WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2009 Senate Bill 440	Senate Amendment 2, Senate Amendments 1 and 2 to Senate Amendment 2, and Senate Amendment 5

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BACKGROUND

Recovery Zone Facility Bonds

The American Recovery and Reinvestment Act of 2009 (ARRA), the Federal Stimulus Act, authorized certain local governments to issue specified amounts of several types of tax-exempt bonds, including recovery zone facility bonds (RZF bonds), which are tax-exempt private activity bonds that allow businesses within recovery zones to finance certain depreciable capital projects.

Under the ARRA, the size of the bond issuance allocations provided to individual states is based on the number of unemployed individuals in each state compared to the number of unemployed individuals nationwide. The ARRA specifies that within each state, the total state allocation is to be reallocated to counties and large municipalities based on the relative employment declines in each county or municipality in 2008. (A "large municipality" is a municipality with a population of more than 100,000.)

The ARRA provides that a county or municipality may waive any portion of an allocation it receives.

The total RZF bond issuance allocation for the State of Wisconsin is $238,217,000. This amount was reallocated to 63 counties and the Cities of Milwaukee, Madison, and Green Bay.

Midwestern Disaster Area Bonds

The Heartland Disaster Tax Relief Act of 2008, Title VII, Subtitle A, of the Emergency Economic Stabilization Act of 2008, Public Law 110-343 (HDTRA), established Midwestern Disaster Area (MDA) bonds, a form of tax-exempt private activity bond. MDA bonds may only be issued to finance projects in areas that were declared to be major disaster areas as a result of storms, tornadoes, or flooding in 2008. In Wisconsin, only projects located in the following counties ("affected counties") may utilize MDA bonds:

> Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, and Winnebago.

Under the HDTRA, Wisconsin received MDA bond issuance allocations in the amount of $3,830,112,000. In Executive Order No. 288, the Governor directed that $50 million of this amount be reserved for each affected county until January 1, 2011, and the remaining amount, approximately $2.3 billion, be unreserved and available to projects in any affected county in the order that qualifying requests are received.

2009 Senate Bill 440

2009 Senate Bill 440 specifies that the unused portion of a city or county's RZF bond allocation shall be considered waived by a city or county on the effective date of the bill, and that the allocation may be reallocated by the Department of Commerce (Commerce). The bill specifies that a city or county's RZF bond allocation shall be considered unused, except for any of the following:

- RZF bonds that have been sold before the effective date of the bill.
- RZF bonds that are subject to a contract for sale that takes effect before the effective date of the bill and are issued within 30 days of that date.

A city or county that has an allocation that is not unused must send written notice regarding the allocation to Commerce by the first day of the second month beginning after the effective date of the bill.

The bill directs Commerce to, by rule, establish and administer a system to reallocate the waived RZF bond allocations among local units of government, including commissions formed by contract under intergovernmental agreement; special purpose districts; state authorities, such as the Wisconsin Housing and Economic Development Authority, the Wisconsin Health and Educational Facilities Authority, and the University of Wisconsin Hospitals and Clinics Authority; and local housing, redevelopment, or community development authorities.

The bill authorizes Commerce to establish any procedure for, and place any conditions upon, the granting of a reallocation which Commerce believes to be in the best interest of the state. The bill requires Commerce to consider the availability of MDA bonds as an alternative source of financing for a project for which recovery zone facility bond allocations are sought.

Senate Amendment 2

Senate Amendment 2 does all of the following:

County Authority to Issue Industrial Development Revenue Bonds

Senate Amendment 2 authorizes counties to issue industrial development revenue bonds (IDRBs) under s. 66.1103, Stats.

Current law authorizes municipalities (cities, villages, or towns) to issue IDRBs. Under the IDRB law, municipalities currently may do all of the following:

1. Construct, equip, acquire, rebuild, maintain, or remodel industrial projects.

2. Borrow money and issue IDRBs to finance all or part of the costs of the work described in item 1., above, and for improving sites for industrial projects.

3. Enter into revenue agreements that are related to industrial projects. "Revenue agreements" is defined to include any lease, sales or service contract, loan agreement, or similar agreement providing that any private person agrees to pay the municipality an amount of funds to provide for the payment of the principal of, and interest on, the IDRBs and agrees to construct the project.

4. Mortgage all or part of the industrial project, or assign the revenue agreements in favor of the bond holders.

5. Sell the industrial project and site.

Generally, the principal and interest due on IDRBs issued by a municipality are payable solely out of the revenues derived under the revenue agreement that relates to the project to be financed by the bonds. In addition, there are currently a number of certifications that must be obtained, and notice, filing, and bidding requirements that must be met, before a municipality may enter into a revenue agreement.

Senate Amendment 2 authorizes any county to issue IDRBs and to act under the IDRB statute as a municipality may currently act.

Waiver of RZF Bond Allocations

Senate Amendment 2 deletes the provisions of the bill that specify the circumstances under which RZF bond allocations are considered to be unused and deemed to be waived and replaces them with the following provisions:

As of ***March 1, 2010***, a city or county's RZF bond allocation is considered to be waived, except for any amount to which one of the following applies:

1. The city or county sends written notice to Commerce that states that RZF bonds have been issued; or

2. The city or county sends written notice to Commerce that does both of the following:

a. Identifies the amount of a proposed issuance of RZF bonds and the nongovernmental entity that will own or operate the project being financed.

b. Includes a letter to Commerce from the prospective purchaser of the RZF bonds that states the prospective purchaser's expectation that an agreement for the purchase of the bonds will be executed before May 1, 2010, and the bonds will be issued before June 1, 2010.

As of ***May 1, 2010***, a city or county's RZF bond allocation is considered to be waived, except for any amount to which one of the following applies:

1. The city or county sends written notice to Commerce that states that RZF bonds have been issued; or

2. The city or county sends written notice to Commerce that states that an agreement has been executed by the city, county, other local governmental unit, or authority that will issue the RZF bonds, and a bond purchaser, providing for the purchase of RZF bonds.

As of ***June 1, 2010***, a city or county's RZF bond allocation is considered to be waived except for any amount about which the city or county sends written notice to Commerce that states that RZF bonds have been issued.

MDA Bond Allocations

Senate Amendment 2 provides that if a county that is eligible to issue an MDA bond waives any portion of its RZF bond allocation before January 1, 2011, Commerce must increase that county's allocation of MDA bond authority by the amount of the county's waived RZF bond limitation allocation.

SENATE AMENDMENT 1 TO SENATE AMENDMENT 2

Senate Amendment 1 to Senate Amendment 2 provides that cities that are eligible to issue MDA bonds that waive any portion of their RZF bond allocation will receive a corresponding increase in their MDA bond allocation. Under Senate Amendment 2, this provision applies only to counties.

SENATE AMENDMENT 2 TO SENATE AMENDMENT 2

Senate Amendment 2 to Senate Amendment 2 specifies that a letter from a prospective purchaser, while in the possession of a city, county, or Commerce, is not subject to the right of inspection or copying under state open records law before the first day of the third month after the letter is received by the city, county, or Commerce.

SENATE AMENDMENT 5

Generally, Senate Bill 440 authorizes Commerce to establish, by rule, procedures and conditions for the reallocation of RZF bond allocations waived into an aggregate pool created by the bill. The bill exempts emergency rules related to RZF bond reallocation from statutory requirements on findings related to the preservation of public peace, health, safety, or welfare.

Senate Amendment 5 specifies reallocation procedures for applications made after March 1, 2010, but before June 1, 2010. During that time, the department shall make reallocations from the aggregate pool for projects in cities and counties that waived an allocation in an amount equal to the total allocation waived by the city or county or the amount necessary for the project, whichever is less.

Senate Amendment 5 also addresses the situation where, during the period after March 1, 2010, but before June 1, 2010, reallocation requests exceed the waived allocations remaining in the aggregate pool. In the event the reallocation requests exceed the allocations remaining in the aggregate pool, the department shall prorate the available allocations among cities and counties in proportion to the amount waived by the cities and counties.

Legislative History

Senate Bill 440 was introduced on January 4, 2010 by Senator Lassa; cosponsored by Representative Molepske, Jr. It was referred to the Senate Committee on Economic Development, which held a hearing on the bill on January 7, 2010.

Senate Amendment 2 to Senate Bill 440 was offered on January 25, 2010, by Senators Lassa and Darling. Senate Amendment 1 to Senate Amendment 2 was offered on January 26, 2010, by the Senate Committee on Economic Development. On that date, the committee voted to recommend adoption of Senate Amendment 1 to Senate Amendment 2; to recommend adoption of Senate Amendment 2, as amended; and to recommend passage of Senate Bill 440, as amended, by votes of Ayes, 7; Noes, 0.

Senators Lassa and Miller offered Senate Amendment 2 to Senate Amendment 2 and Senate Amendment 5 on January 28, 2010.

On January 28, 2010, the Senate adopted Senate Amendments 1 and 2 to Senate Amendment 2, Senate Amendment 2, and Senate Amendment 5 on voice votes. On the same day, the Senate passed Senate Bill 440 by a vote of Ayes, 32; Noes, 1, and the Assembly concurred in Senate Bill 440 by a vote of Ayes, 90; Noes, 6.

MM:SG:ksm