

CHAPTER 18

PUBLIC STATE DEBT

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

(1) "Commission" means the state building commission.

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

(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 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.

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

18.02 Scope of chapter. 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 chapter, except that this chapter 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.

18.03 State building commission. (1) Subject to the conditions and limitations contained in this chapter, the state building 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. 227.014 (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 chapter 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).

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), the whole or any part of:

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

(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 any interest to accrue thereon. Each purpose specified by the legislature pursuant to sub. (2) shall be construed to include interest to be paid on loans or notes and the expenses of contracting public debt.

History: 1973 c. 90s 555m (2); 1975 c. 26.

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 chapter 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).

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.

(2) **LOAN.** An authorizing resolution may authorize the negotiation of a loan or loan agreement of any type, upon any terms, with any bank authorized to transact business in this state 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. Such a sale 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). Such a sale shall be for not less than par value, plus accrued interest to the date of delivery. No such notes may be sold to pay bonds or bonded corporation indebtedness.

(6) **EXERCISE OF AUTHORITY.** Public debt may be contracted and evidence of indebtedness issued therefor pursuant to 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, for any term, payable at any intervals, at any place, in

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any manner and having any other terms or conditions deemed necessary or useful. 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.

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, 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).

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 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. 25.17 (3) (dg). All such investments shall be the exclusive property of such fund and all earnings on or income from such investments shall be credited to such fund and shall become available for any of the purposes under sub. (2). However earnings from that portion created by self-amortizing projects may be transferred by resolution of the state building 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) (a) On July 1, 1975, there shall lapse into the bond security and redemption fund \$5,265,300 in interest earnings accrued to the capital improvement fund due to the investment of moneys resulting from the contracting of public debt under the authority of s. 20.866 (2) (s), (tm), (tp), (v), (w), (x), (y), (z), (zd), (zh), and (zm). Such funds shall be used for meeting periodic principal, interest and premiums due, if any, on principal repayment and interest payments required from general purpose revenues. Thereafter, all investment earnings accruing to the capital improvement fund shall continue in that fund to be available for the purposes provided in this chapter.

(b) On July 1, 1975, there shall lapse into the bond security and redemption fund \$258,300 in interest earnings accrued to the capital improvement fund due to the investment of moneys resulting from the contracting of public debt under the authority of s. 20.866 (2) (t). Such funds shall be used for meeting periodic

principal, interest and premiums due, if any, on principal repayment and interest payments required from program revenues. Thereafter, all investment earnings accruing to the capital improvement fund shall continue in that fund to be available for the purposes provided in this chapter.

(c) On July 1, 1975, there shall lapse into the bond security and redemption fund \$3,803,700 in interest earnings accrued to the capital improvement fund due to the investment of moneys resulting from the contracting of public debt under the authority of s. 20.866 (2) (u), (ug), (ur), (us) and (ut). Such funds shall be used for meeting periodic principal, interest and premiums due, if any, on principal repayment and interest payments required from the highway fund. Thereafter, all investment earnings accruing to the capital improvement fund shall continue in that fund to be available for the purposes provided in this chapter.

History: 1971 c. 125; 1973 c. 90 ss. 32c, 555m (2); 1973 c. 243; 1975 c. 39.

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, but they shall be invested only as provided in s. 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 pursuant to s. 18.08 (3) 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. 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.

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) ANTICIPATORY 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 to the registered owner at his 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 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 annum 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 prescribes 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) FISCAL AGENTS. The commission may appoint one or more fiscal agents for each issue of bonds or notes. The state treasurer may be denominated the sole fiscal agent or a co-fiscal 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. 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 fiscal agents as it deems necessary or useful and may enter into a contract with any fiscal agent containing such terms, including its compensation, and conditions in regard to the 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) EXTINGUISHMENT OF DEBT. 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, but such debt and the accrued interest thereon shall continue to be public debt until 6 years overdue for payment or, in the case of public debt owing to the United States, until 20 years overdue for payment. At that time, unless demand for their payment has been made, they shall be extinguished and shall be deemed no longer outstanding.

(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.

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

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 (9).

(3) JUDGMENT. Sections 16.53 and 285.01 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. 285.04 together with interest thereon at the rate of 10% per annum from the date such payment was judged to have been due until the date of payment of such judgment.

History: Sup. Ct. Order, 67 W (2d) 749; 1975 c. 218.

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 Construction. Until January 1, 1971, this chapter shall be deemed to provide an alternative authorization for and method of accomplishing the financing, from moneys in the treasury of this state, of the public purposes enumerated in this chapter, to the authorization and method contained in existing laws of this state.

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.