

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/21/2001

Received By: **champra**

Wanted: **Soon**

Identical to LRB:

For: **Johnnie Morris-Tatum (608) 266-3756**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **champra**

May Contact:

Addl. Drafters:

Subject: **Bonding - state
State Finance - miscellaneous**

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Holy Redeemer Institutional Church of God in Christ youth and family center

Instructions:

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>
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FE Sent For:

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FE Sent For:

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D-note
State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb0853/1

RAC:cjs:kjf

LRBb128611

RAC

Sean

SDC:.....Keckhaver - CN6534, Bonding for youth and family center at the HR Academy, Inc.

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT
- ASSEMBLY
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 55

ASSEMBLY

CS
HOLY REDEEMER INSTITUTIONAL
CHURCH OF GOD IN CHRIST

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 16, line 16: after that line insert:

3 "SECTION 108m. 13.48 (35) of the statutes is created to read:

4 13.48 (35) ~~HR ACADEMY, INC.~~, YOUTH AND FAMILY CENTER. (a) The building
5 commission may authorize up to \$1,500,000 in general fund supported borrowing to
6 aid in the construction of a youth and family center for ~~HR Academy, Inc.~~ in the city
7 of Milwaukee. The state funding commitment under this paragraph shall be in the
8 form of a grant to HR Academy, Inc. Before approving any such state funding
9 commitment, the building commission shall determine that ~~HR Academy, Inc.~~ has

see Holy Redeemer
Institutional Church of God
in Christ

1 secured additional funding at least equal to \$3,500,000 from nonstate donations for
2 the purpose of constructing a youth and family center.

3 (b) If the building commission authorizes a grant ~~HR Academy, Inc.~~ under
4 par. (a) and if, for any reason, the facility that is constructed with funds from the
5 grant is not used as a youth and family center, the state shall retain an ownership
6 interest in the facility equal to the amount of the state's grant.”

7 **2.** Page 290, line 9: after that line insert:

8 “(bm) Principal repayment, interest,
9 and rebates; ~~HR Academy, Inc.~~ GPR \$ -0- -0-”.

10 **3.** Page 414, line 10: after “(3) (a), (b),” insert “(bm).”

11 **4.** Page 421, line 18: after that line insert:

12 “SECTION 973r. 20.866 (2) (zbg) of the statutes is created to read:

13 20.866 (2) (zbg) ~~HR Academy, Inc.~~ From the capital improvement fund, a sum
14 sufficient for the building commission to provide a grant to ^(the) ~~HR Academy, Inc.~~ in the
15 city of Milwaukee to aid in the construction of a youth and family center in the city
16 of Milwaukee. The state may contract public debt in an amount not to exceed
17 \$1,500,000 for this purpose.”

18 **5.** Page 423, line 23: after that line insert:

19 “SECTION 978s. 20.867 (3) (bm) of the statutes is created to read:

20 20.867 (3) (bm) *Principal repayment, interest, and rebates;* ~~HR Academy, Inc.~~
21 A sum sufficient to reimburse s. 20.866 (1) (u) for the payment of principal and
22 interest costs incurred in financing the construction of a youth and family center for
23 ~~HR Academy, Inc.~~ ^{the} in the city of Milwaukee, and to make the payments determined
24 by the building commission under s. 13.488 (1) (m) that are attributable to the

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Holy Redeemer Institutional Church of God in Christ

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1 proceeds of obligations incurred in financing the construction of a youth and family
2 center for the ~~HR Academy, Inc.~~

3 **6.** Page 1315, line 6: after that line insert the following (and adjust the
4 appropriate totals accordingly):

5 "~~(ob) HR ACADEMY, INC.~~

6 1. *Projects financed by general fund supported borrowing:*

7 Youth and family center \$1,500,000

8 2. *Projects financed by gifts, grants and other receipts:*

9 Youth and family center 3,500,000

10 3. *Agency totals:*

11 General fund supported borrowing 1,500,000

12 Gifts, grants and other receipts 3,500,000

13 Total — All sources of funds \$5,000,000".

14 **7.** Page 1321, line 15: after that line insert:

15 "~~(60) HR ACADEMY, INC.,~~ YOUTH AND FAMILY CENTER. Notwithstanding section

16 13.48 (35) of the statutes, as created by this act, the building commission shall not

17 make a grant to ^{the}~~HR Academy, Inc.~~ for the youth and family center project

18 enumerated in subsection (1) (ob) under section 13.48 (35) of the statutes, as created

19 by this act, unless the department of administration has reviewed and approved the

20 plans for the project. Notwithstanding sections 16.85 (1) and 16.855 (1) of the

statutes, the department of administration shall not supervise any services or work

6r

1 or let any contract for the project. Section 16.87 of the statutes does not apply to the
2 project.”.

3 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0853/1dn

RAC:cjs:kjf

LRBb1286/1dn

RAC

June 16, 2001

Because this amendment authorizes the state to spend public money to construct a facility that is owned and operated by a religious organization

The Holy Redeemer Institutional Church of God in Christ

This amendment authorizes the state to incur public debt in an amount not to exceed \$1,500,000 for the purpose of aiding in the construction of a youth and family center for ~~HR Academy, Inc.~~, in the city of Milwaukee. ~~If HR Academy, Inc., is owned and operated by a religious organization,~~ there is an issue as to whether this amendment violates the Establishment Clause of the First Amendment, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. (This provision applies to the states through the operation of the 14th Amendment.)

The test that the courts have used to examine whether a provision violates the Establishment Clause of the First Amendment is taken from *Lemon v. Kurtzman*, 403 U.S. 602, at 612-613 (1971). The test provides that a statute does not violate the Establishment Clause if:

1. The statute has a secular legislative purpose;
2. The statute's principal or primary effect neither enhances not inhibits religion; and
3. The statute does not create excessive entanglement between government and religion.

While courts, using the *Lemon* test, have permitted revenue bonding for religious institutions for secular purposes (see *Hunt v. McNair*, 413 U.S. 734 (1973)), I have been unable to identify a case in which courts have permitted general obligation bonding for a religious institution for the construction of a facility in which religious instruction and religious worship could occur. As I read the materials that you submitted with the drafting request, the youth and family center to be constructed at Holy Redeemer will contain classrooms in which religious instruction may occur and will also be used as a retreat center in which religious worship may occur. For this reason, I cannot ensure that this amendment will be found not to violate the Establishment Clause of the First Amendment.

For a very recent discussion of the Establishment Clause and the use of revenue bonding for a religious institution, see *Johnson v. Economic Development Corp. of Oakland County*, No. 99-1884 (6th Cir. February 27, 2001). (A copy of this decision can be found on the Web at <http://pub.bna.com/lw/991884.htm>). In *Johnson*, the court upheld a government corporation's issuing tax-exempt revenue bonds for a religious

institution as part of a community economic development program. Significantly, however, the religious institution was required to pay all issuance costs of the bonds and was required to pay all principal and interest payments. Obviously, this fact situation differs considerably from the fact situation involving ~~HR Academy, Inc.~~ because in this amendment general obligation bonds are being issued, the issuance and principal and interest costs of which are to be paid by the state and not by HR Academy, Inc.

If I may be of further assistance, please do not hesitate to contact me.

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266-9930
E-mail: rick.champagne@legis.state.wi.us

*The Holy Redeemer Institutional
Church of God in Christ*

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1286/1dn
RAC:ejs:ch

June 21, 2001

This amendment authorizes the state to incur public debt in an amount not to exceed \$1,500,000 for the purpose of aiding in the construction of a youth and family center for the Holy Redeemer Institutional Church of God in Christ in the city of Milwaukee. Because this amendment authorizes the state to spend public money to construct a facility that is owned and operated by a religious organization, there is an issue as to whether this amendment violates the Establishment Clause of the First Amendment, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. (This provision applies to the states through the operation of the 14th Amendment.)

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