen, the commission shall execute and deliver a new bond or note of like date of issue, maturity date, principal amount and interest rate per year as the bond or note so mutilated, destroyed, lost or stolen, in exchange and substitution for such mutilated bond or note or in lieu of and substitution for the bond or note destroyed, lost or stolen, upon filing with the commission evidence satisfactory to the commission that such bond or note has been destroyed, lost or stolen and proof of ownership thereof, and upon furnishing the commission with indemnity satisfactory to it and complying with such other reasonable rules as the commission promulgates and paying such expenses as the commission may incur. The bonds or

notes so surrendered to the commission shall be canceled by it.

(7) **RECORD OF INSTRUMENTS.** The state treasurer or his agent shall maintain records containing a full and correct description of each evidence of indebtedness issued, identifying it and showing its date, issue, amount, interest rate, payment dates, payments made, registration, destruction and every other relevant transaction.

(8) **TRUSTEES AND FISCAL AGENTS.** The commission may appoint one or more trustees and fiscal agents for each issue of bonds or notes. The state treasurer may be denominated the trustee and the sole fiscal agent or a cofiscal agent for any issue of bonds or notes. Every other such fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do a banking or trust company business. The commission shall periodically require competitive proposals, under procedures established by the commission, for fiscal agent services and, in so doing, shall consult the state treasurer. There may be deposited with a trustee, in a special account administered as provided in this chapter, moneys to be used only for the purposes expressly provided in a resolution authorizing the issuance of debt or an agreement between the commission and the trustee. There may be deposited with a fiscal agent, in a special account for such purpose only, a sum estimated to be sufficient to enable such fiscal agent to pay the principal and interest on public debt which will come due not more than 15 days after the date of such deposit. The commission may make such other provisions respecting trustees and fiscal agents as it deems necessary or useful and may enter into a contract with any trustee or fiscal agent containing such terms, including compensation, and conditions in regard to the trustee or fiscal agent as it deems necessary or useful.

(9) **PREPAYMENT.** The commission may authorize debt having any provisions for prepayment deemed necessary or useful, including the payment of any premium.

(10) **DEBT RETIREMENT.** Interest shall cease to accrue on public debt on the date that such debt becomes due for payment if said payment is made or duly provided for. On that date, that public debt is no longer outstanding. If any holder of any public debt, including any interest pertaining to public debt and any premium, fails to present that public debt for payment, the unpaid unclaimed moneys provided for the payment of that public debt shall be administered under ch. 177.

(11) **CANCELLATION OF INSTRUMENTS.** Unless otherwise directed by the commission, every evidence of indebtedness and interest coupon paid or otherwise retired shall forthwith be marked "canceled" and shall be delivered by the state treasurer or fiscal agent accepting the surrender thereof, through the state treasurer to the state auditor who shall destroy them and shall forthwith deliver to the state treasurer a certificate to that effect.

(12) **PROCUREMENT OF SERVICES.** The commission may enter into a contract with any firm or individual engaged in financial services for the performance of any of its duties under this chapter, using selection and procurement procedures established by the commission. That contract is not subject to s. 16.705 or 16.75.

History: 1973 c. 90 s. 555m (2); 1979 c. 34; 1979 c. 110 s. 60 (13); 1981 c. 20; 1983 a. 368; 1987 a. 27, 403; 1989 a. 31.

See note to 13.48, citing 68 Atty. Gen. 320.

18.12 Pledge of full faith. The full faith, credit and taxing power of this state are irrevocably pledged to the payment of the principal, interest and premium due, if any, on all public debt. There is irrevocably appropriated through s. 20.866, as a first charge upon all revenues of this state, a sum sufficient

for the payment of the instalments of principal, interest and premium due, if any, on all public debt as the same falls due.

18.13 Suits against the state. (1) IN GENERAL. This section and ss. 18.14 and 18.15 shall govern all civil claims, suits, proceedings and actions respecting public debt notwithstanding any contrary provision of the statutes.

(2) **TO RECOVER A DEBT.** If the state fails to pay any public debt in accordance with its terms, an action to compel such payment may be commenced against the state in accordance with s. 801.02. The plaintiff shall serve an authenticated copy of the summons and complaint on the attorney general by leaving the copies at the attorney general's office in the capitol with an assistant or clerk. The place of trial of such an action shall be as provided in s. 801.50.

(3) **JUDGMENT.** Sections 16.53 and 775.01 shall not apply to such claims for payment of a public debt. If there is final judgment against the state in such action, it shall be paid as provided in s. 775.04 together with interest thereon at the rate of 10% per year from the date such payment was judged to have been due until the date of payment of such judgment.

(4) **PUBLIC INTERVENOR.** Notwithstanding s. 165.075, the public intervenor does not have authority to initiate any action or proceeding concerning the issuance of obligations by the building commission under this chapter.

History: Sup. Ct. Order, 67 W (2d) 749; 1975 c. 218; 1979 c. 32 s. 92 (5); 1979 c. 110 s. 60 (13); 1983 a. 228 s. 16; 1983 a. 410.

18.14 Validation of debt. (1) Notwithstanding any defects, irregularities, lack of power or failure to comply with any statute or any act of the commission, all public debt contracted or attempted to be contracted after December 7, 1969 is declared to be valid and entitled to the pledge made by s. 18.12; all instruments given after December 7, 1969 to evidence such debt are declared to be binding, legal, valid, enforceable and incontestable in accordance with their terms; and all proceedings taken and certifications and determinations made after December 7, 1969 to authorize, issue, sell, execute, deliver or enter into such debt or such instruments are validated, ratified, approved and confirmed.

(2) A determination, legislative, judicial or administrative, for any reason, that the state may not spend the proceeds of contracted public debt, or that it has spent such proceeds for a purpose other than the stated purpose for which such public debt was contracted or for a purpose for which the state may not spend money, shall not affect the validity of such public debt nor the evidence of indebtedness therefor.

History: 1973 c. 90 s. 555m (2).

18.15 Diversion of funds, liability of officers for. Any public officer or public employe, as defined in s. 939.22 (30), and the surety on his official bond, or any other person participating in any direct or indirect impairment of the capital improvement fund or bond security and redemption fund, shall be liable in an action brought by the attorney general in the name of the state, or by any taxpayer of the state, or by the holder of any evidence of indebtedness payable in whole or in part, directly or indirectly, out of such fund, to restore to such fund all diversions therefrom.

18.16 Minority financial advisers and investment firms.

(1) In this section, "minority financial adviser" and "minority investment firm" mean a financial adviser and investment firm, respectively, certified by the department of development under s. 560.036 (2).

(2) Except as provided under sub. (7), in contracting public debt by competitive sale, the commission shall ensure that at least 6% of total public indebtedness contracted in each fiscal year is underwritten by minority investment firms.

(3) Except as provided under sub. (7), in contracting public debt by negotiated sale, the commission shall ensure that at least 6% of total public indebtedness contracted in each fiscal year is underwritten by minority investment firms.

(4) Except as provided under sub. (7), in contracting public debt by competitive sale or negotiated sale, the commission shall ensure that at least 6% of the total moneys expended in each fiscal year for the services of financial advisers are expended for the services of minority financial advisers.

(5) Except as provided under s. 18.06 (9) and sub. (7), an individual underwriter or syndicate of underwriters shall ensure that each bid or proposal, submitted by that individual or syndicate in a competitive or negotiated sale of public debt, provides for a portion of sales to minority investment firms.

(6) The commission shall annually report to the department of administration the total amount of public indebtedness contracted with the underwriting services of minority investment firms and the total amount of moneys expended for the services of minority financial advisers during the preceding fiscal year.

(7) The requirements of any of subs. (2) to (5) do not apply to a contracting of public debt, if the secretary of administration submit a report in writing to the joint committee on finance specifying the building commission's reasons for not complying with the requirements of any of subs. (2) to (5) for that contracting of public debt.

History: 1987 a 27; 1989 a 366.

18.17 Full authority. This chapter shall constitute full authority for the accomplishment of all acts authorized in this chapter to be done. No other law restricting the carrying out of such acts shall be construed as applying to proceedings had or acts done pursuant to this chapter.

SUBCHAPTER II

REVENUE OBLIGATIONS

18.51 Provisions applicable. The following sections apply to this subchapter, except that all references to "public debt" or "debt" are deemed to refer to a "revenue obligation": ss. 18.02, 18.03, 18.07, 18.10 (1), (2), (4) to (9) and (11) and 18.17.

History: 1977 c. 29.

18.52 Definitions. In this subchapter, unless the context requires otherwise:

(1) "Authorizing resolution" means any resolution adopted by the commission under this subchapter which authorizes the contracting of a revenue obligation.

(2) "Commission" means the building commission.

(3) "Evidence of revenue obligation" means a written promise to pay a revenue obligation.

(4) "Public debt" means every voluntary, unconditional undertaking by the state to repay a certain amount of borrowed money:

(a) Out of the state treasury, except a loan or advance by any state agency or fund to any other state agency or fund; or

(b) For which any existing asset of the state is pledged, except the pledge of an outstanding evidence of indebtedness without recourse.

(5) "Revenue obligation" means every undertaking by the state to repay a certain amount of borrowed money which is:

(a) Created for the purpose of purchasing, acquiring, leasing, constructing, extending, expanding, adding to, improving, conducting, controlling, operating or managing a revenue-producing enterprise or program;

(b) Payable solely from and secured solely by the property or income or both of the enterprise or program; and

(c) Not public debt under s. 18.01 (4).

(6) "Revenue-producing enterprise" or "program" means every state enterprise or program deemed by the legislature to be likely to produce sufficient net income to pay when due the principal and interest of revenue obligations to be issued in connection therewith.

History: 1977 c. 29; 1979 c. 107; 1981 c. 336; 1983 a 36 s. 96 (4).

18.53 Purposes of revenue obligations and amounts. (1)

The commission may authorize money to be borrowed and evidences of revenue obligation to be issued therefor in an amount sufficient to fund or refund, as provided in s. 18.60, the whole or any part of:

(a) Any revenue obligation issued under this subchapter.

(b) Any public debt or indebtedness described in s. 18.04.

(2) The commission may authorize money to be borrowed and evidences of revenue obligation to be issued therefor, in an amount sufficient, as provided in s. 18.59:

(a) To anticipate the sale of revenue-obligation bonds.

(b) To renew the whole or any part of any revenue-bond anticipation notes then outstanding.

(3) The commission shall authorize money to be borrowed and evidences of revenue obligation to be issued therefor up to the amounts specified by the legislature to purchase, acquire, lease, construct, extend, expand, add to, improve, conduct, control, operate or manage such revenue-producing enterprises or programs as are specified by the legislature as the funds are required. The requirements for funds shall be established by the state department or agency head carrying out program responsibilities for which the revenue obligations have been authorized by the legislature.

(4) Each purpose specified in sub. (3) shall include the expenses of issuance of the revenue obligations.

History: 1977 c. 29.

18.54 Limitations on revenue obligations. (1) The amount of evidences of revenue obligation issued or outstanding for the purposes specified in s. 18.53 (1) and (2) are subject only to the limits provided in this subchapter.

(2) The amount of evidences of revenue obligation issued or outstanding for purposes specified by the legislature under s. 18.53 (3) are subject only to the limits provided in the legislation which authorizes that revenue obligation. No refunding obligation is subject to any limitation specified by that legislation.

History: 1977 c. 29; 1987 a. 27.

18.55 Procedures. (1) AUTHORIZING RESOLUTION. No money may be borrowed under this subchapter nor any evidence of revenue obligation issued by the state except pursuant to an authorizing resolution. Each authorizing resolution shall state each purpose of the revenue obligation it authorizes, which need not be more specific but shall not be more general than those purposes provided in or pursuant to law, and the maximum principal amount of revenue obligations authorized for each such purpose.

(2) **BOND ANTICIPATION NOTES.** Revenue-obligation bond anticipation notes may be sold at public or private sale or, in the case of renewal notes, exchanged privately for and in payment and discharge of any of the outstanding notes being renewed, as provided in the authorizing resolution.

(3) **REVENUE-OBLIGATION BONDS.** Revenue-obligation bonds may be sold at either public or private sale. The commission may provide in the authorizing resolution for refunding bonds that they be exchanged privately in payment and discharge of any of the outstanding bonds or notes being refunded. All revenue-obligation bonds sold at public sale

shall be noticed as provided in the authorizing resolution. Any or all bids received at public sale may be rejected.

(4) **NO MINIMUM ISSUANCE PRICE.** Revenue obligation bonds may be sold at any price or percentage of par value.

(5) **EXERCISE OF AUTHORITY.** Money may be borrowed and evidences of revenue obligation issued therefor pursuant to one or more authorizing resolutions, unless otherwise provided in the resolution or in this subchapter, at any time and from time to time, for any combination of purposes, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner and having any other terms or conditions deemed necessary or useful. Revenue obligation bonds may bear interest at variable or fixed rates, bear no interest or bear interest payable only at maturity or upon redemption prior to maturity. Unless sooner exercised or unless a shorter period is provided in the resolution, every authorizing resolution, except as provided in s. 18.59 (1), shall expire one year after the date of its adoption.

History: 1977 c. 29; 1985 a. 29; 1987 a. 69; 1989 a. 31, 46

18.56 Revenue bonds. (1) The commission may authorize, for any of the purposes described in s. 18.53 (3), the issuance of revenue-obligation bonds. The bonds shall mature at any time not exceeding 50 years from the date thereof as the commission shall determine. The bonds shall be payable only out of the redemption fund provided under sub. (5) and each bond shall contain on its face a statement to that effect. Any such bonds may contain a provision authorizing redemption, in whole or in part, at stipulated prices, at the option of the commission and shall provide the method of redeeming the bonds. The state and a contracting party may provide in any contract for purchasing or acquiring a revenue-producing enterprise or program, that payment shall be made in such bonds.

(2) There shall be a mortgage lien upon or security interest in the income and property of each revenue-producing enterprise or program to the holders of the related bonds and to the holders of the coupons of the bonds. The note or other instrument evidencing the security interest of a bondholder in a loan made or purchased with revenue obligation bonds shall constitute a statutory lien on the revenue obligations. No physical delivery, recordation or other action is required to perfect the security interest. The revenue-producing enterprise or program shall remain subject to the lien until provision for payment in full of the principal and interest of the bonds has been made. Any holder of such bonds or attached coupons may either at law or in equity protect and enforce the lien and compel performance of all duties required by this section. If there is any default in the payment of the principal or interest of any of such bonds, any court having jurisdiction of the action may appoint a receiver to administer the revenue-producing enterprise or program on behalf of the state and the bondholders, with power to charge and collect rates sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the revenue-producing enterprise or program, and to apply the income and revenues thereof in conformity with this subchapter and the authorizing resolution, or the court may declare the whole amount of the bonds due and payable, if such relief is requested, and may order and direct the sale of the revenue-producing enterprise or program. Under any sale so ordered, the purchaser shall be vested with an indeterminate permit to maintain and operate the revenue-producing enterprise or program. The legislature may provide for additions, extensions and improvements to a revenue-producing enterprise or program to be financed by additional issues of bonds as provided by this section. Such

additional issues of bonds shall be subordinate to all prior related issues of bonds which may have been made under this section, unless the legislature, in the statute authorizing the initial issue of bonds, permits the issue of additional bonds on a parity therewith.

(3) As accurately as possible in advance, the commission and the state department or agency carrying out program responsibilities for which bonds are to be issued shall determine, and the commission shall fix in the authorizing resolution for such bonds: the proportion of the revenues of the revenue-producing enterprise or program which shall be necessary for the reasonable and proper operation and maintenance thereof; the proportion of the revenues which shall be set aside as a proper and adequate replacement and reserve fund; and the proportion of the revenues which shall be set aside and applied to the payment of the principal and interest of the bonds, and shall provide that the revenues be set aside in separate funds. At any time after one year's operation, the state department or agency and the commission may recompute the proportion of the revenues which shall be assignable under this subsection based upon the experience of operation or upon the basis of further financing.

(4) The proportion set aside to the replacement and reserve fund shall be available and shall be used, whenever necessary, to restore any deficiency in the redemption fund for the payment of the principal and interest due on bonds and for the creation and maintenance of any reserves established by the authorizing resolution to secure such payments. At any time when the redemption fund is sufficient for said purposes, moneys in the replacement and reserve fund may, subject to available appropriations, be expended either in the revenue-producing enterprise or program or in new constructions, extensions or additions. Any accumulations of the replacement and reserve fund may be invested as provided in this subchapter, and if invested, the income from the investment shall be carried in the replacement and reserve fund.

(5) The proportion which shall be set aside for the payment of the principal and interest of such bonds shall from month to month as they accrue and are received, be set apart and paid into a separate fund in the treasury or in an account maintained by a trustee under sub. (9) (j) to be identified as "the redemption fund". Each redemption fund shall be expended, and all moneys from time to time on hand therein are irrevocably appropriated, in sums sufficient, only for the payment of principal and interest on the revenue obligations giving rise to it and premium, if any, due upon refunding of any such obligations. Moneys in the redemption funds may be commingled only for the purpose of investment with other public funds, but they shall be invested only in investment instruments permitted in s. 25.17 (3) (dr). All such investments shall be the exclusive property of the fund and all earnings on or income from such investments shall be credited to the fund.

(6) If any surplus is accumulated in any of the redemption funds, subject to any contract rights vested in holders of revenue obligations secured thereby, it shall be paid over to the treasury.

(7) The reasonable cost and value of any service rendered to the state by a revenue-producing enterprise or program shall be charged against the state and shall be paid for by it in periodic instalments, subject to available appropriations.

(8) The rates for all services rendered by a revenue-producing enterprise or program to the state or to other consumers, shall be reasonable and just, taking into account and consideration the value of the services, the cost of maintaining and operating the same, the proper and neces-

sary allowance for depreciation replacement and reserve, and a sufficient and adequate return upon the capital invested.

(9) The commission may provide in the authorizing resolution for bonds or by subsequent action all things necessary to carry into effect this section. Any authorizing resolution shall constitute a contract with the holder of any bonds issued pursuant to such resolution. Any authorizing resolution may contain such provisions or covenants, without limiting the generality of the power to adopt the resolution, as is deemed necessary or desirable for the security of bondholders or the marketability of the bonds, including but not limited to provisions as to:

- (a) The sufficiency of the rates or charges to be made for services.
- (b) The maintenance and operation of the enterprise or program.
- (c) Improvements or additions to and sale or alienation of the revenue-producing enterprise or program.
- (d) Insurance against loss.
- (e) Employment of consulting engineers and accountants.
- (f) Records and accounts.
- (g) Operating and construction budgets.
- (h) Establishment of reserve or other funds.
- (i) Issuance of additional bonds.
- (j) Deposit of the proceeds of the sale of the bonds or revenues of the revenue-producing enterprise or program in trust, including the appointment of depositories or trustees.

(10) The authorizing resolution may set apart bonds the par value of which are equal to the principal amount of any secured obligation or charge subject to which a revenue-producing enterprise or program is to be purchased or acquired, and shall set aside in a sinking fund from the income of the revenue-producing enterprise or program, a sum sufficient to comply with the requirements of the instrument creating the security, or if the instrument does not make any provision therefor, the resolution shall fix and determine the amount which shall be set aside into such fund from month to month for interest on the secured obligation or charge, and a fixed amount or proportion not exceeding a stated sum, which shall be not less than one percent of the principal, to be set aside into the fund to pay the principal of the secured obligation or charge. Any balance in the fund after satisfying the secured obligations or charge, shall be transferred to the redemption fund. Bonds set aside for the secured obligation or charge may, from time to time, be issued to an amount sufficient with the amount then in the sinking fund, to pay and retire the secured obligation or charge or any portion thereof. The bonds may be issued in exchange for or satisfaction of the secured obligation or charge, or may be sold in the manner provided in this subchapter, and the proceeds applied in payment of the same at maturity or before maturity by agreement with the holder. The commission and the owners of any revenue-producing enterprise or program acquired or purchased may, upon such terms and conditions as are satisfactory, contract that bonds to provide for the discharge of the secured obligation or charge, or for the whole purchase price shall be deposited with a trustee or depository and released from the deposit from time to time on such terms and conditions as are necessary to secure the payment of the secured obligation or charge.

History: 1977 c. 29; 1979 c. 34, 155; 1989 a. 31, 46

Federal provision subjecting interest on unregistered state and local bonds to federal income tax does not violate 10th Amendment or intergovernmental tax immunity doctrine. *South Carolina v. Baker*, 485 US 505 (1988).

18.57 Enterprise and program capital funds. (1) A separate and distinct fund shall be established in the state treasury

or in an account maintained by a trustee under s. 18.56 (9) (j) with respect to each revenue-producing enterprise or program the income from which is to be applied to the payment of any revenue obligation. All moneys resulting from the issuance of evidences of revenue obligation shall be credited to the appropriate fund or applied for refunding or note renewal purposes, except that moneys which represent premium or accrued interest received on the issuance of evidences shall be credited to the appropriate redemption fund.

(2) Moneys in such funds may be expended, pursuant to appropriations, only for the purposes and in the amounts for which borrowed, for the payment of the principal of and interest on related revenue obligations and for expenses incurred in issuing such obligations.

(3) Moneys in such funds may be commingled only for the purpose of investment with other public funds, but they shall be invested only in investment instruments permitted in s. 25.17 (3) (dg) or in clean water fund investment instruments permitted in s. 144.2415 (2m). All such investments shall be the exclusive property of such fund and all earnings on or income from investments shall be credited to such fund and shall become available for any of the purposes under sub. (2) and for the payment of interest on related revenue obligations.

(4) If, after all outstanding related revenue obligations have been paid or payment provided for, moneys remain in any such fund, they shall be paid over to the treasury and the fund shall be closed.

History: 1977 c. 29; 1979 c. 34, 155; 1989 a. 366

18.58 Other fiscal and administrative regulations. (1) **MANAGEMENT OF FUNDS AND RECORDS.** All funds established under this subchapter which are deposited in the state treasury shall be managed as provided by law for other state funds, subject to any contract rights vested in holders of evidences of revenue obligation secured by such fund. The department of administration shall maintain full and correct records of each fund. The legislative audit bureau shall audit each fund as of January 1 of each year reconciling all transactions and showing the fair market value of all property on hand. All records and audits shall be public documents. All funds established under this subchapter which are deposited with a trustee under s. 18.56 (9) (j) shall be managed in accordance with resolutions authorizing the issuance of revenue obligations, agreements between the commission and the trustee and any contract rights vested in holders of evidence of revenue obligations secured by such fund.

(2) **INSURANCE.** The commission may procure insurance on any issue of revenue obligations.

(3) **EXTINGUISHMENT OF DEBT.** Interest shall cease to accrue on a revenue obligation on the date that the obligation becomes due for payment if payment is made or duly provided for, but the obligation and accrued interest shall continue to be a binding obligation according to its terms until 6 years overdue for payment, or such longer period as may be required by federal law. At that time, unless demand for its payment has been made, it shall be extinguished and shall be deemed no longer outstanding.

(4) **SUBSTANTIVE COVENANTS.** Notwithstanding any other provision of this subchapter, the state department or agency head carrying out program responsibilities for which a revenue obligation has been authorized by the legislature shall have the authority to formulate covenants respecting the operation of the related enterprise or program. The department or agency head shall consult with the commission with respect to the effect of any proposed covenants on the sale of the proposed revenue obligation. Nothing in this subsection

shall be construed to expand the powers of any state department or agency.

History: 1977 c. 29; 1979 c. 34.

18.59 Bond anticipation notes. (1) Whenever the commission has adopted an authorizing resolution for revenue-obligation bonds for any one or more of the purposes described in s. 18.53 (3), it may, prior to the issuance of the bonds and in anticipation of their sale, adopt an authorizing resolution for revenue-obligation bond anticipation notes. The authorizing resolution shall recite that all conditions precedent to the issuance of revenue-obligation bonds required by law or by the resolution authorizing the bonds have been complied with and that the notes are issued for the purposes for which the bonds were authorized or to renew notes issued for such purposes. The authorizing resolution shall pledge to the payment of the principal of the notes the proceeds of the sale of the bonds. Upon the adoption of the authorizing resolution, the authorizing resolution for the bonds shall be irrevocable until the notes have been paid.

(2) All original revenue-obligation bond anticipation notes, or any renewal, shall mature within 5 years from the date of issue of the original notes. The notes shall be named revenue-bond anticipation notes and shall recite on their face that they are payable solely from the proceeds of revenue-obligation bonds to be issued under this subchapter. The aggregate amount of such notes outstanding including interest to accrue shall not exceed the aggregate principal amount of the bonds in anticipation of the sale of which they are issued. The rate of interest borne by the notes shall not exceed any maximum rate of interest authorized to be borne by the bonds. No lien shall be created or attached with respect to any property of the state as a consequence of the issuance of such notes except as provided in sub. (4).

(3) No original revenue-obligation bond anticipation notes shall be issued until the state department or agency head carrying out program responsibilities for which the revenue obligation bonds have been authorized has certified to the commission that contracts are to be let and that the proceeds of the notes will be required for the payment of the contracts.

(4) Upon the issuance of revenue-obligation bond anticipation notes, there shall be paid into the funds or accounts respectively provided for the payment of the principal and interest of the revenue-obligation bonds in anticipation of the sale of which the notes are issued, from the portion of the income of the enterprise or program allocated to the payment of principal and interest, the same amount at the same times as would have been required to be paid for the payment of the principal and interest of the bonds if the bonds, in an equal principal amount and at the same rate of interest, maturing in annual instalments over 50 years, had been issued instead of the notes. Such moneys or any part thereof may, by the authorizing resolution for the notes, be pledged for the payment of the principal and interest of the notes.

(5) All funds derived from the sale of revenue-obligation bonds or renewal notes issued subsequent to the issuance of revenue-obligation bond anticipation notes which the notes were issued in anticipation of the sale shall constitute a trust fund, and the fund shall be expended first for the payment of principal and interest of the notes, and then may be expended for other purposes set forth in the authorizing resolution for the bonds or renewal notes.

(6) The commission may authorize the issuance of renewal revenue-obligation bond anticipation notes to provide funds for the payment of the principal and interest of any such notes then outstanding. All of the provisions of this section shall apply to the renewal notes.

History: 1977 c. 29.

18.60 Refunding bonds. (1) The commission may authorize, for any one or more of the purposes described in s. 18.53 (1), the issuance of revenue-obligation refunding bonds. Refunding bonds may be issued, subject to any contract rights vested in holders of bonds or notes being refinanced, to refinance more than one issue of bonds or notes notwithstanding that the bonds or notes may have been issued at different times for different purposes and may be secured by the property or income of more than one enterprise or program or may be public debt or building-corporation indebtedness. The principal amount of refunding bonds shall not exceed the sum of: the principal amount of the bonds or notes being refinanced; applicable redemption premiums; unpaid interest on the bonds or notes to the date of delivery or exchange of the refunding bonds; in the event the proceeds are to be deposited in trust as provided in sub. (3), interest to accrue on the bonds or notes from the date of delivery to the date of maturity or to the redemption date selected by the commission, whichever is earlier; and the expenses incurred in the issuance of the refunding bonds and the payment of the bonds or notes. A determination by the commission that a refinancing is advantageous or that any of the amounts provided in the preceding sentence should be included in the refinancing shall be conclusive.

(2) If the commission determines to exchange refunding bonds, they may be exchanged privately for and in payment and discharge of any of the outstanding bonds or notes being refinanced. Refunding bonds may be exchanged for a like or greater principal amount of the bonds or notes being exchanged therefor except that the principal amount of the refunding bonds may exceed the principal amount of the bonds or notes being exchanged therefor only to the extent determined by the commission to be necessary or advisable to pay redemption premiums and unpaid interest to the date of exchange not otherwise provided for. The holders of the bonds or notes being refunded who elect to exchange need not pay accrued interest on the refunding bonds if and to the extent that interest is accrued and unpaid on the bonds or notes being refunded and to be surrendered. If any of the bonds or notes to be refinanced are to be called for redemption, the commission shall determine which redemption dates shall be used, if more than one date is applicable and shall, prior to the issuance of the refunding bonds, provide for notice of redemption to be given in the manner and at the times required by the proceedings authorizing the outstanding bonds or notes.

(3) The principal proceeds from the sale of any refunding bonds shall be applied either to the immediate payment and retirement of the bonds or notes being refinanced or, if the bonds or notes have not matured and are not presently redeemable, to the creation of a trust for and shall be pledged to the payment of the bonds or notes being refinanced. If a trust is created, a separate deposit shall be made for each issue of bonds or notes being refinanced. Each deposit shall be with the state treasurer or a bank or trust company that is then a member of the federal deposit insurance corporation. If the total amount of any deposit, including money other than sale proceeds but legally available for such purpose, is less than the principal amount of the bonds or notes being refinanced and for the payment of which the deposit has been created and pledged, together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption, then the application of the sale proceeds shall be legally sufficient only if the money deposited is invested in securities issued by the United States or one of its agencies, or securities fully guaranteed by the United States, and only if the principal amount of the securities at

maturity and the income therefrom to maturity will be sufficient and available, without the need for any further investment or reinvestment, to pay at maturity or upon redemption the principal amount of the bonds or notes being refinanced together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption. The income from the principal proceeds of the securities shall be applied solely to the payment of the principal of and interest and redemption premiums on the bonds or notes being refinanced, but provision may be made for the pledging and disposition of any surplus. Nothing in this subsection shall be construed as a limitation on the duration of any deposit in trust for the retirement of bonds or notes being refinanced, but which have not matured and which are not presently redeemable. Nothing in this subsection shall be construed to prohibit reinvestment of the income of a trust if the reinvestments will mature at such times that sufficient cash will be available to pay interest, applicable premiums and principal on the bonds or notes being refinanced.

(4) The commission may in addition to the other powers conferred by this subchapter, include a provision in any authorizing resolution for refunding bonds pledging all or any part of the income of any enterprise or program originally financed from the proceeds of any of the bonds or notes being refinanced, or pledging all or any part of the surplus income derived from the investment of any trust created under sub. (3), or both.

(5) All provisions of s. 18.56 not inconsistent with the express provisions of this section shall apply to refunding bonds except that the maximum permissible term shall be 50 years from the date of original issue of the oldest note or bond issue being refunded.

History: 1977 c. 29

18.61 Undertakings of state. (1) The state shall not be generally liable on revenue obligations and revenue obligations shall not be a debt of the state for any purpose whatsoever. All evidences of revenue obligation shall contain on their face a statement to that effect.

(2) The state pledges and agrees with the holders of any evidences of revenue obligation that the state will not limit or alter its powers to fulfill the terms of any agreements made with the holders or in any way impair the rights and remedies of the holders until the revenue obligations, together with interest including interest on any unpaid instalments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The commission may include this pledge and agreement of the state in any agreement with the holders of notes or bonds and in any evidence of revenue obligation.

(3) (a) If the state fails to pay any revenue obligation in accordance with its terms, and default continues for a period of 30 days or if the state fails or refuses to comply with this subchapter or defaults in any agreement made with the holders of any issue of revenue obligations, the holders of 25% in aggregate principal amount of the revenue obligations of the issue then outstanding by instrument filed in the office of the register of deeds of Dane county and approved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the notes or bonds for the purposes specifically provided in the instrument.

(b) The trustee may, and upon written request of the holders of 25% in aggregate principal amount of the revenue obligations of the issue then outstanding shall, in the trustee's own name:

1. By action or proceeding, enforce all rights of all holders of the issue of revenue obligations, including the right to require the state to collect enterprise or program income adequate to carry out any agreement as to, or pledge of, such income and to require the state to carry out any other agreements with the holders of the revenue obligations and to perform its duties under this subchapter;

2. Bring suit upon the revenue obligation;

3. By action, require the state to account as if it were the trustee of an express trust for the holders of the revenue obligations;

4. By action, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the revenue obligations; and

5. Declare all the revenue obligations due and payable, and if all defaults shall be made good, the aggregate principal amount of the revenue obligations of the issue then outstanding, to annul the declaration and its consequences.

(c) The trustee shall have all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this subchapter or incident to the general representation of the holders of revenue obligations in the enforcement and protection of their rights.

(d) Before declaring the principal of revenue obligations due and payable, the trustee shall first give 30 days' notice in writing to the governor and the attorney general.

(e) Any action or proceeding by the trustee against the state may be commenced by delivering a copy of the summons and of the complaint to the attorney general or leaving them at the attorney general's office with an assistant or clerk. The place of trial of such an action shall be as provided in s. 801.50. Sections 16.53 and 775.01 shall not apply to such claims. If there is final judgment against the state in such action, it shall be paid as provided in s. 775.04, together with interest at the rate of 10% per year from the date payment was judged to have been due until the date of payment of the judgment.

(4) Any public officer or public employe, as defined in s. 939.22 (30), and the surety on the person's official bond, or any other person participating in any direct or indirect impairment of any fund established under this subchapter, shall be liable in any action brought by the attorney general in the name of the state, or by any taxpayer of the state, or by the holder of any evidence of revenue obligation payable in whole or in part, directly or indirectly, out of such fund, to restore to the fund all diversions from the fund.

(5) The legislature may provide, with respect to any specific issue of revenue obligations, prior to their issuance, that if the enterprise or program income pledged to the payment of the principal and interest of the issue is insufficient for that purpose, it will consider supplying the deficiency by appropriation of funds, from time to time, out of the treasury. If the legislature so provides, the commission may make the necessary provisions therefor in the authorizing resolution and other proceedings of the issue. Thereafter, if the contingency occurs, recognizing its moral obligation to do so, the legislature hereby expresses its expectation and aspiration that it shall make such appropriation.

History: 1977 c. 29; 1979 c. 32 s. 92 (5); 1979 c. 107; 1981 c. 336; 1983 a 228 s. 16

18.62 Revenue obligations as legal investments. Any other provision of law to the contrary notwithstanding, the state, the investment board, all public officers, municipal corporations, political subdivisions and public bodies, all banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance as-

sociations and other persons carrying on a banking or insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any revenue obligations issued under this subchapter. Such revenue obligations shall be authorized security for all public deposits.

History: 1977 c. 29.

18.63 Validation of revenue obligations. (1) Notwithstanding any defects, irregularities, lack of power or failure to comply with any statute or any act of the commission, all revenue obligations issued or attempted to be issued after July 1, 1977 are declared to be valid; all instruments given after July 1, 1977 to evidence the obligation are declared to be binding, legal, valid, enforceable and incontestable in accordance with their terms; and all proceedings taken and certifications and determinations made after July 1, 1977 to authorize, issue, sell, execute, deliver or enter into the obligation or instruments are validated, ratified, approved and confirmed.

(2) A determination, legislative, judicial or administrative, for any reason, that the state may not spend the proceeds of revenue obligations or that it has spent the proceeds for a purpose other than the stated purpose for which the revenue obligations were issued or for a purpose for which the state may not spend money, shall not affect the validity of the revenue obligations nor the evidence of revenue obligation therefor.

History: 1977 c. 29.

18.64 Minority financial advisers and investment firms.

(1) In this section, "minority financial adviser" and "minority investment firm" mean a financial adviser and investment firm, respectively, certified by the department of development under s. 560.036 (2).

(2) Except as provided under sub. (7), in issuing evidences of revenue obligations by competitive sale, the commission shall ensure that at least 6% of the total of revenue obligations contracted in each fiscal year is underwritten by minority investment firms.

(3) Except as provided under sub. (7), in issuing evidences of revenue obligations by negotiated sale, the commission shall ensure that at least 6% of the total of revenue obligations contracted in each fiscal year is underwritten by minority investment firms.

(4) Except as provided under sub. (7), in issuing evidences of revenue obligations by competitive sale or negotiated sale, the commission shall ensure that at least 6% of the total moneys expended in such fiscal year for the services of financial advisers are expended for the services of minority financial advisers.

(5) Except as provided under sub. (7), an individual underwriter or syndicate of underwriters shall ensure that each bid or proposal, submitted by that individual or syndicate in a competitive or negotiated sale of a revenue obligation, provides for a portion of sales to minority investment firms.

(6) The commission shall annually report to the department of administration the total amount of revenue obligations contracted with the underwriting services of minority investment firms and the total amount of moneys expended for the services of minority financial advisers during the preceding fiscal year.

(7) The requirements of any of subs. (2) to (5) do not apply to an issuance of evidence of a revenue obligation, if the secretary of administration submit a report in writing specifying

the building commission's reasons for not complying with the requirements of any of subs. (2) to (5) for that issuance.

History: 1987 a. 27; 1989 a. 366.

SUBCHAPTER III

OPERATING NOTES

18.70 Provisions applicable. The following sections apply to this subchapter, except that all references to "public debt", "debt" or "revenue obligation" are deemed to refer to "operating notes", all references to "evidence of indebtedness" are deemed to refer to "evidence of operating note", and all references to "evidences of indebtedness" are deemed to refer to "evidences of operating notes": ss. 18.03, 18.07, 18.10 (1), (2), (4) to (9) and (11), 18.17, 18.52 (1), 18.58 (2), 18.61 (1), 18.62 and 18.63.

History: 1983 a. 3.

18.71 Definitions. In this subchapter, unless the context requires otherwise:

(1) "Commission" means the building commission.

(2) "Department" means the department of administration.

(3) "Evidence of operating note" means a written promise to pay an operating note.

(4) "Operating note" means every undertaking of the state to repay a certain amount of a financial obligation which is:

(a) Created for the purpose of funding operating deficits of the state as determined under s. 16.405 (1), which must be repaid not later than the last day of the fiscal year during which the operating note is issued;

(b) Payable from and secured solely by revenues pledged by the commission and the department pursuant to the authorizing resolution provided that all such pledged revenues must first be available for the payment of public debt; and

(c) Not public debt under s. 18.01 (4) nor a revenue obligation under s. 18.52 (5).

(5) "Public debt" or "debt" has the meaning given under s. 18.01 (4).

History: 1983 a. 3; 1983 a. 36 s. 96 (4); 1983 a. 192; 1985 a. 29. See note to Art. VIII, sec. 4, citing State ex rel. La Follette v. Stitt, 114 W.2d 358, 338 NW (2d) 684 (1983).

18.72 Purposes of operating notes. (1) The commission may authorize financial obligations to be incurred and evidences of operating notes to be issued therefor in an amount sufficient to fund or refund the whole or any part of any operating note issued under this subchapter. However, no operating notes originally issued in a fiscal year may be funded or refunded by proceeds of an operating note to mature in a later fiscal year.

(2) The commission may authorize financial obligations to be incurred and evidences of operating notes to be issued therefor to fund operating deficits as moneys are required. The requirements for moneys shall be established by the department.

(3) Each purpose specified in subs. (1) and (2) may include the expenses of issuance of the operating notes and reserves securing the operating notes.

(4) No operating note issued under this section may have a maturity date later than the last day of the fiscal year during which the operating note is issued.

History: 1983 a. 3; 1985 a. 29.

18.725 Limit on amount of operating notes. The building commission may not sell operating notes under s. 18.73 (2) at any time if the amount of operating notes to be sold at that

time plus the amount of operating notes outstanding at that time exceed 10% of the amounts shown in the schedule under s. 20.005 (3) of appropriations of general purpose revenues, as defined in s. 20.001 (2) (a), plus the amounts shown in the schedule of appropriations of program revenues, as defined in s. 20.001 (2) (b), both calculated as of that time and for that fiscal year.

History: 1985 a. 29.

18.73 Procedures. (1) AUTHORIZING RESOLUTION. No financial obligations may be incurred under this subchapter nor may any evidence of operating notes be issued by the state except upon submission of a request by the department under s. 16.405 and pursuant to an authorizing resolution of the commission. Each authorizing resolution shall state each purpose of the operating notes it authorizes, which need not be more specific but may not be more general than those purposes provided in or pursuant to law, and the maximum principal amount of the operating notes. The operating notes may be designated by any name as determined by the commission.

(2) SALE. Operating notes may be sold at either public or private sale. The commission may provide in an authorizing resolution for the refunding of operating notes, for their exchange privately, in payment and discharge of any of the outstanding operating notes being refunded. All operating notes sold at public sale shall be noticed as provided in the authorizing resolution. Any bids received at public sale may be rejected.

(4) EXERCISE OF AUTHORITY. Financial obligations may be incurred and evidences of operating notes issued therefor pursuant to one or more authorizing resolutions, unless otherwise provided in the resolution or in this subchapter, at any time and from time to time, for any combination of purposes, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner and having any other terms or conditions deemed necessary or useful. Unless sooner exercised or unless a shorter period is provided in the resolution, every authorizing resolution shall expire 3 months after the date of its adoption.

History: 1983 a. 3; 1985 a. 29; 1989 a. 31.

18.74 Application of operating note proceeds. All moneys resulting from the contracting of operating notes shall be credited to the general fund, except that moneys which represent premium and accrued interest on operating notes, or moneys for purposes of funding or refunding operating notes pursuant to s. 18.72 (1) shall be credited to the operating note redemption fund.

History: 1983 a. 3.

18.75 Operating note redemption fund. (1) When operating notes are authorized, there shall be established in the state treasury or with a trustee if so required in the authorizing resolution, an operating note redemption fund separate and distinct from every other fund, which may contain separate and distinct accounts for each particular operating note issue.

(2) The operating note redemption fund shall be expended and all moneys from time to time on hand therein are irrevocably appropriated, in sums sufficient, only for the payment of principal and interest on operating notes giving rise to it and premium, if any, due upon refunding or early redemption of such operating notes.

(3) Moneys of the operating note redemption fund may be commingled only for the purpose of investment with other public funds, but they may be invested only as provided in the authorizing resolution. All such reinvestments shall be the exclusive property of such fund and all earnings on or income

from such investments shall be used in meeting principal and interest payments on operating notes issued.

(4) There shall be transferred, under s. 20.855 (1) (a), a sum sufficient for the payment of the principal, interest and premium due, if any, on the operating notes giving rise to it as the same falls due. Such transfers shall be so timed that there is at all times on hand in the fund an amount not less than the amount to be paid out of it during the ensuing 30 days or such other period if so provided for in the authorizing resolution. The commission may pledge the deposit of additional amounts at periodic intervals and the secretary of the department may impound moneys of the general fund, including moneys temporarily reallocated from other funds under s. 20.002 (11), in accordance with the pledge of revenues in the authorizing resolution, and all such impoundments are deemed to be payments for purposes of s. 16.53 (10), but no such impoundment may be made until the amounts to be paid into the bond security and redemption fund under s. 18.09 during the ensuing 30 days have been deposited in the bond security and redemption fund.

History: 1983 a. 3; 1985 a. 29 s. 3202 (56).

18.76 Suits against the state. (1) IN GENERAL. This section governs all civil claims, suits, proceedings and actions respecting operating notes notwithstanding any contrary provision of the statutes.

(2) TO RECOVER AN OPERATING NOTE. If the state fails to pay any operating note in accordance with its terms, an action to compel such payment may be commenced against the state in accordance with s. 801.02. The plaintiff shall serve an authenticated copy of the summons and complaint on the attorney general by leaving the copies at the attorney general's office in the capitol with an assistant or clerk. The place of trial of such an action shall be as provided in s. 801.50.

(3) JUDGMENT. Sections 16.007 and 775.01 do not apply to such claims for payment of operating notes. If there is final judgment against the state in such an action, it shall be paid as provided in s. 775.04 together with interest thereon at the rate of 10% per year from the date the payment was judged to have been due until the date of payment of the judgment.

History: 1983 a. 3; 1983 a. 228 s. 16.

18.77 Minority financial advisers and investment firms.

(1) In this section, "minority financial adviser" and "minority investment firm" mean a financial adviser and investment firm, respectively, certified by the department of development under s. 560.036 (2).

(2) Except as provided under sub. (7), in contracting operating notes by competitive sale, the commission shall ensure that at least 6% of total operating note indebtedness contracted in each fiscal year is underwritten by minority investment firms.

(3) Except as provided under sub. (7), in contracting operating notes by negotiated sale, the commission shall ensure that at least 6% of total operating note indebtedness contracted in each fiscal year is underwritten by minority investment firms.

(4) Except as provided under sub. (7), in contracting operating notes by competitive sale or negotiated sale, the commission shall ensure that at least 6% of the total moneys expended in such fiscal year for the services of financial advisers are expended for the services of minority financial advisers.

(5) Except as provided under sub. (7), an individual underwriter or syndicate of underwriters shall ensure that each bid or proposal, submitted by that individual or syndicate in a competitive or negotiated sale of an operating note, provides for a portion of sales to minority investment firms.

(6) The commission shall annually report to the department of administration the total amount of operating note indebtedness contracted with the underwriting services of minority investment firms and the total amount of moneys expended for the services of minority financial advisers during the preceding fiscal year.

(7) The requirements of any of subs. (2) to (5) do not apply to a contracting of operating notes, if the secretary of administration submit a report in writing to the joint committee on finance specifying the building commission's reasons for not complying with the requirements of any of subs. (2) to (5) for that contracting.

History: 1987 a. 27; 1989 a. 366.

SUBCHAPTER IV

HIGHER EDUCATION BONDS

18.81 Definitions. In this subchapter:

- (1) "Commission" means the building commission.
- (2) "Eligible educational institution" means a regionally accredited, nonprofit, postsecondary educational institution.
- (3) "Higher education bond" means obligations designated by the commission under s. 18.82.

History: 1989 a. 46.

18.82 Bond designation. The commission may designate any obligation authorized and issued under subch. I or II as a higher education bond.

History: 1989 a. 46.

18.822 Debt requirements. The authorizing resolution for an obligation under this subchapter shall require that all of the following conditions be met:

- (1) The terms of the obligation are structured to encourage ownership by as many individuals as possible.
- (2) The evidences of the obligation are issued in denominations of not more than \$1,000.

History: 1989 a. 46.

18.83 Redemption. The commission may provide that higher education bonds may be presented for payment before

maturity to any eligible educational institution for tuition, fees and other educationally related costs owed that eligible educational institution plus an allowance for other educationally related costs such as room and board, books and supplies and other miscellaneous expenses owed to any person except that eligible educational institution, subject to any requirement of the commission. The commission may treat higher education bonds presented for payment under this section as still outstanding, even though owned by the state, and the commission may resell such higher education bonds or fund or refund such higher education bonds through the issuance of other obligations. If obligations are issued to fund or refund such higher education bonds, such obligations shall be treated as issued for the purpose of funding, not refunding, for all purposes under this chapter and ch. 20.

History: 1989 a. 46.

18.84 Schools as bond trustees or fiscal agents; contracts. Notwithstanding s. 18.10 (8), the commission may designate any eligible educational institution as a trustee or fiscal agent for any issue of higher education bonds and may enter into any contract with any eligible educational institution to satisfy the purposes of this subchapter.

History: 1989 a. 46.

18.85 Facilities. The commission may enter into agreements and ancillary arrangements for public debt under this subchapter, including liquidity facilities, remarketing or dealer agreements, letter of credit agreements and line of credit agreements.

History: 1989 a. 46.

18.852 Procedure. (1) The commission may establish any procedure necessary to administer this subchapter.

(2) The sale of any bond, authorized and issued under subch. I and designated by the commission under s. 18.82 as a higher education bond, shall be private.

History: 1989 a. 46, 68, 359.