



Legislation Text

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010824
SUBSTITUTE 3

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Substitute resolution relating to the issuance of Industrial Development Revenue Bonds (Waste Management of Wisconsin, Inc. Project).

This substitute resolution sets forth the intent of the City to issue Industrial Development Revenue Bonds in an amount not to exceed \$100,000,000 to finance costs related to the acquisition of land and the acquisition, construction and equipping of landfill sites and other waste disposal facilities within and at several other locations throughout the State of Wisconsin by Waste Management of Wisconsin, Inc.; waives the public bidding requirement for construction work on the facility; and authorizes a public hearing on the Bonds.

Whereas, The City of Milwaukee, Wisconsin (the "City") is a municipal corporation organized and existing under and pursuant to the laws of the State of Wisconsin and is authorized by Section 66.1103, Wisconsin Statutes, as amended (hereinafter sometimes referred to as the "Act"):

- a. To issue revenue bonds to finance all or any part of the costs of the construction, equipping, reequipping, acquisition, purchase, installation, reconstruction, rebuilding, rehabilitation, improving, supplementing, replacing, maintaining, repairing, enlarging, extending or remodeling of a project which qualifies under the Act and the improvement of the site therefore.
- b. To enter into a revenue agreement with an eligible participant pursuant to which the eligible participant agrees to cause said project to be constructed and to pay the City an amount of funds sufficient to provide for the prompt payment when due of the principal of and interest on said revenue bonds.
- c. To finance an industrial project which is located entirely outside the geographic limits of the municipality, but only if the revenue agreement with respect to such project also relates to another project of the same eligible participant some part of which is located within such limits; and

Whereas, Waste Management of Wisconsin, Inc., a Wisconsin corporation (the "Eligible Participant"), has been considering undertaking projects in the City and throughout the State of Wisconsin (the "State") and the Eligible Participant has represented to the City that it would be an encouragement and inducement for the Eligible Participant to proceed if the projects could be financed with revenue bonds; and

Whereas, The Eligible Participant has represented that the intended use of the projects is for the purpose of improving the Eligible Participant's solid waste collection and transfer equipment and landfill sites in the City and throughout the State and that the projects would consist of (i) the acquisition of new collection vehicles, solid waste disposal containers and related equipment, (ii) the acquisition of certain solid waste disposal sorting and processing equipment to be located at various hauling and transfer stations of the Eligible Participant, and (iii) certain landfill development costs, including vertical and horizontal landfill cell development to create additional disposal area at the Eligible Participant's current permitted landfill sites and general improvements to the landfill sites, including various upgrades to the leachate collection

system, methane gas collection system and other infrastructure improvements, and the acquisition of additional landfill property (hereinafter called the "Projects"); and

Whereas, The Eligible Participant has estimated that the cost of the Projects throughout the State would be approximately \$100,000,000; and

Whereas, It is in the public interest of the City to promote, attract, stimulate, rehabilitate and revitalize commerce, industry and manufacturing, to promote the betterment of the environment and the economy of the City and to stimulate a large flow of private investment funds into the City; and

Whereas, Section (11)(b)1. of the Act contains provisions requiring competitive bidding for certain construction contracts with regard to the construction of projects financed under the Act; and

Whereas, Section (11)(b)2. of the Act empowers the governing body of a municipality to waive the requirements of Section (11)(b)1. with respect to a particular project; and

Whereas, It is the finding and determination of this body that the Projects are qualified "projects" within the meaning of the Act and that the Eligible Participant is an "eligible participant" within the meaning of the Act; and

Whereas, It is the finding and determination of this body that the City would derive public benefits from the Projects and their operations, including by way of illustration but not limitation the following: the provision and retention of gainful employment opportunities for the citizens of the City, the stimulation of the flow of investment capital into the City with resultant beneficial effects on the economy in the City, the improvement of solid waste disposal services in the region, and the strengthening of the Eligible Participant's presence in the region; and

Whereas, It is the finding and determination of this body that the public interest will be served if the City were to encourage and induce the Eligible Participant to undertake the Projects in the City and throughout the State; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee that:

1. Subject to the conditions specified in paragraph 2, the City shall pursue and consummate a financing having the following elements:

a. The City shall issue revenue bonds pursuant to the Act at one or more times in one or more series in such aggregate principal amount not in excess of \$100,000,000 as the Eligible Participant shall request; provided, however, that the actual aggregate principal amount shall not be greater than the sum of the then estimated aggregate cost of providing the Project, plus the amount necessary to fund any reserve deemed necessary or desirable, plus the estimated financing and bond issuance costs (said bonds being hereinafter called the "Bonds").

b. The Bonds shall be limited obligations of the City payable by the City solely out of revenues derived from the Eligible Participant or otherwise provided for pursuant to the terms of a loan, lease or similar agreement (hereinafter called the "Revenue Agreement") to be entered into between the City and the Eligible Participant.

c. The Revenue Agreement shall require the Eligible Participant to acquire, lease, construct or install the Projects and to provide the City with revenues sufficient to pay when due the principal of, premium, if any, and interest on the Bonds.

d. The Revenue Agreement shall require the Eligible Participant to submit to the Department of Commerce within 12 months after the Projects are completed or 2 years after

the Bonds are issued, whichever is sooner, the net number of jobs eliminated, created or maintained on the Project sites and elsewhere in the State as a result of the Projects.

e. Any contract for construction work for the Projects shall include a clause prohibiting discrimination in employment and subcontracting.

f. The Bonds shall have such maturities, interest rates and redemption limitations as the Eligible Participant and the initial Bond purchaser(s) shall propose.

g. The Eligible Participant shall enter into one or more agreements with the City to use its documented "best efforts," as defined in such agreement(s), to use certified disadvantaged businesses in the construction, equipping, acquisition and installation of the Projects in the City and outside the City.

2. The issuance of the Bonds by the City shall be on the following conditions:

a. The Bonds shall not constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation.

b. The Bonds shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

c. The Eligible Participant shall be responsible for finding a purchaser or purchasers for all of the Bonds.

d. Prior to the issuance of the Bonds: (i) the electors of the City shall have been given the opportunity to petition for a referendum on the matter of the Bond issue as required by the Act; (ii) either no such petition shall be timely filed or such petition shall have been filed or said referendum shall have approved the Bond issue; and (iii) this body, by further resolution, shall have authorized and approved the terms of the Bonds and the Revenue Agreement.

e. The Bonds shall be issued pursuant to the Act, and the delivery of the Bonds shall be accompanied with the approving legal opinion of the law firm of Foley & Lardner or such other nationally recognized firm of bond attorneys as shall be acceptable to the City and the Eligible Participant.

f. The City shall have received, from other municipalities in which portions of the Projects to be financed with the Bonds will be located, assignments of allocations of Wisconsin's volume cap for private activity bonds in a total amount equal to the portion of the Bonds that will finance such facilities.

3. All out-of-pocket costs in connection with the issuance and sale of the Bonds shall be paid either from the proceeds of the Bonds or by the Eligible Participant.

4. The City Clerk shall cause notice of adoption of this Resolution, in substantially the form of Exhibit A, a copy of which is attached to this Common Council File, to be published once in the City's official newspaper for the publication of notices pursuant to Chapter 985 of the Wisconsin Statutes, and shall cause evidence of publication (including a copy of the notice as published) indicating the date of publication of such public notice to be filed with the Secretary of the Department of Commerce of the State of Wisconsin within 20 days following publication of such notice.

5. This Resolution is an "initial resolution" within the meaning of the Act and official action toward issuance of the Bonds for purposes of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

6. The appropriate officials of the Department of City Development are authorized to hold a public hearing on the question of the issuance of the bonds so as to fulfill the public approval requirement of Section 147(f) of the Internal Revenue Code of 1986, as amended. Notice of the public hearing shall be published as a class 1 notice in the official newspaper of the City at least 14 days prior to the scheduled date for such hearing.

7. This Resolution shall be effective immediately upon its passage and approval. Unless the Bonds shall have been issued prior thereto, the authorities and authorizations given by this Resolution shall expire on the second anniversary date of the date of adoption of this Resolution or on such later date as this body may specify by resolution adopted either before or after such date.

8. It is the finding and determination of this body that the City will not control the design, costs, construction or operation of the Projects; that no public monies will be expended for the Projects; that the City will have no beneficial ownership in the Projects; that the primary reason for requiring competitive bidding for construction of municipal projects is to protect the taxpayers against excessive expenditures of public funds and that such reason, although sound as applied to public works, is not applicable to the Projects in which no general funds or tax revenues of the City will be used or put at risk; that it would be more efficient and expedient for the accomplishment of the public purposes of the revenue bond issue if the Eligible Participant were to have complete control over the letting of contracts for construction of the Projects. Therefore, the City does waive the provisions of Section (11)(b)1. of the Act with regard to the Projects.

9. The City Clerk shall cause paragraph 8 to be published together with the public notice required by paragraph 4.

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