

**2011 DRAFTING REQUEST**

**Assembly Amendment (AA-AB508)**

Received: 02/27/2012

Received By: **fknepp**

Wanted: **As time permits**

Companion to LRB:

For: **Scott Krug (608) 266-0215**

By/Representing: **Vince**

May Contact:

Drafter: **fknepp**

Subject: **Econ. Development - bus. dev.**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Krug@legis.wi.gov**

Carbon copy (CC:) to: **fern.knepp@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

WHEFA - bonding for nonprofit facilities

---

**Instructions:**

Eliminate authorization for WHEFA to issue bonds to finance projects for nonprofits. See attached.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	fknepp 02/27/2012	kfollett 02/27/2012	phenry 02/27/2012	_____	mbarman 02/27/2012	mbarman 02/27/2012	

FE Sent For:

<END>

**2011 DRAFTING REQUEST**

**Assembly Amendment (AA-AB508)**

Received: 02/27/2012

Received By: **fknepp**

Wanted: **As time permits**

Companion to LRB:

For: **Scott Krug (608) 266-0215**

By/Representing: **Vince**

May Contact:

Drafter: **fknepp**

Subject: **Econ. Development - bus. dev.**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Krug@legis.wi.gov**

Carbon copy (CC:) to: **fern.knepp@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

WHEFA - bonding for nonprofit facilities

---

**Instructions:**

Eliminate authorization for WHEFA to issue bonds to finance projects for nonprofits. See attached.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	fknepp	1/1kf 2/27	2/27 ph	<del>ph/2/27</del>			

FE Sent For:

<END>



## 2011 ASSEMBLY BILL 508

February 1, 2012 - Introduced by Representatives KRUG, BERNIER, ENDSLEY, KERKMAN, PETRYK, STEINEKE and STRACHOTA, cosponsored by Senators OLSEN and HOLPERIN. Referred to Joint Committee on Finance.

1     **AN ACT to repeal** 231.01 (3c), 231.01 (3m) and 231.01 (5r); **to amend** 66.0621 (1)  
2           (b), 231.01 (4) (a), 231.01 (4) (b) 1., 231.01 (4) (b) 2., 231.01 (4) (b) 5., 231.01 (4)  
3           (c), 231.01 (7) (a) 1., 231.01 (7) (a) 2., 231.01 (7) (a) 4., 231.01 (7) (c), 231.02 (6)  
4           (b), 231.03 (5), 231.03 (6) (b), 231.03 (6) (g), 231.03 (7), 231.03 (8), 231.03 (11),  
5           231.03 (13), 231.03 (14), 231.03 (15), 231.03 (16), 231.03 (17), 231.03 (18),  
6           231.03 (19), 231.04, 231.05 (1), 231.06, 231.07 (1) (b), 231.07 (2) (a), 231.08 (3),  
7           231.08 (5), 231.10 (1), 231.12, 231.13 (1) (intro.), 231.13 (2), 231.16 (1), 231.16  
8           (3), 231.20 and 231.23; and **to create** 231.01 (5) (a) 7., 231.01 (5n), 231.01 (5p),  
9           231.01 (6m), 231.03 (6) (j) and 231.03 (6) (k) of the statutes; **relating to:**  
10          authorizing the Wisconsin Health and Educational Facilities Authority to issue  
11          bonds to finance projects related to nonprofit facilities.

---

### *Analysis by the Legislative Reference Bureau*

Under current law, the Wisconsin Health and Educational Facilities Authority (WHEFA) may issue bonds to finance certain projects of health, educational, or research institutions; to refinance outstanding debt of health, educational, or research institutions; and to finance a purchase of the state's right to receive any of

**ASSEMBLY BILL 508**

the payments under the Attorneys General Master Tobacco Settlement Agreement of November 23, 1998. Projects of health, educational, or research institutions that may be financed include, among others, the acquisition of a hospital, the construction or operation of an ambulatory surgery center or home health agency, and the construction, remodeling, furnishing, or equipping of a health, educational, or research facility or related structure.

~~This bill authorizes WHEFA to issue bonds to finance any project undertaken by a nonprofit institution for a nonprofit facility, or to refinance outstanding debt of a nonprofit institution. A nonprofit institution is defined in the bill as a nonprofit entity that is not a health, education, or research institution. A nonprofit facility is defined in the bill as a facility that is owned or operated by a nonprofit entity. Project activities for which WHEFA may issue bonds for a nonprofit institution include construction, acquisition, remodeling, furnishing, and equipping of nonprofit facilities, related structures, and structures or items that are useful for the operation of nonprofit facilities.~~

This bill also makes the following changes to WHEFA's bonding authority:

1. Extends the maximum bond maturity date for bonds issued by WHEFA from 30 years from the date of issue to 50 years from the date of issue.
2. Eliminates the requirement the certain refinancing projects for health institutions be certified by the Department of Health Services.
3. Changes the working capital limits that must be included in the cost of a project to be consistent with federal law.
4. Eliminates references to WHEFA's authority to issue bonds to participating child care providers which expired on May 1, 2000.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

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

1           **SECTION 1.** 66.0621 (1) (b) of the statutes is amended to read:

2           66.0621 (1) (b) "Public utility" means any revenue producing facility or  
3 enterprise owned by a municipality and operated for a public purpose as defined in  
4 s. 67.04 (1) (b) including garbage incinerators, toll bridges, swimming pools, tennis  
5 courts, parks, playgrounds, golf links, bathing beaches, bathhouses, street lighting,  
6 city halls, village halls, town halls, courthouses, jails, schools, cooperative  
7 educational service agencies, hospitals, homes for the aged or indigent, child care  
8 centers, as defined in s. 231.01 (3e), regional projects, waste collection and disposal

**ASSEMBLY BILL 508**

1 operations, sewerage systems, local professional baseball park facilities, local  
2 professional football stadium facilities, local cultural arts facilities, and any other  
3 necessary public works projects undertaken by a municipality.

4 **SECTION 2.** 231.01 (3c) of the statutes is repealed.

5 **SECTION 3.** 231.01 (3m) of the statutes is repealed.

6 **SECTION 4.** 231.01 (4) (a) of the statutes is amended to read:

7 231.01 (4) (a) "Cost" means the sum of all costs incurred by a participating  
8 health institution, participating educational institution, participating research  
9 institution, or participating ~~child care provider~~ nonprofit institution, as approved by  
10 the authority, as are reasonable and necessary to accomplish the project, exclusive  
11 of any private or federal, state, or local financial assistance received by the  
12 participating health institution, participating educational institution, participating  
13 research institution, or participating ~~child care provider~~ nonprofit institution for the  
14 payment of the project cost.

15 **SECTION 5.** 231.01 (4) (b) 1. of the statutes is amended to read:

16 231.01 (4) (b) 1. The cost incurred by or on behalf of the participating health  
17 institution, participating educational institution, participating research institution,  
18 or participating ~~child care provider~~ nonprofit institution of all necessary  
19 developmental, planning, and feasibility studies, surveys, plans, and specifications,  
20 architectural, engineering, legal, or other special services, the cost of acquisition of  
21 land and any buildings and improvements on the land, site preparation, and  
22 development including demolition or removal of existing structures, construction,  
23 reconstruction, and equipment, including machinery, fixed equipment, and personal  
24 property.

25 **SECTION 6.** 231.01 (4) (b) 2. of the statutes is amended to read:

**ASSEMBLY BILL 508****SECTION 6**

1           231.01 (4) (b) 2. The reasonable cost of financing incurred by a participating  
2 health institution, participating educational institution, participating research  
3 institution, or participating ~~child care provider~~ nonprofit institution in the course of  
4 the development of the project to the occupancy date.

5           **SECTION 7.** 231.01 (4) (b) 5. of the statutes is amended to read:

6           231.01 (4) (b) 5. Working capital not exceeding 3% of the estimated total project  
7 cost or 3% of the actual total final cost, whichever is larger the amounts permitted  
8 under 26 CFR 1.148-6 (d) (3).

9           **SECTION 8.** 231.01 (4) (c) of the statutes is amended to read:

10           231.01 (4) (c) All rents and other net revenues from the operation of the real  
11 property, improvements, or personal property on the project site by a participating  
12 health institution, participating educational institution, participating research  
13 institution, or participating ~~child care provider~~ nonprofit institution on and after the  
14 date on which the contract between a participating health institution, participating  
15 educational institution, participating research institution, or participating ~~child~~  
16 ~~care provider~~ nonprofit institution and the authority was entered into, but prior to  
17 the occupancy date, shall reduce the sum of all costs in this subsection.

18           **SECTION 9.** 231.01 (5) (a) 7. of the statutes is created to read:

19           231.01 (5) (a) 7. Any hospital, ambulatory surgical center, skilled nursing  
20 facility, community-based residential facility, assisted living facility, home health  
21 agency, hospice, rehabilitation facility, medical office or clinic, or other similar  
22 facility that is located outside of this state.

23           **SECTION 10.** 231.01 (5n) of the statutes is created to read:

**ASSEMBLY BILL 508**

1           231.01 (5n) "Nonprofit entity" means an entity that is described in section 501  
2           (c) (3) of the Internal Revenue Code and that is exempt from federal income tax under  
3           section 501 (a) of the Internal Revenue Code.

4           **SECTION 11.** 231.01 (5p) of the statutes is created to read:

5           ~~231.01 (5p) "Nonprofit facility" means a facility that is owned or operated by~~  
6           ~~a nonprofit entity.~~

7           **SECTION 12.** 231.01 (5r) of the statutes, as affected by 2011 Wisconsin Act 32,  
8           is repealed.

9           **SECTION 13.** 231.01 (6m) of the statutes is created to read:

10          231.01 (6m) "Participating nonprofit institution" means a nonprofit entity, or  
11          an affiliate of that entity, that undertakes the financing and construction or  
12          acquisition of a project or undertakes the refunding or refinancing of obligations or  
13          of a mortgage or of advances as provided in this chapter, and is not any of the  
14          following:

15           1. An entity authorized by state law to provide or operate an educational facility  
16          or an affiliate of an entity authorized by state law to provide or operate an  
17          educational facility.

18           2. An entity authorized by state law to provide or operate a health facility or  
19          an affiliate of an entity authorized by state law to provide or operate a health facility.

20           3. An entity authorized by state law to provide or operate a research facility or  
21          an affiliate of an entity authorized by state law to provide or operate a research  
22          facility.

23          **SECTION 14.** 231.01 (7) (a) 1. of the statutes is amended to read:

24          231.01 (7) (a) 1. A specific health facility, educational facility, research facility,  
25          or ~~child care center~~ nonprofit facility work or improvement to be refinanced,

**ASSEMBLY BILL 508****SECTION 14**

1 acquired, constructed, enlarged, remodeled, renovated, improved, furnished, or  
2 equipped by the authority with funds provided in whole or in part under this chapter.

3 **SECTION 15.** 231.01 (7) (a) 2. of the statutes is amended to read:

4 231.01 (7) (a) 2. One or more structures suitable for use as a ~~child care center~~,  
5 research facility, nonprofit facility, health facility, laboratory, laundry, nurses' or  
6 interns' residence or other multi-unit housing facility for staff, employees, patients  
7 or relatives of patients admitted for treatment or care in a health facility, physician's  
8 facility, administration building, research facility, maintenance, storage, or utility  
9 facility.

10 **SECTION 16.** 231.01 (7) (a) 4. of the statutes is amended to read:

11 231.01 (7) (a) 4. Any structure useful for the operation of a health facility,  
12 educational facility, research facility, or ~~child care center~~ nonprofit facility, including  
13 facilities or supporting service structures essential or convenient for the orderly  
14 conduct of the health facility, educational facility, research facility, or ~~child care~~  
15 ~~center~~ nonprofit facility.

16 **SECTION 17.** 231.01 (7) (c) of the statutes, as affected by 2011 Wisconsin Act 32,  
17 is amended to read:

18 231.01 (7) (c) "Project" may include more than one project, and it may include  
19 any combination of projects undertaken jointly by any participating health  
20 institution, participating educational institution, participating research institution,  
21 or participating ~~child care provider~~ nonprofit institution with one or more other  
22 participating health institutions, participating educational institutions,  
23 participating research institutions, or participating ~~child care providers~~ nonprofit  
24 institutions.

25 **SECTION 18.** 231.02 (6) (b) of the statutes is amended to read:

**ASSEMBLY BILL 508**

1           231.02 (6) (b) Notwithstanding any other provision of law, it is not a conflict  
2 of interest or violation of this section or of any other law for a trustee, director, officer,  
3 or employee of a participating health institution, participating educational  
4 institution, participating research institution, or participating ~~child care provider~~  
5 nonprofit institution or for a person having the required favorable reputation for  
6 skill, knowledge, and experience in state and municipal finance or for a person  
7 having the required favorable reputation for skill, knowledge, and experience in the  
8 field of health facility, educational facility, research facility, or ~~child care center~~  
9 nonprofit facility architecture to serve as a member of the authority; if in each case  
10 to which par. (a) is applicable, the trustee, director, officer, or employee of the  
11 participating health institution, participating educational institution, participating  
12 research institution, or participating ~~child care provider~~ nonprofit institution  
13 abstains from discussion, deliberation, action, and vote by the authority in specific  
14 respect to any undertaking pursuant to this chapter in which his or her participating  
15 health institution, participating educational institution, participating research  
16 institution, or participating ~~child care provider~~ nonprofit institution has an interest,  
17 or the person having the required favorable reputation for skill, knowledge, and  
18 experience in state and municipal finance abstains from discussion, deliberation,  
19 action, and vote by the authority in specific respect to any sale, purchase, or  
20 ownership of bonds of the authority in which any business of which such person is  
21 a participant, owner, officer, or employee has a past, current, or future interest, or  
22 such person having the required favorable reputation for skill, knowledge, and  
23 experience in the field of health facility, educational facility, research facility, or ~~child~~  
24 ~~care center~~ nonprofit facility architecture abstains from discussion, deliberation,  
25 action, and vote by the authority in specific respect to construction or acquisition of

**ASSEMBLY BILL 508****SECTION 18**

1 any project of the authority in which any business of which such person is a  
2 participant, owner, officer, or employee has a past, current, or future interest.

3 **SECTION 19.** 231.03 (5) of the statutes is amended to read:

4 231.03 (5) Determine the location and character of any project to be financed  
5 under this chapter, and construct, reconstruct, remodel, maintain, enlarge, alter, add  
6 to, repair, lease as lessee or lessor and regulate the same, enter into contracts for any  
7 such purpose, enter into contracts for the management and operation of a project or  
8 other health facilities, educational facilities, research facilities, or ~~child care centers~~  
9 nonprofit facilities owned by the authority, and designate a participating health  
10 institution, participating educational institution, participating research institution,  
11 or participating ~~child care provider~~ nonprofit institution as its agent to determine the  
12 location and character of a project undertaken by the participating health  
13 institution, participating educational institution, participating research institution,  
14 or participating ~~child care provider~~ nonprofit institution under this chapter and as  
15 the agent of the authority, to construct, reconstruct, remodel, maintain, manage,  
16 enlarge, alter, add to, repair, operate, lease as lessee or lessor and regulate the same,  
17 and as the agent of the authority, to enter into contracts for any such purpose,  
18 including contracts for the management and operation of such project or other health  
19 facilities, educational facilities, research facilities, or ~~child care centers~~ nonprofit  
20 facilities owned by the authority.

21 **SECTION 20.** 231.03 (6) (b) of the statutes, as affected by 2011 Wisconsin Act 32,  
22 is amended to read:

23 231.03 (6) (b) Refinance outstanding debt of any participating health  
24 institution ~~if the department of health services certifies that refinancing will result~~  
25 ~~in a reduction in the participating health institution's rates below the rates which~~

**ASSEMBLY BILL 508**

1 ~~would have otherwise prevailed, except that the authority may not refinance any~~  
2 ~~office or clinic of a person licensed under ch. 446, 447, 448, 449 or 455, or the~~  
3 ~~substantially equivalent laws or rules of another state, and except that this~~  
4 ~~certification is not required for the refinancing for a participating health institution~~  
5 ~~that operates a facility as defined under s. 49.45 (6m) (a) 3, or for a participating~~  
6 ~~health institution that is located in another state.~~

7 **SECTION 21.** 231.03 (6) (g) of the statutes is amended to read:

8 231.03 (6) (g) Finance a purchase, or make a loan, under sub. (20). Bonds  
9 issued under this paragraph shall be payable from, or secured by interests in, tobacco  
10 settlement revenues and such other property pledged under the bond resolution and,  
11 notwithstanding s. 231.08 (3), are not required to mature in ~~30~~ 50 years or less from  
12 the date of issue.

13 **SECTION 22.** 231.03 (6) (j) of the statutes is created to read:

14 231.03 (6) (j) Finance any project undertaken for a nonprofit facility by a  
15 participating nonprofit institution.

16 **SECTION 23.** 231.03 (6) (k) of the statutes is created to read:

17 231.03 (6) (k) Refinance outstanding debt of any participating nonprofit  
18 institution.

19 **SECTION 24.** 231.03 (7) of the statutes is amended to read:

20 231.03 (7) Fix and revise from time to time and charge and collect rates, rents,  
21 fees, and charges for the use of and for the services furnished or to be furnished by  
22 a project or other health facilities, educational facilities, research facilities, or ~~child~~  
23 ~~care centers~~ nonprofit facilities owned by the authority or any portion thereof,  
24 contract with any person in respect thereto and coordinate its policies and

**ASSEMBLY BILL 508****SECTION 24**

1 procedures, and cooperate with recognized health facility, educational facility,  
2 research facility, or ~~child care center~~ nonprofit facility rate setting mechanisms.

3 **SECTION 25.** 231.03 (8) of the statutes is amended to read:

4 231.03 (8) Adopt rules for the use of a project or other health facility,  
5 educational facility, research facility, or ~~child care center~~ nonprofit facility or any  
6 portion of the project or facility owned, financed, or refinanced in whole or in part by  
7 the authority, including any property used as security for a loan secured through,  
8 from, or with the assistance of the authority. The authority may designate a  
9 participating health institution, participating educational institution, participating  
10 research institution, or participating ~~child care provider~~ nonprofit institution as its  
11 agent to establish rules for the use of a project or other health facilities, educational  
12 facilities, research facilities, or ~~child care centers~~ nonprofit facilities undertaken for  
13 that participating health institution, participating educational institution,  
14 participating research institution, or participating ~~child care provider~~ nonprofit  
15 institution. The rules shall ensure that a project, health facility, educational facility,  
16 research facility, ~~child care center~~ nonprofit facility, or property may not be used  
17 primarily for sectarian instruction or study or as a place for devotional activities or  
18 religious worship.

19 **SECTION 26.** 231.03 (11) of the statutes is amended to read:

20 231.03 (11) Establish or contract with others to carry out on its behalf a health  
21 facility, educational facility, research facility, nonprofit facility, or child care center  
22 project cost estimating service, and make this service available on all projects to  
23 provide expert cost estimates and guidance to the participating health institution,  
24 participating educational institution, participating research institution, or  
25 participating ~~child care provider~~ nonprofit institution and to the authority. To

**ASSEMBLY BILL 508**

1 implement this service and, through it, to contribute to cost containment, the  
2 authority may require such reasonable reports and documents from health facility,  
3 educational facility, research facility, or ~~child care center~~ nonprofit facility projects  
4 as are required for this service and for the development of cost reports and  
5 guidelines. The authority shall appoint a technical committee on health facility,  
6 educational facility, research facility, or ~~child care center~~ nonprofit facility project  
7 costs and cost containment.

8 **SECTION 27.** 231.03 (13) of the statutes is amended to read:

9 231.03 (13) Make loans to any participating health institution, participating  
10 educational institution, participating research institution, or, ~~before May 1, 2000,~~  
11 participating ~~child care provider~~ nonprofit institution for the cost of a project in  
12 accordance with an agreement between the authority and the participating health  
13 institution, participating educational institution, participating research institution,  
14 or participating ~~child care provider~~ nonprofit institution. The authority may secure  
15 the loan by a mortgage or other security arrangement on the health facility,  
16 educational facility, research facility, or ~~child care center~~ nonprofit facility granted  
17 by the participating health institution, participating educational institution,  
18 participating research institution, or participating ~~child care provider~~ nonprofit  
19 institution to the authority. The loan may not exceed the total cost of the project as  
20 determined by the participating health institution, participating educational  
21 institution, participating research institution, or participating ~~child care provider~~  
22 nonprofit institution and approved by the authority.

23 **SECTION 28.** 231.03 (14) of the statutes is amended to read:

24 231.03 (14) Make loans to a health facility, educational facility, research  
25 facility, or, ~~before May 1, 2000,~~ ~~child care center~~ nonprofit facility for which bonds

**ASSEMBLY BILL 508****SECTION 28**

1 may be issued under sub. (6) (b) ~~or, (d) or under s. 231.03 (6) (f), 1999 stats., (i), or (k),~~  
2 to refinance the health facility's, educational facility's, research facility's, or ~~child~~  
3 ~~care center's~~ nonprofit facility's outstanding debt. The authority may secure the loan  
4 or bond by a mortgage or other security arrangement on the health facility,  
5 educational facility, research facility, or ~~child care center~~ nonprofit facility granted  
6 by the participating health institution, participating educational institution,  
7 participating research institution, or participating ~~child care provider~~ nonprofit  
8 institution to the authority.

9 **SECTION 29.** 231.03 (15) of the statutes is amended to read:

10 231.03 (15) Mortgage all or any portion of a project and other health facilities,  
11 educational facilities, research facilities, or ~~child care centers~~ nonprofit facilities and  
12 the site thereof, whether owned or thereafter acquired, for the benefit of the holders  
13 of bonds issued to finance the project, health facilities, educational facilities,  
14 research facilities, or ~~child care centers~~ nonprofit facilities or any portion thereof or  
15 issued to refund or refinance outstanding indebtedness of participating health  
16 institutions, participating educational institutions, participating research  
17 institutions, or ~~child care providers~~ participating nonprofit institutions as permitted  
18 by this chapter.

19 **SECTION 30.** 231.03 (16) of the statutes is amended to read:

20 231.03 (16) Lease to a participating health institution, participating  
21 educational institution, participating research institution, or participating ~~child~~  
22 ~~care provider~~ nonprofit institution the project being financed or other health  
23 facilities, educational facilities, research facilities, or ~~child care centers~~ nonprofit  
24 facilities conveyed to the authority in connection with such financing, upon such  
25 terms and conditions as the authority deems proper, and charge and collect rents

## ASSEMBLY BILL 508

1 therefor, and terminate any such lease upon the failure of the lessee to comply with  
2 any of the obligations thereof; and include in any such lease, if desired, provisions  
3 that the lessee thereof shall have options to renew the term of the lease for such  
4 periods and at such rent as the authority determines or to purchase all or any part  
5 of the health facilities, educational facilities, research facilities, or ~~child care centers~~  
6 nonprofit facilities or that, upon payment of all of the indebtedness incurred by the  
7 authority for the financing of such project or health facilities, educational facilities,  
8 research facilities, or ~~child care centers~~ nonprofit facilities or for refunding  
9 outstanding indebtedness of a participating health institution, participating  
10 educational institution, participating research institution, or participating ~~child~~  
11 ~~care provider~~ nonprofit institution, the authority may convey all or any part of the  
12 project or such other health facilities, educational facilities, research facilities, or  
13 ~~child care centers~~ nonprofit facilities to the lessees thereof with or without  
14 consideration.

15 SECTION 31. 231.03 (17) of the statutes is amended to read:

16 231.03 (17) Charge to and apportion among participating health institutions,  
17 participating educational institutions, participating research institutions, and  
18 participating ~~child care providers~~ nonprofit institutions its administrative costs and  
19 expenses incurred in the exercise of the powers and duties conferred by this chapter.

20 SECTION 32. 231.03 (18) of the statutes is amended to read:

21 231.03 (18) Make studies of needed health facilities, educational facilities,  
22 research facilities, and ~~child care centers~~ nonprofit facilities that could not sustain  
23 a loan were it made under this chapter and recommend remedial action to the  
24 legislature; and do the same with regard to any laws or rules that prevent health

**ASSEMBLY BILL 508****SECTION 32**

1 facilities, educational facilities, research facilities, and ~~child care centers~~ nonprofit  
2 facilities from benefiting from this chapter.

3 **SECTION 33.** 231.03 (19) of the statutes is amended to read:

4 231.03 (19) Obtain, or aid in obtaining, from any department or agency of the  
5 United States or of this state or any private company, any insurance or guaranty  
6 concerning the payment or repayment of, interest or principal, or both, or any part  
7 thereof, on any loan, lease, or obligation or any instrument evidencing or securing  
8 the same, made or entered into under the provisions of this chapter; and  
9 notwithstanding any other provisions of this chapter, to enter into any agreement,  
10 contract, or other instrument with respect to that insurance or guaranty, to accept  
11 payment in the manner and form provided therein in the event of default by a  
12 participating health institution, participating educational institution, participating  
13 research institution, or participating ~~child care provider~~ nonprofit institution, and  
14 to assign the insurance or guaranty as security for the authority's bonds.

15 **SECTION 34.** 231.04 of the statutes is amended to read:

16 **231.04 Expenses.** All expenses of the authority incurred in carrying out this  
17 chapter shall be payable solely from funds provided under the authority of this  
18 chapter, and no liability may be incurred by the authority beyond the extent to which  
19 moneys have been provided under this chapter except that, for the purposes of  
20 meeting the necessary expenses of initial organization and operation of the authority  
21 for the period commencing on June 19, 1974 and continuing until such date as the  
22 authority derives moneys from funds provided to it under the authority of this  
23 chapter, the authority may borrow such moneys as it requires to supplement the  
24 funds provided under s. 20.440. Such moneys borrowed by the authority shall  
25 subsequently be charged to and apportioned among participating health

**ASSEMBLY BILL 508**

1 institutions, participating educational institutions, participating research  
2 institutions, and participating ~~child-care providers~~ nonprofit institutions in an  
3 equitable manner, and repaid with appropriate interest over a reasonable period of  
4 time.

5 **SECTION 35.** 231.05 (1) of the statutes is amended to read:

6 231.05 (1) By means of this chapter, it is the intent of the legislature to provide  
7 assistance and alternative methods of financing to nonprofit health institutions to  
8 aid them in providing needed health services consistent with the state's health plan,  
9 ~~to nonprofit educational institutions to aid them in providing needed educational~~  
10 ~~services, to nonprofit research institutions to aid them in providing needed research~~  
11 ~~facilities, and to nonprofit child-care providers to aid them in providing needed child~~  
12 ~~care~~ other needed services and facilities in this state.

13 **SECTION 36.** 231.06 of the statutes, as affected by 2011 Wisconsin Act 32, is  
14 amended to read:

15 **231.06 Property acquisition.** The authority may acquire, directly or by and  
16 through a participating health institution, participating educational institution,  
17 participating research institution, or participating ~~child-care provider~~ nonprofit  
18 institution as its agent, by purchase or by gift or devise, such lands, structures,  
19 property, rights, rights-of-way, franchises, easements, and other interests in lands,  
20 including lands lying under water and riparian rights, as it deems necessary or  
21 convenient for the construction or operation of a project, upon such terms and at such  
22 prices as it considers reasonable and can be agreed upon between it and the owner  
23 thereof, and take title thereto in the name of the authority or in the name of a health  
24 facility, educational facility, research facility, or ~~child-care center~~ nonprofit facility  
25 as its agent.

## ASSEMBLY BILL 508

## SECTION 37

1           **SECTION 37.** 231.07 (1) (b) of the statutes is amended to read:

2           231.07 (1) (b) Convey to the participating health institution, participating  
3 educational institution, participating research institution, or participating ~~child~~  
4 ~~care provider~~ nonprofit institution the authority's interest in the project and in any  
5 other health facility, educational facility, research facility, or ~~child-care center~~  
6 nonprofit facility leased, mortgaged, or subject to a deed of trust or any other form  
7 of security arrangement to secure the bond.

8           **SECTION 38.** 231.07 (2) (a) of the statutes is amended to read:

9           231.07 (2) (a) The principal of and interest on any bond issued by the authority  
10 to finance a project or to refinance or refund outstanding indebtedness of one or more  
11 participating health institutions, participating educational institutions,  
12 participating research institutions, or participating ~~child-care providers~~ nonprofit  
13 institutions, including any refunding bonds issued to refund and refinance the bond,  
14 have been fully paid and the bonds retired or if the adequate provision has been made  
15 to pay fully and retire the bond; and

16           **SECTION 39.** 231.08 (3) of the statutes is amended to read:

17           231.08 (3) The bonds may be issued as serial bonds or as term bonds, or the  
18 authority may issue bonds of both types. The bonds shall be authorized by a bond  
19 resolution of the authority and shall bear such dates, mature at such times not  
20 exceeding ~~30~~ 50 years from their respective dates of issue, bear interest at such rates,  
21 be payable at such times, be in such denominations, be in such form, either coupon  
22 or fully registered, carry such registration and conversion privileges, be executed in  
23 such manner, be payable in lawful money of the United States at such places, and  
24 be subject to such terms of redemption as the bond resolution provides. The bonds  
25 or notes shall be executed by the manual or facsimile signatures of such officers of

**ASSEMBLY BILL 508**

1 the authority as the authority designates. Coupon bonds shall have attached thereto  
2 interest coupons bearing the facsimile signature of the treasurer of the authority or  
3 such other officer as the authority designates. The bonds or notes may be sold at  
4 public or private sale for such price and in such manner and from time to time as the  
5 authority determines. Pending preparation of the definitive bonds, the authority  
6 may issue interim receipts or certificates which shall be exchanged for the definitive  
7 bonds.

8 **SECTION 40.** 231.08 (5) of the statutes is amended to read:

9 231.08 (5) In addition to the other authorizations under this section, bonds of  
10 the authority may be secured by a pooling of leases whereby the authority may assign  
11 its rights, as lessor, and pledge rents under 2 or more leases of health facilities,  
12 educational facilities, research facilities, or ~~child care centers~~ nonprofit facilities  
13 with 2 or more participating health institutions, participating educational  
14 institutions, participating research institutions, or ~~child care providers~~  
15 participating nonprofit institutions, as lessees respectively, upon such terms as may  
16 be provided for in bond resolutions of the authority.

17 **SECTION 41.** 231.10 (1) of the statutes is amended to read:

18 231.10 (1) The state is not liable on notes or bonds of the authority and the notes  
19 and bonds are not a debt of the state. All notes and bonds of the authority shall  
20 contain on the face thereof a statement to this effect. The issuance of bonds under  
21 this chapter shall not, directly or indirectly or contingently, obligate the state or any  
22 political subdivision thereof to levy any form of taxation therefor or to make any  
23 appropriation for their payment. Nothing in this section prevents the authority from  
24 pledging its full faith and credit or the full faith and credit of a health institution,

**ASSEMBLY BILL 508****SECTION 41**

1 educational institution, research institution, or ~~child care provider~~ nonprofit  
2 institution to the payment of bonds authorized under this chapter.

3 **SECTION 42.** 231.12 of the statutes is amended to read:

4 **231.12 Studies and recommendations.** It is the intent and purpose of this  
5 chapter that the exercise by the authority of the powers granted to it shall be in all  
6 respects for the benefit of the people of this state to assist them to provide needed  
7 health facilities, educational facilities, research facilities, and ~~child care centers~~  
8 nonprofit facilities of the number, size, type, distribution, and operation that will  
9 assure admission and health care, education, research opportunities, or ~~child care~~  
10 ~~of high quality other necessary services~~ to all who need it. The authority shall  
11 identify and study all projects which are determined by health planning agencies to  
12 be needed, but which could not sustain a loan were such to be made to it under this  
13 chapter. The authority shall formulate and recommend to the legislature such  
14 amendments to this and other laws, and such other specific measures as grants, loan  
15 guarantees, interest subsidies, or other actions the state may provide which would  
16 render the construction and operation of needed health facilities, educational  
17 facilities, research facilities, and ~~child care centers~~ nonprofit facilities feasible and  
18 in the public interest. The authority also shall identify and study any laws or rules  
19 which it finds handicaps or bars a needed health facility, educational facility,  
20 research facility, or ~~child care center~~ nonprofit facility from participating in the  
21 benefits of this chapter, and recommend to the legislature such actions as will  
22 remedy such situation.

23 **SECTION 43.** 231.13 (1) (intro.) of the statutes is amended to read:

24 231.13 (1) (intro.) The authority shall collect rents for the use of, or other  
25 revenues relating to the financing of, each project. The authority shall contract with

**ASSEMBLY BILL 508**

1 a participating health institution, participating educational institution,  
2 participating research institution, or participating ~~child care provider~~ nonprofit  
3 institution for each issuance of bonds. The contract shall provide that the rents or  
4 other revenues payable by the health facility, educational facility, research facility,  
5 or ~~child care center~~ nonprofit facility shall be sufficient at all times to:

6 **SECTION 44.** 231.13 (2) of the statutes is amended to read:

7 231.13 (2) The authority shall pledge the revenues derived and to be derived  
8 from a project and other related health facilities, educational facilities, research  
9 facilities, or ~~child care centers~~ nonprofit facilities for the purposes specified in sub.  
10 (1), and additional bonds may be issued which may rank on a parity with other bonds  
11 relating to the project to the extent and on the terms and conditions provided in the  
12 bond resolution. Such pledge shall be valid and binding from the time when the  
13 pledge is made, the revenues so pledged by the authority shall immediately be  
14 subject to the lien of such pledge without any physical delivery thereof or further act  
15 and the lien of any such pledge shall be valid and binding as against all parties  
16 having claims of any kind in tort, contract, or otherwise against the authority,  
17 irrespective of whether such parties have notice thereof. Neither the bond resolution  
18 nor any financing statement, continuation statement, or other instrument by which  
19 a pledge is created or by which the authority's interest in revenues is assigned need  
20 be filed or recorded in any public records in order to perfect the lien thereof as against  
21 3rd parties, except that a copy thereof shall be filed in the records of the authority  
22 and with the department of financial institutions.

23 **SECTION 45.** 231.16 (1) of the statutes is amended to read:

24 231.16 (1) The authority may issue bonds to refund any outstanding bond of  
25 the authority or indebtedness that a participating health institution, participating

**ASSEMBLY BILL 508****SECTION 45**

1 educational institution, participating research institution, or participating child  
2 ~~care provider~~ nonprofit institution may have incurred for the construction or  
3 acquisition of a project prior to or after April 30, 1980, including the payment of any  
4 redemption premium on the outstanding bond or indebtedness and any interest  
5 accrued or to accrue to the earliest or any subsequent date of redemption, purchase,  
6 or maturity, or to pay all or any part of the cost of constructing and acquiring  
7 additions, improvements, extensions, or enlargements of a project or any portion of  
8 a project. Except for bonds to refund bonds issued under s. 231.03 (6) (g), no bonds  
9 may be issued under this section unless the authority has first entered into a new  
10 or amended agreement with a participating health institution, participating  
11 educational institution, participating research institution, or participating child  
12 ~~care provider~~ nonprofit institution to provide sufficient revenues to pay the costs and  
13 other items described in s. 231.13.

14 **SECTION 46.** 231.16 (3) of the statutes is amended to read:

15 231.16 (3) All bonds issued under this section shall be subject to this chapter  
16 in the same manner and to the same extent as other bonds issued pursuant to this  
17 chapter, except that the limitations with respect to dates ~~under s. 231.03 (6) (e) and~~  
18 ~~(f), 1999 stats., and~~ under s. 231.03 (14) do not apply to bonds issued under this  
19 section, and the requirement under s. 231.08 (3) that the bonds mature in ~~30~~ 50 years  
20 or less from their date of issue does not apply to bonds issued under this section to  
21 refund bonds issued under s. 231.03 (6) (g).

22 **SECTION 47.** 231.20 of the statutes, as affected by 2011 Wisconsin Act 32, is  
23 amended to read:

24 **231.20 Waiver of construction and bidding requirements.** In exercising  
25 its powers under s. 101.12, the department of safety and professional services or any

**ASSEMBLY BILL 508**

1 city, village, town, or county may, within its discretion for proper cause shown, waive  
2 any particular requirements relating to public buildings, structures, grounds,  
3 works, and improvements imposed by law upon projects under this chapter; the  
4 requirements of s. 101.13 may not be waived, however. If, however, the prospective  
5 lessee so requests in writing, the authority shall, through the participating health  
6 institution, participating educational institution, participating research institution,  
7 or participating ~~child care provider~~ nonprofit institution as its agent, call for  
8 construction bids in such manner as is determined by the authority with the approval  
9 of the lessee.

10 **SECTION 48.** 231.23 of the statutes is amended to read:

11 **231.23 Nonprofit institutions.** It is intended that all nonprofit health  
12 ~~institutions, educational institutions, research institutions, and child care providers~~  
13 entities in this state be enabled to benefit from and participate in this chapter. To  
14 this end, all nonprofit ~~health institutions, educational institutions, research~~  
15 ~~institutions, and child care providers~~ entities operating, or authorized to be  
16 operated, under any law of this state may undertake projects and utilize the capital  
17 financing sources and methods of repayment provided by this chapter, the provisions  
18 of any other laws to the contrary notwithstanding.

19 (END)

66.0304(1)(f) of the statutes is amended to read:

“Political subdivision” means any city, village, town, or county in this state or any city, village, town, county, district, authority, agency, commission, or other similar governmental entity in another state or office, department, authority or agency of any such other state or territory of the United States.

7542319\_1

Vince

## MEMORANDUM

TO: Liz Stephens  
Public Finance Authority

FROM: Mike Wittenwyler  
Godfrey & Kahn, S.C.

DATE: September 14, 2011

SUBJECT: 2011 Wisconsin Act 32: "Political Subdivision" Definition

With the passage of 2009 Wisconsin Act 205 and the creation of the Public Finance Authority (the "PFA"), a definition of "political subdivision" was added to state law as part of the new section on conduit revenue bonds.

"Political subdivision" means any city, village, town, or county in this state or any city, village, town, county, district, authority, agency, commission, or other similar governmental entity in another state.

Wis. Stat. § 66.0304(1)(f) (2009-10 version).

This original version of the definition, however, has proved to be problematic for the PFA. As described in greater detail in the attached letters, the original definition of "political subdivision" is viewed by bond counsel as limited to units of local government and does *not* include a state and various agencies of the state. As a result, certain bond financings by the PFA involving state units of government have been delayed or rejected.

In Ohio, for example, three projects for which the PFA otherwise would have been the issuing authority will not receive financing as a direct result of the original "political subdivision" definition. Because of the lack of clarity in the Wisconsin statutes on whether state-level units of government can satisfy the conduit revenue bond requirements that the PFA must follow, bond counsel has determined that the PFA is not authorized to issue the bonds in Ohio. And, until the definition of "political subdivision" is modified, the PFA will be unable to issue bonds in connection with these three projects.

More recently, in Vermont, a project with the PFA as the issuing authority was delayed because of the inability to use a consolidated state approval mechanism. Instead, a multi-site, multi-community project was subject to multiple approvals and increased the transaction cost – all as a direct result of the current, limited statutory definition of "political subdivision."

To remedy this limitation and avoid these problems, an updated version of the definition of “political subdivision” was approved by the Joint Committee on Finance (“Joint Finance”):

Modify the definition of political subdivision to include “or office, department, authority or agency of any such other state or territory of the United States”;

Joint Finance Motion #518 (passed 12-4 on June 3, 2011).

Despite this clear and direct language in Motion #518, Assembly Substitute Amendment 1 that was drafted to include all of Joint Finance’s motions contained inconsistent language and a revised definition of “political subdivision” that was *not* identical to the language approved by Joint Finance:

“Political subdivision” means any city, village, town, or county in this state or any city, village, town, county, district, office, department, authority, agency, commission, or other similar governmental entity in another state or territory of the United States.”

Section 1720f, Assembly Substitute Amendment 1 to 2011 Assembly Bill 40.

This erroneous statutory language was then included as part of 2011 Wisconsin Act 32.

While there was likely no intention in the preparation of Assembly Substitute Amendment 1 to alter the meaning of the definition as adopted by Joint Finance, the difference between the two versions quoted above, is substantive and significant.

- The Joint Finance version of the definition refers to offices, departments and agencies “*of*” other states and territories, meaning that *state-level* units of government – for example, a state housing authority or a Governor’s or Attorney General’s office – would be included within the definition.
- Under the Assembly Substitute Amendment 1 version of the definition, state-level offices, departments and agencies would *not* be considered “political subdivisions.” By changing the order of the words (putting “*office*” and “*department*” before “*or other similar governmental entity*”) and by using the word “in” rather than “of” to refer to other states or territories, the definition encompasses *only local government units* (i.e., cities, villages, towns etc.) and offices and departments that are “similar to” such local governmental units. As a result, the revised definition still excludes state-level government units.

In sum, the drafting error that occurred between Joint Finance Motion #518 and preparation of Assembly Substitute Amendment 1 changed the meaning of the definition and this change has very real consequences for the PFA. Accordingly, a definition of “political subdivision” should be adopted that reflects what was originally passed by Joint Finance:

“Political subdivision” means any city, village, town, or county in this state or any city, village, town, county, district, authority, agency, commission, or other similar governmental entity in another state or office, department, authority or agency of any such other state or territory of the United States.

Please let us know if you have further questions or need any additional information on this matter.



ORRICK, HERRINGTON & SUTCLIFFE LLP  
THE ORRICK BUILDING  
405 HOWARD STREET  
SAN FRANCISCO, CALIFORNIA 94105-2669  
tel +1-415-773-5700  
fax +1-415-773-5759  
WWW.ORRICK.COM

July 1, 2011

Roger L. Davis  
(415) 773-5758  
rogerdavis@orrick.com

Liz Stephens  
Program Manager  
Public Finance Authority  
10 East Doty Street  
Suite 1003  
Madison, WI 53703  
(email: lstephens@pfauthority.org)

Re: Wisconsin Statutes Section 66.0304(1)(f)

Dear Liz:

You have asked for our position on the effect of proposed amendments to Wisconsin Statute section 66.0304(1)(f), presumably from our perspective as consistently the number one ranked public finance bond counsel firm in the country, with diverse experience in many states, and specific familiarity with Public Finance Authority (PFA) and its governing statute, section 66.0304, that will, as bond counsel to PFA, have to render unqualified legal opinions about the meaning and application of that statute to particular PFA financings.

First, a bit of background. As a precondition to tax-exemption of interest on most of the types of bonds issued by PFA, federal tax law requires so-called TEFRA approval of the bonds by a "governmental unit" having jurisdiction over the area in which the facility to be financed with proceeds of the bonds is to be located. A similar, but not precisely the same, requirement exists in section 66.0304(11)(a), which requires, as a precondition to issuance of bonds by the PFA, approval of the financing by a "political subdivision" within whose boundaries the project to be financed is located.

The problem that the proposed amendment was aimed to correct is the difference between "governmental unit" under the federal tax law requirement, which includes a state and various agencies of the state, and "political subdivision" in the PFA Act which is limited to units of local government. So, the proposed change was to add to the end of the definition of "political subdivision," as additional categories, "or office, department, authority or agency of any such other state or territory of the United States," to make clear that, in addition to the types of local government entities identified in 66.0304(1)(f), being "any city, village, town, county, district, authority, agency, commission or other similar governmental entity in another state" (emphasis added), state governmental entities are also included.



ORRICK

Liz Stephens  
(email: lstephens@pfauthority.org)  
July 1, 2011  
Page 2

However, the language included in 2011 Act 32 instead amends 66.0304(1)(f) to read, in relevant part, “any city, village, town, county, district, office, department, or other similar governmental entity in another state or territory of the United States,” (underlines indicating the added language) – that is, simply adding “office, department” in the list of types of entities that are included in the definition with other “similar governmental entities.” Because what is similar about the entities in the list is that, to the extent they can be identified as state or local entities, they are all local, these changes did not accomplish the purpose of adding state governmental entities to the types of entities that can approve PFA bond financings.

The reasons why the addition of state governmental entities is important are that some PFA financings may involve multiple projects in multiple local governmental jurisdictions, or are otherwise more appropriately approved by a state agency than a local one, or the law in a particular state has granted TEFRA approval authority to a state department or agency, or there is no local unit of government covering the area in which the project is located (for example, if the project is located on Indian tribal lands, federal trust or preservation lands or in some U. S. territories).

Accordingly, we recommend that the language be revised as originally proposed or that 66.0304(11)(a) otherwise be changed to permit “departments, offices, authorities or agencies of a state or territory” to approve PFA financings as an alternative to “political subdivisions.” In the absence of these changes, it will not be possible for our firm or other bond counsel to render the required opinion on bonds issued by PFA which are based on approval by a state unit of government instead of a local unit of government under the current 2011 Act 32 amendments.

Please let me know if you have any questions.

Sincerely,

Roger L. Davis



PECK, SHAFFER & WILLIAMS LLP  
ATTORNEYS AT LAW  
201 EAST FIFTH STREET, SUITE 900  
CINCINNATI, OHIO 45202

TEL 513 621 3394  
800 927 2663  
FAX 513 621 3813  
WWW.PECKSHAFFER.COM

Bradley N. Ruwe  
Attorney  
Ph: 513.639.9237  
Fx: 513.621.3813  
E-Mail: [bruwe@peckshaffer.com](mailto:bruwe@peckshaffer.com)

July 6, 2011

VIA ELECTRONIC MAIL

Liz Stephens  
Program Manager  
Public Finance Authority  
10 East Doty Street  
Suite 1003  
Madison, WI 53703  
E-Mail: [lstephens@pfauthority.org](mailto:lstephens@pfauthority.org)

Re: 2011 Wisconsin Act 32, Motion #518, § 66.0304(1)(f), Wisconsin Statutes

Dear Liz:

This correspondence is being provided in response to your request to provide formal comment in connection with the adoption of the amendment to § 66.0304(1)(f), Wisconsin Statutes, pursuant to 2011 Wisconsin Act 32, as such amendment may affect future public financing transactions with the Public Finance Authority (the "P.F.A."). As you know, Peck, Shaffer & Williams LLP specializes in public finance transactions in the Midwest and around the country. Peck, Shaffer & Williams LLP was the number one ranked bond counsel firm in the State of Ohio and the Commonwealth of Kentucky in 2010, and consistently ranks among the top bond counsel firms in the country by number of issues and dollar volume. Accordingly, Peck, Shaffer & Williams LLP is uniquely qualified to comment on provisions such as § 66.0304(1)(f), Wisconsin Statutes, as the amendment to such provision will affect future public finance transactions under certain circumstances.

Pursuant to § 147(f) of the Internal Revenue Code of 1986, as amended, and accompanying Treasury Regulations (the "Code"), each issue of tax-exempt private activity bonds must receive "issuer" and "host" approval. In circumstances where the P.F.A. serves as the conduit issuer for a particular issue of tax-exempt private activity bonds and the project being financed is not located within the immediate vicinity of the P.F.A. (generally speaking), it becomes necessary to obtain "host" approval separate and apart from "issuer" approval. Typically, both "issuer" and "host" approvals are obtained by receiving the approval from the respective "applicable elected representatives" (as provided for in the Code).

Page 2

Prior to the recent amendment of § 66.0304(1)(f), Wisconsin Statutes, it was clear that extraterritorial "host" approval (or extraterritorial local approval) could be obtained from any "city, village, town, county, district, authority, agency, commission or other similar governmental entity in another state..." However, this language (that is, the language existing prior to the adoption of 2011 Wisconsin Act 32), was lacking in terms of explicit authority permitting another state or commonwealth to provide "host" approval. Motion #518 was an attempt to clarify this lack of explicit authority. Motion #518 provided clear state law authority that a state or commonwealth could provide the necessary "host" approval in circumstances where such approval would be necessary or appropriate. Unfortunately, the revisions to Motion #518 by the Legislative Reference Bureau and § 66.0304(1)(f), Wisconsin Statutes, as it currently exists, do not provide the requisite clarity to § 66.0304(1)(f), Wisconsin Statutes, necessary for Peck, Shaffer & Williams LLP to provide an unqualified bond counsel opinion, as such relates to the ability of a state or commonwealth to provide extraterritorial "host" approval.

In the event that § 66.0304(1)(f), Wisconsin Statutes, is revised in a manner consistent with Motion #518, pursuant to legislation providing for technical corrections or otherwise, then the lack of explicit authority in circumstances where it is necessary or appropriate for a state or commonwealth to provide "host" approval would be clarified, and Peck, Shaffer & Williams LLP would no longer be prevented from issuing an unqualified bond counsel opinion based solely on the lack of explicit authority within § 66.0304(1)(f), Wisconsin Statutes, as such relates to the ability of a state or commonwealth to provide extraterritorial "host" approval.

I hope this correspondence has been helpful. Please let me know if you would like to discuss this issue in greater detail or if we can be of further assistance in this matter.

Very truly yours,

PECK, SHAFFER & WILLIAMS LLP

/s/ Bradley N. Ruwe

cc: David H. Williams, Esq. (via e-mail)



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT,**  
**TO 2011 ASSEMBLY BILL 508**

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 10: delete lines 10 and 11 and substitute "miscellaneous  
3 changes for bonds issued by the Wisconsin Health and Education<sup>al</sup> Facilities  
4 Authority." (e)

5 2. Page 2, line 1: before that line insert:

6 "SECTION 1. 66.0304 (1) (f) of the statutes, as affected by 2011 Wisconsin Act 32,  
7 is amended to read:

8 66.0304 (1) (f) "Political subdivision" means any city, village, town, or county  
9 in this state or any city, village, town, county, district, ~~office, department,~~ authority,  
10 agency, commission, or other similar governmental entity in another state or office,  
11 department, authority, or agency of any such other state or territory of the United

12 States." (a) fix no (b) & fix quote

- 1           **3.** Page 2, line 1: delete “**SECTION 1**” and substitute “**SECTION 1m**”.
- 2           **4.** Page 3, line 8: after “educational institution,” insert “or”.
- 3           **5.** Page 3, line 9: delete that line and substitute “institution,~~or participating~~  
4 ~~child care provider~~, as approved by”.
- 5           **6.** Page 3, line 12: after “educational institution,” insert “or”.
- 6           **7.** Page 3, line 13: delete that line and substitute “research institution,~~or~~  
7 ~~participating child care provider~~ for the”.
- 8           **8.** Page 3, line 17: after “educational institution,” insert “or”.
- 9           **9.** Page 3, line 17: delete “research institution,” and substitute “research  
10 institution,”.
- 11          **10.** Page 3, line 18: delete that line and substitute “~~or participating child care~~  
12 ~~provider~~ of all necessary”.
- 13          **11.** Page 4, line 2: after “educational institution,” insert “or”.
- 14          **12.** Page 4, line 3: delete that line and substitute “institution,~~or participating~~  
15 ~~child care provider~~ in the course of”.
- 16          **13.** Page 4, line 12: after “educational institution,” insert “or”.
- 17          **14.** Page 4, line 13: delete that line and substitute “institution,~~or~~  
18 ~~participating child care provider~~ on and after the”.
- 19          **15.** Page 4, line 15: delete that line and substitute “educational institution,  
20 or participating research institution,~~or participating child~~”.
- 21          **16.** Page 4, line 16: delete “nonprofit institution”.
- 22          **17.** Page 4, line 23: delete that line.

1 **18.** Page 5, line 1: delete lines 1 to 22.

2 **19.** Page 5, line 24: after "educational facility," insert "or".

3 **20.** Page 5, line 24: delete "research facility," and substitute "research  
4 facility,".

5 **21.** Page 5, line 25: delete "or child" and substitute "~~or child~~".

6 **22.** Page 5, line 25: delete "nonprofit facility".

7 **23.** Page 6, line 5: delete "nonprofit facility".

8 **24.** Page 6, line 12: delete that line and substitute "educational facility, or  
9 research facility, ~~or child care center~~, including".

10 **25.** Page 6, line 14: delete that line and substitute "conduct of the health  
11 facility, educational facility, or research facility, ~~or child care~~".

12 **26.** Page 6, line 15: delete "nonprofit facility".

13 **27.** Page 6, line 20: after "educational institution," insert "or".

14 **28.** Page 6, line 20: delete "research facility," and substitute "research  
15 institution,". *institution*

16 **29.** Page 6, line 21: delete that line and substitute "~~or participating child care~~  
17 ~~provider with one or more other~~".

18 **30.** Page 6, line 23: delete the material beginning with "participating  
19 research" and ending with "institutions" on ~~page 6,~~ line 24 and substitute: *delete previous period*

20 *make up no pt* "or participating research institutions, ~~or participating child care providers~~".

21 **31.** Page 7, line 1: delete lines 1 to 25 and substitute:

1           “231.02 (6) (b) Notwithstanding any other provision of law, it is not a conflict  
2 of interest or violation of this section or of any other law for a trustee, director, officer,  
3 or employee of a participating health institution, participating educational  
4 institution, or participating research institution, ~~or participating child care provider~~  
5 or for a person having the required favorable reputation for skill, knowledge, and  
6 experience in state and municipal finance or for a person having the required  
7 favorable reputation for skill, knowledge, and experience in the field of health  
8 facility, educational facility, or research facility, ~~or child care center~~ architecture to  
9 serve as a member of the authority; if in each case to which par. (a) is applicable, the  
10 trustee, director, officer, or employee of the participating health institution,  
11 participating educational institution, or participating research institution, ~~or~~  
12 ~~participating child care provider~~ abstains from discussion, deliberation, action, and  
13 vote by the authority in specific respect to any undertaking pursuant to this chapter  
14 in which his or her participating health institution, participating educational  
15 institution, or participating research institution, ~~or participating child care provider~~  
16 has an interest, or the person having the required favorable reputation for skill,  
17 knowledge, and experience in state and municipal finance abstains from discussion,  
18 deliberation, action, and vote by the authority in specific respect to any sale,  
19 purchase, or ownership of bonds of the authority in which any business of which such  
20 person is a participant, owner, officer, or employee has a past, current, or future  
21 interest, or such person having the required favorable reputation for skill,  
22 knowledge, and experience in the field of health facility, educational facility, or  
23 research facility, ~~or child care center~~ architecture abstains from discussion,

1 deliberation, action, and vote by the authority in specific respect to construction or  
2 acquisition of”.

History: 1973 c. 304; 1975 c. 224; 1977 c. 29; 1979 c. 221; 1983 a. 192; 1987 a. 27, 403; 1991 a. 39, 316; 1993 a. 124; 2009 a. 2.

3 **32.** Page 8, line 4: delete lines 4 to 20 and substitute:

4 “231.03 (5) Determine the location and character of any project to be financed  
5 under this chapter, and construct, reconstruct, remodel, maintain, enlarge, alter, add  
6 to, repair, lease as lessee or lessor and regulate the same, enter into contracts for any  
7 such purpose, enter into contracts for the management and operation of a project or  
8 other health facilities, educational facilities, or research facilities, ~~or child care~~  
9 ~~centers~~ owned by the authority, and designate a participating health institution,  
10 participating educational institution, or participating research institution, ~~or~~  
11 ~~participating child care provider~~ as its agent to determine the location and character  
12 of a project undertaken by the participating health institution, participating  
13 educational institution, or participating research institution, ~~or participating child~~  
14 ~~care provider~~ under this chapter and as the agent of the authority, to construct,  
15 reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease  
16 as lessee or lessor and regulate the same, and as the agent of the authority, to enter  
17 into contracts for any such purpose, including contracts for the management and  
18 operation of such project or other health facilities, educational facilities, or research  
19 facilities, ~~or child care centers~~ owned by the authority. ”

History: 1973 c. 304; 1975 c. 189; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 221; 1981 c. 20, 298; 1983 a. 27; 1985 a. 29 ss. 2112 to 2115, 3202 (24); 1987 a. 27, 69; 1989 a. 303; 1993 a. 124; 1995 a. 27 s. 9126 (19); 1995 a. 332; 1999 a. 20; 2001 a. 16, 38, 105, 109; 2007 a. 20 s. 9121 (6) (a); 2009 a. 2; 2011 a. 32.

20 **33.** Page 9, line 13: delete lines 13 to 18.

21 **34.** Page 9, line 22: <sup>after</sup> delete the material beginning with “educational” and  
22 ending with “child” on page 9, line 22 and substitute “educational facilities, or  
23 research facilities, or child”.

*Change component*

*Facilities, insert "or"*

*#. Page 9, line 22: delete "facilities, or" and substitute "facilities or".*

1           **35.** Page 9, line 23: delete "nonprofit facilities".

2           **36.** Page 10, line 2: delete that line and substitute "or research facility, or child  
3 ~~care center~~ rate setting mechanisms." (circled)

4           **37.** Page 10, line 4: delete lines 4 to 18 and substitute:

5           "231.03 (8) Adopt rules for the use of a project or other health facility,  
6 educational facility, or research facility, ~~or child care center~~ or any portion of the  
7 project or facility owned, financed, or refinanced in whole or in part by the authority,  
8 including any property used as security for a loan secured through, from, or with the  
9 assistance of the authority. The authority may designate a participating health  
10 institution, participating educational institution, or participating research  
11 institution, ~~or participating child care provider~~ as its agent to establish rules for the  
12 use of a project or other health facilities, educational facilities, or research facilities,  
13 ~~or child care centers~~ undertaken for that participating health institution,  
14 participating educational institution, or participating research institution, ~~or~~  
15 ~~participating child care provider~~. The rules shall ensure that a project, health  
16 facility, educational facility, research facility, ~~child care center~~, or property may not  
17 be used primarily for sectarian instruction or study or as a place for devotional  
18 activities or religious worship."

History: 1973 c. 304; 1975 c. 189; 1977 c. 19; 1977 c. 196 s. 131; 1979 c. 221; 1981 c. 20, 298; 1983 a. 27; 1985 a. 29 ss. 2112 to 2115, 3202 (24); 1987 a. 27, 69; 1989 a. 303; 1993 a. 124; 1995 a. 27 s. 9126 (19); 1995 a. 332; 1999 a. 120; 2001 a. 16, 38, 105, 109; 2007 a. 20 s. 9121 (6) (a); 2009 a. 2; 2011 a. 32.

19           **38.** Page 10, line 20: delete the material beginning with that line and ending  
20 with "containment." on page 11, line 7 and substitute:

21           " 231.03 (11) Establish or contract with others to carry out on its behalf a health  
22 facility, educational facility, or research facility, ~~or child care center~~ project cost  
23 estimating service, and make this service available on all projects to provide expert

1 cost estimates and guidance to the participating health institution, participating  
 2 educational institution, or participating research institution, ~~or participating child~~  
 3 ~~care provider~~ and to the authority. To implement this service and, through it, to  
 4 contribute to cost containment, the authority may require such reasonable reports  
 5 and documents from health facility, educational facility, or research facility, ~~or child~~  
 6 ~~care center~~ projects as are required for this service and for the development of cost  
 7 reports and guidelines. The authority shall appoint a technical committee on health  
 8 facility, educational facility, or research facility, ~~or child care center~~ project costs and  
 9 cost containment.”

History: 1973 c. 304; 1975 c. 189; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 221; 1981 c. 20, 298; 1983 a. 27; 1985 a. 29 ss. 2112 to 2115, 3202 (24); 1987 a. 27, 69; 1989 a. 303; 1993 a. 124; 1995 a. 27 s. 9126 (19); 1995 a. 332; 1999 a. 120; 2001 a. 16, 38, 105, 109; 2007 a. 20 s. 9121 (6) (a); 2009 a. 2; 2011 a. 32.

**39.** Page 11, line 10: delete lines 9 to 22 and substitute:

11 “231.03 (13) Make loans to any participating health institution, participating  
 12 educational institution, or participating research institution, ~~or, before May 1, 2000,~~  
 13 ~~participating child care provider~~ for the cost of a project in accordance with an  
 14 agreement between the authority and the participating health institution,  
 15 participating educational institution, or participating research institution, ~~or~~  
 16 ~~participating child care provider~~. The authority may secure the loan by a mortgage  
 17 or other security arrangement on the health facility, educational facility, or research  
 18 facility, ~~or child care center~~ granted by the participating health institution,  
 19 participating educational institution, or participating research institution, ~~or~~  
 20 ~~participating child care provider~~ to the authority. The loan may not exceed the total  
 21 cost of the project as determined by the participating health institution,  
 22 participating educational institution, or participating research institution, ~~or~~  
 23 ~~participating child care provider~~ and approved by the authority. .

History: 1973 c. 304; 1975 c. 189; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 221; 1981 c. 20, 298; 1983 a. 27; 1985 a. 29 ss. 2112 to 2115, 3202 (24); 1987 a. 27, 69; 1989 a. 303; 1993 a. 124; 1995 a. 27 s. 9126 (19); 1995 a. 332; 1999 a. 120; 2001 a. 16, 38, 105, 109; 2007 a. 20 s. 9121 (6) (a); 2009 a. 2; 2011 a. 32.

1           **40.** Page 11, line 24: delete the material beginning with that line and ending  
2 with "authority." on page 12, line 8 and substitute:

3           "231.03 (14) Make loans to a health facility, educational facility, or research  
4 facility, ~~or, before May 1, 2000, child care center~~ for which bonds may be issued under  
5 sub. (6) (b) ~~or, (d), or under s. 231.03 (6) (f), 1999 stats. (i),~~ to refinance the health  
6 facility's, educational facility's, or research facility's, ~~or child care center's~~  
7 outstanding debt. The authority may secure the loan or bond by a mortgage or other  
8 security arrangement on the health facility, educational facility, or research facility,  
9 ~~or child care center~~ granted by the participating health institution, participating  
10 educational institution, or participating research institution, ~~or participating child~~  
11 ~~care provider~~ to the authority."

History: 1973 c. 304; 1975 c. 189; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 221; 1981 c. 20, 298; 1983 a. 27; 1985 a. 29 ss. 2112 to 2115, 3202 (24); 1987 a. 27, 69; 1989 a. 303; 1993 a. 124; 1995 a. 27 s. 9126 (19); 1995 a. 332; 1999 a. 120; 2001 a. 16, 38, 105, 109; 2007 a. 20 s. 9121 (6) (a); 2009 a. 2; 2011 a. 32.

12           **41.** Page 12, line 10: delete lines 10 to 18 and substitute:

13           "231.03 (15) Mortgage all or any portion of a project and other health facilities,  
14 educational facilities, or research facilities, ~~or child care centers~~ and the site thereof,  
15 whether owned or thereafter acquired, for the benefit of the holders of bonds issued  
16 to finance the project, health facilities, educational facilities, or research facilities,  
17 ~~or child care centers~~ or any portion thereof or issued to refund or refinance  
18 outstanding indebtedness of participating health institutions, ~~educational~~  
19 institutions, or research institutions, ~~or child care providers~~ as permitted by this  
20 chapter."

History: 1973 c. 304; 1975 c. 189; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 221; 1981 c. 20, 298; 1983 a. 27; 1985 a. 29 ss. 2112 to 2115, 3202 (24); 1987 a. 27, 69; 1989 a. 303; 1993 a. 124; 1995 a. 27 s. 9126 (19); 1995 a. 332; 1999 a. 120; 2001 a. 16, 38, 105, 109; 2007 a. 20 s. 9121 (6) (a); 2009 a. 2; 2011 a. 32.

21           **42.** Page 12, line 20: delete the material beginning with that line and ending  
22 with "consideration." on page 13, line 14 and substitute:

1            231.03 (16) Lease to a participating health institution, participating  
 2 educational institution, or participating research institution, ~~or participating child~~  
 3 ~~care provider~~ the project being financed or other health facilities, educational  
 4 facilities, or research facilities, ~~or child care centers~~ conveyed to the authority in  
 5 connection with such financing, upon such terms and conditions as the authority  
 6 deems proper, and charge and collect rents therefor, and terminate any such lease  
 7 upon the failure of the lessee to comply with any of the obligations thereof; and  
 8 include in any such lease, if desired, provisions that the lessee thereof shall have  
 9 options to renew the term of the lease for such periods and at such rent as the  
 10 authority determines or to purchase all or any part of the health facilities,  
 11 educational facilities, or research facilities, ~~or child care centers~~ or that, upon  
 12 payment of all of the indebtedness incurred by the authority for the financing of such  
 13 project or health facilities, educational facilities, or research facilities, ~~or child care~~  
 14 ~~centers~~ or for refunding outstanding indebtedness of a participating health  
 15 institution, participating educational institution, or participating research  
 16 institution, ~~or participating child care provider~~, the authority may convey all or any  
 17 part of the project or such other health facilities, educational facilities, or research  
 18 facilities, ~~or child care centers~~ to the lessees thereof with or without consideration. <sup>fix</sup>

**History:** 1973 c. 304; 1975 c. 189; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 221; 1981 c. 20, 298; 1983 a. 27; 1985 a. 29 s. 2112 to 2115, 3202 (24); 1987 a. 27, 69; 1989 a. 303; 1993 a. 124; 1995 a. 27 s. 9126 (19); 1995 a. 332; 1999 a. 120; 2001 a. 16, 38, 105, 109; 2007 a. 20 s. 9121 (6) (a); 2009 a. 2; 2011 a. 32.

19            **43.** Page 13, line 17: after "educational institution," insert "and".

20            **44.** Page 13, line 17: delete "institutions, and" and substitute "institutions,  
 21 and".

22            **45.** Page 13, line 18: delete "participating child care providers nonprofit  
 23 institutions facilities" and substitute "participating child care providers".

1  
2

46. Page 13, line 22: delete that line and substitute "and research facilities, ~~and child care centers~~ that could not sustain"

3 47. Page 14, line 1: delete that line and substitute "facilities, educational facilities, and research facilities, ~~and child care centers~~".

5 48. Page 14, line 2: delete "facilities".

6 49. Page 14, line 12: after "educational institution," insert "or".

7 50. Page 14, line 13: delete that line and substitute "research institution, ~~or participating child care provider, and~~".

9 51. Page 15, line 1: after "educational institutions," insert "and".

10 11 52. Page 15, line 2: delete that line and substitute "institutions, ~~and participating child care provider in an~~".

12 53. Page 15, line 6: delete lines 6 to 12 and substitute:

13 "231.05 (1) By means of this chapter, it is the intent of the legislature to provide  
14 assistance and alternative methods of financing to nonprofit health institutions to  
15 aid them in providing needed health services consistent with the state's health plan,  
16 to nonprofit educational institutions to aid them in providing needed educational  
17 services, and to nonprofit research institutions to aid them in providing needed  
18 research facilities, ~~and to nonprofit child care providers to aid them in providing~~  
19 ~~needed child care services.~~"

No change here

History: 1973 c. 304; 1979 c. 221; 1981 c. 20, 298; 1983 a. 27; 1987 a. 27; 1993 a. 124; 2009 a. 2.

20 54. Page 15, line 17: delete that line and substitute "or participating research  
21 institution, ~~or participating child care provider~~".

22 55. Page 15, line 18: delete "institution".

1           ✓  
2           **56.** Page 15, line 24: delete that line and substitute “facility, educational  
3           facility, or research facility, ~~or child care center~~”.

3           ✓  
4           **57.** Page 16, line 2: delete lines 2 to 7 and substitute:  
5           “231.07 (1) (b) Convey to the participating health institution, participating  
6           educational institution, or participating research institution, ~~or participating child~~  
7           ~~care provider~~ the authority’s interest in the project and in any other health facility,  
8           educational facility, or research facility, ~~or child care center~~ leased, mortgaged, or  
9           subject to a deed of trust or any other form of security arrangement to secure the  
10          bond. (A) fix

History: 1973 c. 304; 1977 c. 29; 1979 c. 221; 1987 a. 27; 1993 a. 124; 2009 a. 2.

10          ✓  
11          **58.** Page 16, line 12: delete the material beginning with that line and ending  
12          with “institutions,” on page 16, line 13 and substitute “or participating research  
13          institutions, ~~or participating child care providers,~~”.

13          ✓  
14          **59.** Page 17, line 12: delete lines 12 to 15 and substitute:  
15          “educational facilities, ~~or~~ research facilities, ~~or~~ child care centers with 2 or more  
16          health institutions, educational institutions, or research institutions, ~~or~~ child care  
17          providers, as lessees respectively, upon such terms as may be provided for in bond  
18          resolutions of the authority.” (A) fix no (B)

History: 1973 c. 304; 1977 c. 317; 1987 a. 27; 1993 a. 124; 1999 a. 120; 2009 a. 2; 2011 a. 32.

18          **60.** Page 18, line 1: delete that line and substitute “educational institution,  
19          or research institution, ~~or child care provider~~”.

20          ✓  
21          **61.** Page 18, line 2: delete “institution”.

21          **62.** Page 18, line 4: delete lines 4 to 22 and substitute:  
22          No (A) (B)  
23          “231.12 **Studies and recommendations.** It is the intent and purpose of this  
chapter that the exercise by the authority of the powers granted to it shall be in all

1 respects for the benefit of the people of this state to assist them to provide needed  
 2 health facilities, educational facilities, and research facilities, ~~and child care centers~~  
 3 of the number, size, type, distribution, and operation that will assure admission and  
 4 health care, education, or research opportunities, ~~or child care~~ of high quality to all  
 5 who need it. The authority shall identify and study all projects which are determined  
 6 by health planning agencies to be needed, but which could not sustain a loan were  
 7 such to be made to it under this chapter. The authority shall formulate and  
 8 recommend to the legislature such amendments to this and other laws, and such  
 9 other specific measures as grants, loan guarantees, interest subsidies, or other  
 10 actions the state may provide which would render the construction and operation of  
 11 needed health facilities, educational facilities, and research facilities, ~~and child care~~  
 12 ~~centers~~ feasible and in the public interest. The authority also shall identify and  
 13 study any laws or rules which it finds handicaps or bars a needed health facility,  
 14 educational facility, or research facility, ~~or child care center~~ from participating in the  
 15 benefits of this chapter, and recommend to the legislature such actions as will  
 16 remedy such situation. "

History: 1973 c. 304; 1987 a. 27; 1993 a. 124; 2009 a. 2.

**63.** Page 19, line 2: delete lines 2 to 5 and substitute:

18 *move up* "or participating research institution, ~~or participating child care provider~~ for  
 19 each issuance of bonds. The contract shall provide that the rents or other revenues  
 20 payable by the health facility, educational facility, or research facility, ~~or child care~~  
 21 ~~center~~ shall be sufficient at all times to:".

History: 1973 c. 304; 1977 c. 29; 1979 c. 221; 1987 a. 27; 1993 a. 124; 1995 a. 27; 2009 a. 2.

**64.** Page 19, line 8: after "educational facilities," insert "or".

**65.** Page 19, line 9: delete "facilities, or ~~child care centers~~ nonprofit facilities"  
and substitute "facilities, ~~or child care centers~~".

1           **66.** Page 20, line 1: after “educational institution,” insert “or”.

2           **67.** Page 20, line 1: delete “institution, or participating ~~child~~” and substitute  
3 “institution, ~~or participating child~~”.

4           **68.** Page 20, line 2: delete “nonprofit institution”.

5           **69.** Page 20, line 11: after “educational institution,” insert “or”.

6           **70.** Page 20, line 11: delete “institution, or participating ~~child~~” and substitute  
7 “institution, ~~or participating child~~”.

8           **71.** Page 20, line 12: delete “nonprofit institution”.

9           **72.** Page 21, line 6: after “educational institution,” insert “or”.

10          **73.** Page 21, line 6: delete “research institution,” and substitute “research  
11 institution,”.

12          **74.** Page 21, line 7: delete that line and substitute “~~or participating child care~~  
13 ~~provider~~ as its agent, call for”.

14          **75.** Page 21, line 11: delete lines 11 to 15 and substitute:

15          **231.23 Nonprofit institutions.** It is intended that all nonprofit health  
16 institutions, educational institutions, and research institutions, ~~and child care~~  
17 ~~providers~~ in this state be enabled to benefit from and participate in this chapter. To  
18 this end, all nonprofit health institutions, educational institutions, and research  
19 institutions, ~~and child care providers~~ operating, or authorized to be”.

20          History: 1973 c. 304; 1987 a. 27; 1993 a. 124; 2009 a. 2.

(END)