

# Urban & Local Affairs

## SB 399 – Creation of a Political Subdivision to Issue Conduit Revenue Bonds & Exempting from Taxation Interest on Such Bonds

Authored by Sen. Kreitlow

### Summary of SB 399 (As Amended):

Under current law, Wisconsin local governments may issue federally tax-exempt municipal bonds for public purposes and conduit bonds for private projects that serve a public benefit. Additionally, unique financing opportunities have recently been made available for the use of these development tools through \$3.8 billion in Midwest Disaster Assistance Bonds and \$238 million in Recovery Zone Facility Bonds. However, these financing opportunities have a time limit that requires local governments to act quickly in order to promote needed development in their communities.

Only governmental entities may issue tax-exempt bonds. The process is complex, expensive, time-consuming, and requires a host of professional service providers. The process becomes even more complex when a governmental entity acts as a conduit issuer on behalf of a private borrower. For many local governments that are under increasing pressure to provide additional services with fewer resources, devoting staff and financial resources to complex bond issuances and the required post-issuance compliance is not feasible.

Senate Bill 399 authorizes the creation of a joint powers authority, or commission, which can act at the request of Wisconsin local governments to issue conduit bonds for private entities engaged in public benefit projects; issue municipal revenue bonds for public purposes; and, create market leverage through cooperative institutional relationships.

The creation of such a commission will provide local governments with a turn-key resource to evaluate public and private construction and infrastructure projects at the conceptual stage and shepherd eligible projects through the financing process - or refer them to WHEDA, WHEFA or the state Department of Commerce - saving individual local governments the financial burden of directly employing the necessary experts.

The commission would be patterned after the National Association of Counties joint purchasing program, which allows counties and other local governments to buy many goods and services at the lowest possible cost without having to bid or negotiate prices with vendors individually.

By streamlining issuance processes, creating efficiencies for local governmental issuers and reducing local governments' liability in conduit issuances, the commission will save local entities and eligible private borrowers millions of dollars and other valuable staff resources by providing a one-stop resource that coordinates complicated issuance and post-issuance activities. The commission would also:

- Offer local governments in Wisconsin another tool to promote economic development in their communities by growing existing businesses and offering new businesses access to the lower-cost municipal bond market.
- Create additional opportunities for private businesses to access low-cost, tax-exempt capital and increase the number of viable public benefit and public infrastructure projects.
- Create investment economies of scale for small public or private projects that may not otherwise have access to low-cost, tax-exempt bond markets due to their small size.
- Create construction jobs and permanent jobs associated with private expansions and relocations financed through municipal and conduit bonds.
- Generate savings for Wisconsin taxpayers by reducing the cost to local governments for necessary investments in public infrastructure projects.
- Enhance opportunities for Wisconsin's financial services industry by financing projects in Wisconsin and in other states.

The Wisconsin Counties Association, the League of Wisconsin Municipalities, the National Association of Counties and the National League of Cities believes support this legislation and believe it represents an important economic development tool for local governments around Wisconsin.

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### Summary of SB 399 (As Amended):

The senate bill, as amended and passed by the Senate does the following:

1. The bill creates a commission consisting of two or more political subdivisions for the purpose of issuing limited obligation bonds. All of the political subdivisions that initially create a commission include a Wisconsin city, village, town, or county. Upon creation, political subdivisions located in other states may be members of a commission.
2. A majority of the board members shall be public officials or current or former employees of a Wisconsin political subdivision.
3. A commission may only be created within 5 months after the effective date of the bill.
4. The commission is designed to act as a “conduit” for a developer to obtain bonding. The bonds are not a debt of the state or the political subdivisions creating the commission. All of the bonds issued by a commission are payable solely from the funds pledged for their payment in accordance with the bond resolution or trust agreement.
5. Before any commission formation agreement may take effect, the proposed agreement shall be submitted and reviewed by the attorney general. The agreements shall be approved unless the agreement is found to not comply with state law created by this bill.
6. On pages 7 and 8 the bill enumerates a list of powers given to a commission. A commission is also given the authority to exercise eminent domain and condemn property.
7. A commission may not authorize bonds to finance a capital improvement project in Wisconsin unless all of the political subdivisions where the project is located has approved the financing. For a commission to authorize bonds to finance projects out of state, only one of the political subdivisions where the project is located must approve the financing.
8. Before a commission may issue bonds on any project that WHEDA or WHEFA may engage in, a commission must receive written approval from the respective agency.
9. Interest received from the bonds or notes issued by a commission are exempt from income tax if the bonds or notes could have been issued by WHEDA, WHEFA, or redevelopment authorities.

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### Fiscal Estimate:

A fiscal estimate prepared by DOR states the bill could lead to a reduction in collections from the personal income tax and the corporate income tax.

The amount of this reduction would depend on (1) the amount of "conduit revenue bonds" that could be issued for new projects, including projects that would otherwise have been financed under existing state law; (2) the extent to which existing revenue bonds could be refinanced with "conduit revenue bonds"; and (3) the extent to which these bonds would be owned by persons or corporations subject to Wisconsin taxation.

The experience of other states that permit "conduit revenue bonds" suggests that such bonds are a popular way of financing "projects". For example, of the \$2.63 billion in debt issued by sub-state governments in the State of Oregon in 2008, almost \$816 million, or about 31%, were "conduit revenue bonds". Based on data from annual financial report forms filed by municipalities and counties with the Department of Revenue (DOR) for 2007, about \$1.56 billion in long-term debt was issued. (This amount is probably understated since some local development authorities are not considered as part of the municipal or county government for financial reporting purposes.) Thus, if Wisconsin had used "conduit revenue bonds" at the same rate as used in Oregon, about \$482 million of such bonds would have been issued in 2007. The actual amount of "conduit revenue bonds" that could be issued by Wisconsin-based "commissions" has the potential to be higher than the experience of Oregon because, unlike the bill, other states usually require that (1) the financed "project" be located within the state, (2) the "project" be one that qualifies for exemption from federal income taxes, and (3) the members of any entity issuing these bonds must all come from within the state.

By exempting the interest on "conduit revenue bonds" from state income taxes, local governments that have already issued long-term revenue bonds may find it tempting to refinance these bonds through the issuance of "conduit revenue bonds". Data from the municipal financial reporting forms filed with DOR for 2007 suggest that there was about \$2.97 billion of long-term revenue bonds in existence. The extent to which refinancing could occur would depend on the interest savings under a "conduit revenue bond" refinancing "project".

The exemption of "conduit revenue bond" interest from state personal income taxes, corporate income taxes, and insurance company taxation would only affect those persons and companies that are subject to Wisconsin income taxes. Although the exemption from state income taxes will make the bonds more marketable to state taxpayers, the potential market (especially if the bonds also qualify for exemption from federal income taxes) is nationwide. The DOR does not have data to permit a reasonable projection of the percentage of "conduit revenue bonds" issued by a Wisconsin-based "commission" that could be sold to out-of-state persons and corporations.

Based on the above, it is not possible to reasonably estimate the loss in state individual and corporate income taxes that the bill could engender. Data for the 2007 tax year indicates that about \$40 million individual income taxes were generated from state and local bond interest income. Thus, to the extent that existing debt is refinanced with "conduit revenue bonds", there is a potential for this \$40 million to decline over time. To the extent that local governments choose to issue new debt as "conduit revenue bonds" instead of under current laws, the loss in state income taxes is likely to increase over time.

The bill has no effect on local government taxes. To the extent that a "project" involves real or personal property, current laws on the taxability of such property apply. Since the governmental entities that establish a "commission" are not liable if the "project" generates insufficient revenue to repay the "conduit revenue bonds", the bill has no effect on property taxes.

The bill could reduce local government costs to the extent that they can, as a result of the state income tax exemption created under the bill, finance "projects" at a lower rate of interest compared to current law.

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### Supporters Message:

Supporters of SB 399 believe that this offers Wisconsin another tool to provide and promote economic development in Wisconsin and other states by offering new businesses access to loans through the lower-cost municipal bond market.

### Opponents Message:

There are a lot of concerns surrounding this large and questionable undertaking by local government interest groups. This is legislation that is taken directly from California. There is no idea how a “California” public/private initiative will work in Wisconsin. DOA came into the process only at the last minute, well after this legislation passed the State Senate. This legislation is very vast and very complicated.

### Key Supporters:

Rep. Seidel, Senator Plale, Patrick Drinan, Sheboygan Development Corporation, Michael La Pierre, US Communities WI Realtors, Jim Mortenson, Mortenson Brothers Farms, Inc. WI Counties Association. Adams County, Adams - Columbia Electric Cooperative, League of Wisconsin Municipalities, La Crosse County, Bayfield County, Washington County, Adams County Highway Department, Calumet County Vilas County, Dunn County, Winnebago County, Shawano County, WI Transportation Builders Association, Waupaca County, Sauk County, Marathon County, Barron County, La Crosse County, Sheboygan County, Waupaca County, Wood County, Green Lake County, Columbia County, Northwest Regional Planning Commission, Trempealeau County, Door County, Kewaunee County, Rusk County, WI Towns Assoc.

### Key Opponents:

No one testified in opposition of SB 399 or registered with the ethics board. However, the American Council of Engineering Companies of Wisconsin and the Associated General Contractors of Wisconsin Inc have **not disclosed their opinion on SB 399**. While, Construction Business Group has remained **undecided** on the bill

### Committee Vote:

On March 29, 2010 the Assembly Committee on Urban & Local Affairs held an Executive session and voted 7-0 to send SB 399 as Amended to the committee on rules. (Van Akkeren & Roys Absent)

### Staff Author of Bill Summary

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