

State of Wisconsin



2009 Senate Bill 440

Date of enactment:
Date of publication*:

2009 WISCONSIN ACT

AN ACT *to amend* 66.0301 (1) (a), 66.1103 (1) (a), 66.1103 (1) (c), 66.1103 (2) (a), 66.1103 (2) (c), 66.1103 (2) (e), 66.1103 (2) (L), 66.1103 (3) (intro.), 66.1103 (3) (b) 2., 66.1103 (3) (f), 66.1103 (4) (a) (intro.), 66.1103 (4) (a) 2., 66.1103 (4) (d), 66.1103 (4) (e), 66.1103 (4m) (a), 66.1103 (4m) (b), 66.1103 (4m) (c), 66.1103 (4s) (b) (intro.), 66.1103 (4s) (b) 3., 66.1103 (5) (c), 66.1103 (5) (f), 66.1103 (6) (b), 66.1103 (6) (c), 66.1103 (6m), 66.1103 (8), 66.1103 (9), 66.1103 (10) (b), 66.1103 (10) (c), 66.1103 (10) (d), 66.1103 (10) (e), 66.1103 (10) (g), 66.1103 (11) (a), 66.1103 (11) (b) 2. and 560.034 (5) (a); and *to create* 66.1103 (2) (as), 66.1103 (2) (k) 22., 66.1104 and 560.033 of the statutes; **relating to:** granting authority to any county to issue industrial development revenue bonds and waiving certain federal bond limitations allocated to cities and counties and requiring the Department of Commerce to develop a system for reallocating the bond limitations to other state and local units of government.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 66.0301 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

66.0301 (1) (a) Except as provided in pars. (b) and (c), in this section “municipality” means the state or any department or agency thereof, or any city, village, town, county, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system created under s. 59.70 (2), local exposition district created under subch. II of ch. 229, local professional baseball park district created under subch. III of ch. 229, local professional football stadium district created under subch. IV of ch. 229, local cultural arts district created under subch. V of ch. 229, transit authority created under s. 66.1039, long-term care district under s. 46.2895, water utility district, mosquito control district, municipal electric company, county or city transit commission,

commission created by contract under this section, taxation district, regional planning commission, housing authority created under s. 66.1201, redevelopment authority created under s. 66.1333, community development authority created under s. 66.1335, or city-county health department.

SECTION 1e. 66.1103 (1) (a) of the statutes is amended to read:

66.1103 (1) (a) It is found and declared that industries located in this state have been induced to move their operations in whole or in part to, or to expand their operations in, other states to the detriment of state, county and municipal revenue raising through the loss or reduction of income and franchise taxes, real estate and other local taxes causing an increase in unemployment; that such conditions now exist in certain areas of the state and may well arise in other areas; that economic insecurity due to unemployment is a serious menace to the general welfare of not only the people of the affected areas but of the people of the entire state; that unemployment results in obligations to grant public assistance and in the payment

* Section 991.11, WISCONSIN STATUTES 2007–08 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

of unemployment insurance; that the absence of new economic opportunities has caused workers and their families to migrate elsewhere to find work and establish homes, which has resulted in a reduction of the tax base of counties, cities and other local governmental jurisdictions impairing their financial ability to support education and other local governmental services; that security against unemployment and the preservation and enhancement of the tax base can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, industry and manufacturing; and that there is a need to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions. It is therefore the policy of this state to promote the right to gainful employment, business opportunities and general welfare of its inhabitants and to preserve and enhance the tax base by authorizing municipalities and counties to acquire industrial buildings and to finance the acquisition through the issuance of revenue bonds for the purpose of fulfilling the aims of this section. These purposes are declared to be public purposes for which public money may be spent and the necessity in the public interest for the provisions of this section is declared a matter of legislative determination.

SECTION 1f. 66.1103 (1) (c) of the statutes is amended to read:

66.1103 (1) (c) It is found and declared that the revitalization of counties and of the central business districts of the municipalities of this state is necessary to retain existing industry in, and attract new industry to, this state and to protect the health, welfare and safety of residents of this state.

SECTION 1g. 66.1103 (2) (a) of the statutes is amended to read:

66.1103 (2) (a) "Authorized developer" means a corporation organized under ch. 180 or 181 which the governing body designates as an authorized developer after making a finding that the principal purpose of the corporation is the general promotion of business development in the municipality or county or in the local area containing the municipality or county.

SECTION 1h. 66.1103 (2) (as) of the statutes is created to read:

66.1103 (2) (as) "County" means any county in this state.

SECTION 1i. 66.1103 (2) (c) of the statutes is amended to read:

66.1103 (2) (c) "Eligible participant" includes any person, other than the state or any other governmental unit, who enters into a revenue agreement with a municipality or county with respect to an industrial project. If more than one eligible participant is a party to a revenue agreement, the undertaking of each shall be either several or joint and several as the revenue agreement provides.

An eligible participant need not be directly or indirectly a user of the project.

SECTION 1j. 66.1103 (2) (e) of the statutes is amended to read:

66.1103 (2) (e) "Governing body" means the board, council or other body in which the legislative powers of the municipality or county are vested.

SECTION 2. 66.1103 (2) (k) 22. of the statutes is created to read:

66.1103 (2) (k) 22. Facilities with respect to which is issued either a recovery zone facility bond under 26 USC 1400U-3 or a qualified Midwestern disaster area bond under 26 USC 1400N (a), as modified by P.L. 110-343, title VII, subtitle A, section 702 (d) (intro.) and (1).

SECTION 2ae. 66.1103 (2) (L) of the statutes is amended to read:

66.1103 (2) (L) "Revenue agreement" includes any lease, sublease, installment or direct sales contract, service contract, take or pay contract, loan agreement or similar agreement providing that an eligible participant agrees to pay the municipality or county an amount of funds sufficient to provide for the prompt payment of the principal of, and interest on, the revenue bonds and agrees to construct the project.

SECTION 2am. 66.1103 (3) (intro.) of the statutes is amended to read:

66.1103 (3) POWERS. (intro.) A municipality or county may:

SECTION 2as. 66.1103 (3) (b) 2. of the statutes is amended to read:

66.1103 (3) (b) 2. To fund the whole or part of any revenue bonds issued by the municipality or county, including any premium payable with respect to the bonds and any interest accrued or to accrue on the bonds; or

SECTION 2bm. 66.1103 (3) (f) of the statutes is amended to read:

66.1103 (3) (f) Finance an industrial project which is located entirely within the geographic limits of the municipality or county or some contiguous part of which is located within and some contiguous part outside the geographic limits of the municipality or county; or, finance an industrial project which is located entirely outside the geographic limits of the municipality or county, but only if the revenue agreement for the project also relates to another project of the same eligible participant, part of which is located within the geographic limits of the municipality or county. The power granted by this paragraph does not include the power to annex, tax, zone or exercise any other municipal or county power with respect to that part of the project located outside of the geographic limits of the municipality or county.

SECTION 2c. 66.1103 (4) (a) (intro.) of the statutes is amended to read:

66.1103 (4) (a) (intro.) Bonds issued by a municipality or county under this section are limited obligations of

the municipality or county. The principal of and interest on the bonds are payable solely out of the revenues derived under the revenue agreement pertaining to the project to be financed by the bonds, or, if there is a default of the agreement and to the extent that the municipality or county provides in the proceedings of the governing body authorizing the bonds to be issued, out of any revenues derived from the sale, releasing or other disposition of the project, or out of any collateral securing the revenue agreement, or out of the proceeds of the sale of bonds. Bonds and interest coupons issued under this section are not an indebtedness of the municipality or county, within the meaning of any state constitutional provision or statutory limitation. Bonds and interest coupons issued under this section are not a charge against the municipality's or county's general credit or taxing powers or a pecuniary liability of the municipality or county or a redevelopment authority under s. 66.1333, including but not limited to:

SECTION 2cm. 66.1103 (4) (a) 2. of the statutes is amended to read:

66.1103 (4) (a) 2. Any liability in connection with the issuance or sale of bonds, for representations made, or for the performance of the obligation of any person who is a party to a related transaction or agreement except as specifically provided in this section or by an express provision of the bond or a related written agreement to which the municipality or county is a party.

SECTION 2d. 66.1103 (4) (d) of the statutes is amended to read:

66.1103 (4) (d) Unless otherwise expressly or implicitly provided in the proceedings of the governing body authorizing the bonds to be issued, bonds issued under this section are subject to the general provisions of law, not inconsistent with this section, respecting the authorization, execution and delivery of the bonds of the municipality or county.

SECTION 2dm. 66.1103 (4) (e) of the statutes is amended to read:

66.1103 (4) (e) Bonds issued under this section may be sold at public or private sale in the manner, at the price and at the time determined by the governing body. The municipality or county may pay all expenses, premiums and commissions which the governing body considers necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

SECTION 2e. 66.1103 (4m) (a) of the statutes is amended to read:

66.1103 (4m) (a) A municipality or county may not enter into a revenue agreement with any person unless all of the following apply:

1. The person, at least 30 days prior to entering into the revenue agreement, has given a notice of intent to enter into the agreement, on a form prescribed under s. 560.034 (1), to the department of commerce and to any collective bargaining agent in this state with whom the person has a collective bargaining agreement; ~~and~~

2. The municipality or county has received an estimate issued under s. 560.034 (5) (a), and the department of commerce has estimated whether the project which the municipality or county would finance under the revenue agreement is expected to eliminate, create or maintain jobs on the project site and elsewhere in this state and the net number of jobs expected to be eliminated, created or maintained as a result of the project.

SECTION 2em. 66.1103 (4m) (b) of the statutes is amended to read:

66.1103 (4m) (b) Any revenue agreement which an eligible participant enters into with a municipality or county to finance a project shall require the eligible participant to submit to the department of commerce within 12 months after the project is completed or 2 years after a revenue bond is issued to finance the project, whichever is sooner, on a form prescribed under s. 560.034 (1), the net number of jobs eliminated, created or maintained on the project site and elsewhere in this state as a result of the project.

SECTION 2f. 66.1103 (4m) (c) of the statutes is amended to read:

66.1103 (4m) (c) Nothing in this subsection requires a person with whom a municipality or county has entered into a revenue agreement to satisfy an estimate under par. (a) 2.

SECTION 2fm. 66.1103 (4s) (b) (intro.) of the statutes is amended to read:

66.1103 (4s) (b) (intro.) A municipality or county may not enter into a revenue agreement with any employer that employs individuals in this state at a site other than a project site unless the employer certifies that the project is not expected to result in any lost jobs or the employer agrees to all of the following:

SECTION 2g. 66.1103 (4s) (b) 3. of the statutes is amended to read:

66.1103 (4s) (b) 3. The employer shall certify compliance with this subsection to the department, to the governing body of each municipality or county within which a lost job exists and to any collective bargaining agent in this state with which the employer has a collective bargaining agreement at the project site or at a site where a lost job exists.

SECTION 2gm. 66.1103 (5) (c) of the statutes is amended to read:

66.1103 (5) (c) A municipality or county may provide that proceeds from the sale of bonds and special funds from the revenues of the project and any funds held in reserve or debt service funds shall be invested and reinvested in securities and other investments as provided in the proceedings under which the bonds are authorized to be issued. The municipality or county may also provide that the proceeds or funds or investments and the revenues derived pursuant to the revenue agreement shall be received, held and disbursed by one or more banks or trust companies located in or out of this state. A municipi-

pality or county may also provide that the project and improvements shall be constructed or installed by the municipality or county, the eligible participant or the eligible participant's designee or any one or more of them on real estate owned by the municipality or county, the eligible participant or the eligible participant's designee and that the bond proceeds shall be disbursed by the trustee bank or trust company during construction upon the estimate, order or certificate of the eligible participant or the eligible participant's designee. In making agreements or provisions under this paragraph, a municipality or county may not obligate itself, except with respect to the project and the application of the revenues from the project, and may not incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

SECTION 2h. 66.1103 (5) (f) of the statutes is amended to read:

66.1103 (5) (f) The revenue agreement may include any provisions that the municipality or county considers appropriate to effect the financing of the project, including a provision for payments to be made in installments and the securing of the obligation for any payments by lien or security interest in the undertaking either senior or junior to, or ranking equally with, any lien, security interest or rights of others.

SECTION 2hm. 66.1103 (6) (b) of the statutes is amended to read:

66.1103 (6) (b) The determination and findings of the governing body shall be embodied in the proceedings under which the proposed bonds are to be issued; but the amounts specified in par. (a) need not be expressed in dollars and cents in the revenue agreement and proceedings under which the bonds are authorized to be issued, but may be set forth in the form of a formula. Before the issuance of the bonds authorized by this section the municipality or county shall enter into a revenue agreement providing for payment to the municipality or county, or to the trustee for the account of the municipality or county, of those amounts, based upon the determination and findings, that will be sufficient to pay the principal of, and interest on, the bonds issued to finance the project; to build up and maintain any reserves considered advisable by the governing body, in connection with the project; and, unless the revenue agreement obligates the eligible participant to provide for the maintenance of and insurance on the project, to pay the costs of maintaining the project in good repair and keeping it properly insured.

SECTION 2i. 66.1103 (6) (c) of the statutes is amended to read:

66.1103 (6) (c) A governing body may not adopt an initial resolution authorizing issuance of bonds to finance a project specified under sub. (2) (k) 11. unless the governing body finds and states in the initial resolution that the project will significantly increase the number of per-

sons traveling to the municipality or county for business or recreation. The statement shall be included in the public notice required under sub. (10) (b).

SECTION 2im. 66.1103 (6m) of the statutes is amended to read:

66.1103 (6m) NOTIFICATION OF POSITION OPENINGS. A municipality or county may not enter into a revenue agreement with any person who operates for profit unless that person has agreed to notify the department of workforce development and the local workforce development board established under 29 USC 2832, of any position to be filled in that municipality or county within one year after issuance of the revenue bonds. The person shall provide this notice at least 2 weeks before advertising the position. The notice required by this subsection does not affect the offer of employment requirements of sub. (4s).

SECTION 2j. 66.1103 (8) of the statutes is amended to read:

66.1103 (8) PURCHASE. The municipality or county may, by or with the consent of the eligible participant, accept any bona fide offer to purchase the project which is sufficient to pay all the outstanding bonds, interest, taxes, special levies and other costs that have been incurred. The municipality or county may also, by or with the consent of the eligible participant, accept any bona fide offer to purchase any unimproved land which is a part of the project, if the purchase price is not less than the cost of the land to the municipality or county computed on a prorated basis and if the purchase price is applied directly or indirectly to the payment of the principal or interest on the bonds.

SECTION 2jm. 66.1103 (9) of the statutes is amended to read:

66.1103 (9) PAYMENT OF TAXES. If an industrial project acquired by a municipality or county under this section is used by a private person as a lessee, sublessee or in any capacity other than owner, that person is subject to taxation in the same amount and to the same extent as if that person were the owner of the property. Taxes shall be assessed to the private person using the real property and collected in the same manner as taxes assessed to owners of real property. When due, the taxes constitute a debt due from the private person to the taxing unit and are recoverable as provided by law, and the unpaid taxes become a lien against the property with respect to which they were assessed, superior to all other liens, except a lien under s. 292.31 (8) (i) or 292.81, and shall be placed on the tax roll when there has been a conveyance of the property in the same manner as other taxes assessed against real property.

SECTION 2k. 66.1103 (10) (b) of the statutes is amended to read:

66.1103 (10) (b) Upon the adoption of an initial resolution under this section, public notice of the adoption shall be given to the electors of the municipality or county before the issuance of the bonds described in the resolu-

tion, by publication as a class 1 notice, under ch. 985. The notice need not set forth the full contents of the resolution, but shall state the maximum amount of the bonds; the name of the eligible participant; the purpose of the bonds; the net number of jobs which the project the municipality or county would finance with the bond issue is expected to eliminate, create or maintain on the project site and elsewhere in this state which is required to be shown by the proposed eligible participant on the form submitted under sub. (4m) (a) 1.; and that the resolution was adopted under this section. A form of the public notice shall be attached to the initial resolution. Prior to adoption of the initial resolution, the open meeting notice given to members of the public under s. 19.84 shall indicate that information with respect to the job impact of the project will be available at the time of consideration of the initial resolution. No other public notice of the authorization, issuance or sale of bonds under this section is required.

SECTION 2km. 66.1103 (10) (c) of the statutes is amended to read:

66.1103 (10) (c) A copy of the initial resolution together with a statement indicating when the public notice required under par. (b) was published shall be filed with the secretary of commerce within 20 days following publication of notice. Prior to the closing of the bond issue, the secretary may require additional information from the eligible participant or the municipality or county. After the closing of the bond issue, the secretary shall be notified of the closing date, any substantive changes made to documents previously filed with the secretary and the principal amount of the financing.

SECTION 2L. 66.1103 (10) (d) of the statutes is amended to read:

66.1103 (10) (d) The governing body may issue bonds under this section without submitting the proposition to the electors of the municipality or county for approval unless within 30 days from the date of publication of notice of adoption of the initial resolution for the bonds, a petition conforming to the requirements of s. 8.40, signed by not less than 5% of the registered electors of the municipality or county, or, if there is no registration of electors in the municipality or county, by 10% of the number of electors of the municipality or county voting for the office of governor at the last general election as determined under s. 115.01 (13), is filed with the clerk of the municipality or county and as provided in s. 8.37 requesting a referendum upon the question of the issuance of the bonds. If a petition is filed, the bonds may not be issued until approved by a majority of the electors of the municipality or county voting on the referendum at a general or special election.

SECTION 2Lm. 66.1103 (10) (e) of the statutes is amended to read:

66.1103 (10) (e) Members of a governing body and officers and employees of a municipality or county are

not personally liable on bonds and are not personally liable for any act or omission related to the authorization or issuance of bonds.

SECTION 2m. 66.1103 (10) (g) of the statutes is amended to read:

66.1103 (10) (g) Bonds may not be issued unless prior to adoption of an initial resolution a document which provides a good faith estimate of attorney fees which will be paid from bond proceeds is filed with the clerk of the municipality or county and the department of commerce.

SECTION 2mm. 66.1103 (11) (a) of the statutes is amended to read:

66.1103 (11) (a) With respect to the enforcement of any construction lien or other lien under ch. 779 arising out of the construction of projects financed under this section, no deficiency judgment or judgment for costs may be entered against the municipality or county. Projects financed under this section are not public works, public improvements or public construction within the meaning of ss. 59.52 (29), 60.47, 61.55, 62.15, 779.14, 779.15 and 779.155 and contracts for the construction of the projects are not public contracts within the meaning of ss. 59.52 (29) and 66.0901 unless factors including municipal or county control over the costs, construction and operation of the project and the beneficial ownership of the project warrant the conclusion that they are public contracts.

SECTION 2n. 66.1103 (11) (b) 2. of the statutes is amended to read:

66.1103 (11) (b) 2. The governing body of a municipality or county may waive subd. 1. with respect to a particular project by adopting an ordinance or resolution containing a statement of the reasons for the waiver and a description of the project for which waiver is made and publishing it as a class 1 notice under ch. 985.

SECTION 3. 66.1104 of the statutes is created to read:

66.1104 Waiver of recovery zone facility bond limitation. (1) DEFINITIONS. In this section:

(a) "Authority" means a body created under s. 66.1201, 66.1333, or 66.1335; under subch. II of ch. 114 or subch. III of ch. 149; or under ch. 52, 231, 232, 233, 234, 235, 237, or 279.

(b) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a), and includes a commission created by contract under s. 66.0301.

(bm) "Midwestern disaster area bond" means a bond described under 26 USC 1400N (a), as modified by P.L. 110-343, title VII, subtitle A, section 702 (d) (intro.) and (1).

(c) "Recovery zone bond" means a bond described under 26 USC 1400U-3 (b) (1).

(2) WAIVER. (a) The allocation of a recovery zone bond limitation received by a city or county shall be considered waived on March 1, 2010, except with regard to any amount about which the city or county sends written

notice to the department of commerce before that date in which the city or county does one of the following:

1. States that recovery zone bonds have been issued pursuant to the city's or county's limitation allocation.

2. Identifies the amount of a proposed issuance of recovery zone bonds and the nongovernmental entity that will own or operate the project being financed, together with a letter addressed to the department of commerce from the prospective purchaser of the recovery zone bonds that states the expectation of the prospective purchaser that both an agreement will be executed before May 1, 2010, providing for the purchase of the recovery zone bonds, and that the recovery zone bonds will be issued before June 1, 2010.

(b) The allocation of a recovery zone bond limitation received by a city or county shall be considered waived on May 1, 2010, except with regard to any amount about which the city or county sends written notice to the department of commerce before that date in which the city or county states one of the following:

1. That recovery zone bonds have been issued pursuant to the city's or county's limitation allocation.

2. That an agreement has been executed by the city, county, other local governmental unit, or authority that will issue the recovery zone bonds, and a bond purchaser, providing for the purchase of recovery zone bonds.

(c) The allocation of a recovery zone bond limitation received by a city or county shall be considered waived on June 1, 2010, except with regard to any amount about which the city or county sends written notice to the department of commerce before that date in which the city or county states that recovery zone bonds have been issued pursuant to the city's or county's limitation allocation.

(d) Any allocation of a recovery zone bond limitation that is considered waived under this subsection may be reallocated by the department of commerce under s. 560.033.

(e) If a city or county that is eligible to issue a Midwestern disaster area bond waives any portion of its allocation of a recovery zone bond limitation under this subsection before January 1, 2011, the department of commerce, under s. 560.033 (4), shall increase that city's or county's allocation of Midwestern disaster area bond authority by the amount of the city's or county's waived recovery zone bond limitation allocation.

(f) With regard to a letter, or a copy of a letter, addressed to the department of commerce from a prospective purchaser of a recovery zone bond, as described in par. (a) 2., which is in the possession of the city or county, the name of any business or prospective bond purchaser named in the letter or copy of the letter is not subject to the right of inspection or copying under s. 19.35 (1) before the first day of the 3rd month beginning after the letter or copy of the letter is received by the city or county.

(3) REALLOCATION. Any authority or local governmental unit may apply for a reallocation of the recovery zone bond limitation allocation in accordance with the system established by the department of commerce under s. 560.033.

SECTION 4. 560.033 of the statutes is created to read:

560.033 Reallocation of limitation on recovery zone facility bonds. (1) REALLOCATION. The department, by rule, shall establish under 26 USC 1400U-1 (a) (3) (A) and administer a system for the reallocation of the waived allocation, waived as required under s. 66.1104 (2), of the limitation on the issuance of recovery zone facility bonds, as defined under 26 USC 1400U-3 (b) (1), among authorities, as defined in s. 66.1104 (1) (a), and local governmental units, as defined in s. 66.1104 (1) (b).

(2) AMENDMENT TO REALLOCATION. At any time, the department may promulgate rules to revise the reallocation system established under sub. (1), except that any revision under this subsection does not apply to any reallocation under which the recipient of that reallocation has adopted a resolution authorizing the issuance of a recovery zone facility bond, as defined in 26 USC 1400U-3 (b) (1).

(3) CONDITIONS. Subject to sub. (5), the department may, by rule, establish any procedure for, and place any condition upon, the granting of a reallocation under this section which the department deems to be in the best interest of the state, including, but not limited to, a requirement that a cash deposit, at a rate established by the department in the rules, be a condition for a reallocation.

(4) CONSIDERATION OF ALTERNATIVE FINANCING; REALLOCATION. Before making a reallocation under this section, the department shall consider the availability of qualified Midwestern disaster area bonds, as defined under 26 USC 1400N (a), as modified by P.L. 110-343, title VII, subtitle A, section 702 (d) (intro.) and (1), as an alternative source of financing for a project for which the issuance of recovery zone facility bonds, as defined in 26 USC 1400U-3 (b) (1), are sought, and shall ensure that sufficient unallocated bonding authority remains to comply with s. 66.1104 (2) (e).

(5) CONSIDERATION OF WAIVER; REALLOCATION. For a reallocation made under this section after March 1, 2010, but before June 1, 2010, before making the reallocation, the department shall consider the amount of recovery zone bond limitation allocation waived under s. 66.1104 (2) (a) or (b) by each city or county then seeking a reallocation under this section. The department shall reallocate from the aggregated waived allocation, as that term is used in sub. (1), an allocation of the recovery zone bond limitation to a project in a city or county that waived an allocation under s. 66.1104 (2) (a) or (b) in an amount up to the total limitation allocation waived by the city or county or equal to the limitation allocation determined by the city or county to be necessary for the project, which-

ever is less. In the event requests by cities and counties for a reallocation under this section exceed the aggregated waived allocation, the department shall prorate the available waived allocation among cities and counties in proportion to the amount waived by the cities and counties.

(5m) AVAILABILITY OF RECORDS. With regard to a letter addressed to the department from a prospective purchaser of a recovery zone bond, as described in s. 66.1104 (2) (a) 2., the name of any business or prospective bond purchaser named in the letter is not subject to the right of inspection or copying under s. 19.35 (1) before the first day of the 3rd month beginning after the letter is received by the department.

SECTION 4e. 560.034 (5) (a) of the statutes is amended to read:

560.034 (5) (a) Under sub. (2), to the city, village, town, or county which will issue the bonds to finance the project which is the subject of the estimate.

SECTION 5. Nonstatutory provisions.

(1) (a) The department of commerce shall submit in proposed form the rules required under section 560.033 (1) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 2nd month beginning after the effective date of this paragraph.

(b) Using the procedure under section 227.24 of the statutes, the department of commerce may promulgate rules required under section 560.033 (1) of the statutes, as created by this act, for the period before the effective date of the rules submitted under paragraph (a), but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.