

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on  
Housing  
(AC-Ho)

(Form Updated: 11/20/2008)

**COMMITTEE NOTICES ...**

➤ Committee Reports ... CR

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➤ Executive Sessions ... ES

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➤ Public Hearings ... PH

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**INFORMATION COLLECTED BY COMMITTEE  
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➤ Hearing Records ... HR (bills and resolutions)

**\*\*05hr\_ab0573\_AC-Ho\_pt02**

➤ Miscellaneous ... Misc

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**Krieser, Steve**

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**From:** Mario Mendoza [mmendoza@cityofmadison.com]  
**Sent:** Tuesday, May 31, 2005 5:19 PM  
**To:** Rep.Wieckert; Sen.Lasee  
**Cc:** Paul Van Rooy; George Twigg; Mike Kurth; Michael May; Ray Fisher; Rep.Ainsworth;  
Rep.Berceau; Rep.Black; Rep.Freese; Rep.Gard; Rep.Huebsch; Rep.Kaufert; Rep.Kreuser;  
Rep.Nischke; Rep.Parisi; Rep.Pocan; Rep.Pope-Roberts; Rep.Schneider; Rep.Travis;  
Sen.Brown; Sen.Decker; Sen.Erpenbach; Sen.Fitzgerald; Sen.Grothman; Sen.Kapanke;  
Sen.Miller; Sen.Risser; Sen.Robson; Sen.Schultz; Sen.Zien; fred@mmwp-law.com  
**Subject:** WLC: 0186/2 Tax Exemption for Residential Property (ColumbusPark)  
**Attachments:** LASEE and WIECKERT Jt Leg Co re WLC.doc



LASEE and  
WIECKERT Jt Leg Co r

I attach a letter from Mayor Dave Cieslewicz regarding the above matter, which will be considered by the Legislative Council at its meeting June 1. Please feel free to contact me with any questions or comments.  
Thank you.

Best regards,

Mario Mendoza

Mario Mendoza  
Assistant to Mayor Dave Cieslewicz  
Economic Development and Legislative Liaison City of Madison 210 Martin Luther King, Jr.  
Blvd.  
Madison, WI 53703-3345  
Ph: 608-266-4611  
Fax: 608-267-8671



## Office of the Mayor

David J. Cieslewicz

Room 403  
210 Martin Luther King, Jr. Boulevard  
Madison, Wisconsin 53703-3345  
(Phone) 608 266 4611  
(TTY) 608 266 4443  
(FAX) 608 267 8671

May 31, 2005

Honorable Alan Lasee, Co-Chair  
Honorable Steve Wieckert, Co-Chair  
Joint Legislative Council  
P.O. Box 2536  
Madison, WI 53701-2536

Re: WLC: 0186/2 Tax Exemption for Residential Property (Columbus Park)

Dear Senator Lasee and Representative Wieckert:

The City of Madison, like many communities around the State, is facing a very difficult budget in 2006. In the last State Biennial Budget, the City of Madison lost \$2.5 million per year in State Share Revenues. By most indications, State aids to the City of Madison will either remain flat -- preserving the current \$2.5 million cut -- or further decrease in the next State Biennial Budget.

At the same time, the City has had to absorb significant increased expenses that are primarily a function of the increase in costs associated with providing basic services. In putting together the City's 2005 budget, that increase totaled \$6.4 million. These two factors -- loss of State aids and increases in the costs of providing basic services -- continue to place increasing pressure on the property tax as a means of paying for the basic services that our residents depend on.

At the same time, over the last 20 years, there has been a considerable expansion of tax exemptions created by State legislation. Many of these exemptions have come in the form of income tax exemptions, primarily to corporations. Others have come in the form of property tax exemptions. Our concern over the possible expansion of property tax exemptions and the consequent erosion of our tax base motivates this letter.

At issue before the Joint Legislative Council is the subject of tax exemptions for residential properties owned by non-profit organizations. The issue of whether residential property owned by non-profit organizations should be exempt of the property tax gained statewide attention with the Columbus Park court decision, which generally determined that such housing was subject to the property tax. As you know, following that court decision, 2003 Act 195 was enacted to preserve the status quo while a Special Committee on Tax Exemptions, created by Act 195, studied the matter and developed recommendations. The end product of that Special Committee is a

May 31, 2005

Page 2

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proposal, WLC: 0186/2 (hereinafter "the Proposal"), which expressly describes the categories of property that would retain tax exempt status and also narrows the classes of property eligible for tax exemption.

The Special Committee's Proposal is by no means perfect. However, I urge you to support it. A failure to act on this important issue will surely result in the further erosion of Madison's tax base because current law, unlike the Special Committee's Proposal, does not set tax exemptions parameters that are in any way adequate.

Please use all your efforts to move this bill forward in the legislative process. While the current draft bill is far from perfect, it is a step in the right direction. By the Legislative Council advancing the bill to other committees, the minor problems with the legislation can be addressed and corrected.

Thank you for your efforts.

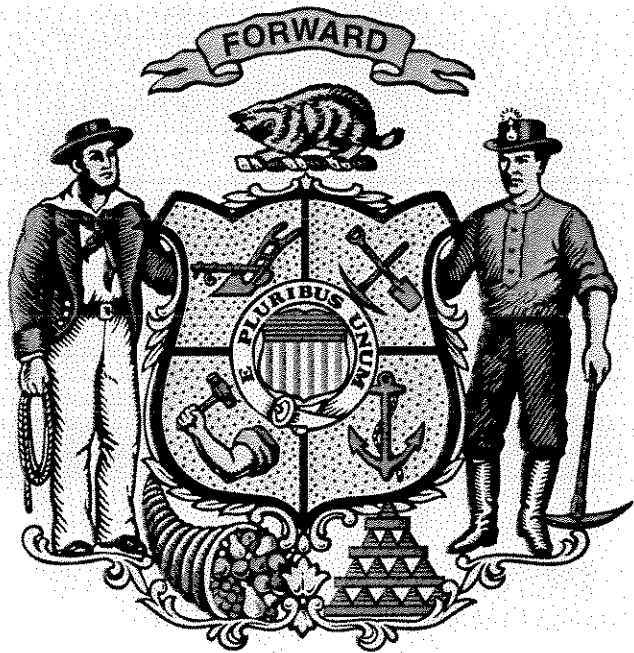
Sincerely,

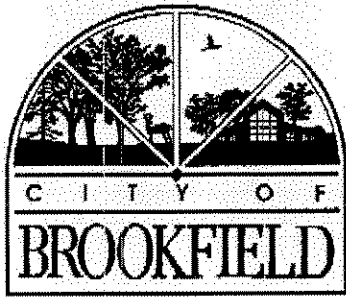


David J. Cieslewicz  
Mayor

DJC/III

cc: Members, Joint Legislative Council  
Governor James Doyle  
Madison Senate and Assembly delegation  
Paul Van Rooy, Madison Common Council President  
Michael May, City Attorney  
Fred Mohs, Attorney at Law





**JEFF R. SPEAKER**  
Mayor

VIA FACSIMILE

May 31, 2005

To the Wisconsin Joint Legislative Council:

Representative Steve Wieckert, co-chair  
 Representative John Ainsworth  
 Representative Stephen J. Freese  
 Representative Michael Huebsch  
 Representative John Gard  
 Representative Dean Kaufert  
 Representative James Kreuser  
 Representative Ann Nischke  
 Representative Mark Pocan  
 Representative Marlin D. Schneider  
 Representative David Travis

Senator Alan Lasee, co-chair  
 Senator Ronald W. Brown  
 Senator Russell Decker  
 Senator Scott Fitzgerald  
 Senator Glenn Grothman  
 Senator Dan Kapanke  
 Senator Mark Miller  
 Senator Fred A. Risser  
 Senator Judy Robson  
 Senator Dale Schultz  
 Senator David Zien

Dear Senators and Representatives:

I am writing in support of the legislative proposal, WLC: 0186/2, recommended for introduction by the Special Committee on Tax Exemptions for Residential Property (Columbus Park), and join many other cities and the League of Wisconsin Municipalities in urging your support of this proposal.

This proposal would narrow (not eliminate) the property tax exemption applicable to residential property owned by "benevolent associations." Specifically, it has the effect of placing independent living facilities serving affluent elderly on the property tax rolls.

A significant amount of the tax exempt housing that has been developed over the past 20 years has flaunted the uniformity clause of the Wisconsin constitution and the statutes having to do with tax exemption. This was confirmed in the Columbus Park case. In the aftermath of the Columbus Park case, the Legislature wisely established the Legislative Study Committee to recommend future handling of this issue. The draft legislation from that committee is now before the Legislative Council from which it can be referred to other standing committees and progress toward enactment.



The proposal begins to address a concern of many municipalities -- the growing number of tax exempt residential housing facilities owned by benevolent associations being located in municipalities and shifting more of the property tax burden onto residential homeowners. Over the years, the courts have interpreted the benevolent association tax exemption to be much broader than the legislature originally intended. The courts have ruled that the exemption applies not only to non-profit associations providing housing to the poor but also to independent living facilities providing high-end housing to affluent elderly. Some of the housing facilities that are currently eligible for the tax exemption require residents to pay initial endowments as high as \$400,000 or greater.

This situation is true in the City of Brookfield, where we have facilities similar to those described above. Were the full value of such facilities on the tax roll, it would provide nearly \$300,000 in property taxes for municipal, school, and other purposes, and offset the burden of the remainder of my constituents living in Brookfield. \$300,000 may not seem like much in the context of the state budget with which you have to struggle, but it makes a difference, even in Brookfield.

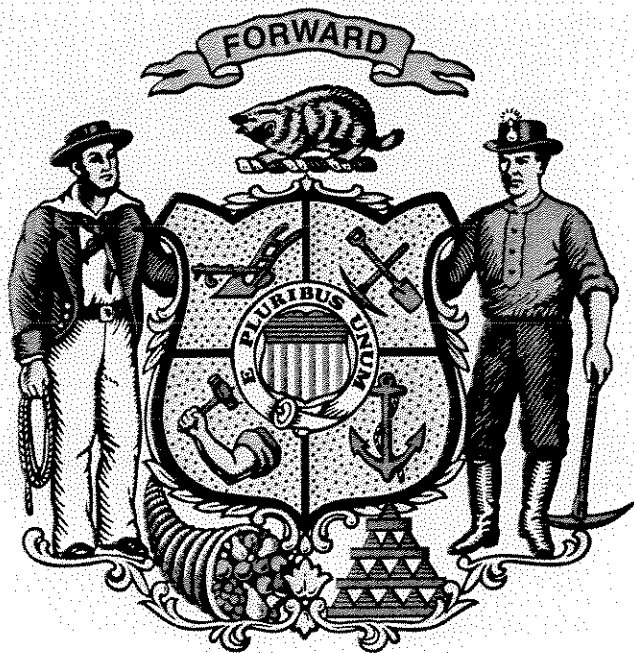
I urge you to vote in support of the legislative proposal recommended by the Special Committee. While it is not a perfect proposal and may need some adjustment as it moves through the legislative process, the intent is to narrow a tax exemption that needs narrowing. Thanks for considering my comments.

Sincerely,

CITY OF BROOKFIELD



Jeff R. Speaker  
Mayor





**Krieser, Steve**

**From:** Tom Ramsey [tr Ramsey@wahsa.org]

**Sent:** Tuesday, May 31, 2005 5:58 PM

**To:** Rep. Wieckert; Rep. Freese; Rep. Huebsch; Rep. Schneider; Rep. Pocan; Rep. Gard; Rep. Ainsworth; Rep. Kreuser; Rep. Kaufert; Rep. Travis; Rep. Nischke; Sen. Fitzgerald; Sen. Decker; Sen. Brown; Sen. Miller; Sen. Robson; Sen. Grothman; Sen. Grothman; Sen. Zien; Sen. Kapanke; Sen. Schultz; Sen. Lasee

**Subject:** June 1, 2005 Joint Legislative Council Meeting

To: State Senator Alan Lasee, Co-Chair  
State Representative Steve Wieckert, Co-Chair  
Members, Joint Legislative Council

From: John Sauer, Executive Director  
Tom Ramsey, Director of Government Relations

Subject: June 1, 2005 Joint Legislative Council Review of WLC: 0186/2, the Final Recommendation of the Special Committee on Tax Exemptions of Residential Property (Columbus Park)

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of 197 not-for-profit corporations which operate, among other properties, 104 independent living apartment complexes for seniors (ILC), also known as "housing for older persons."

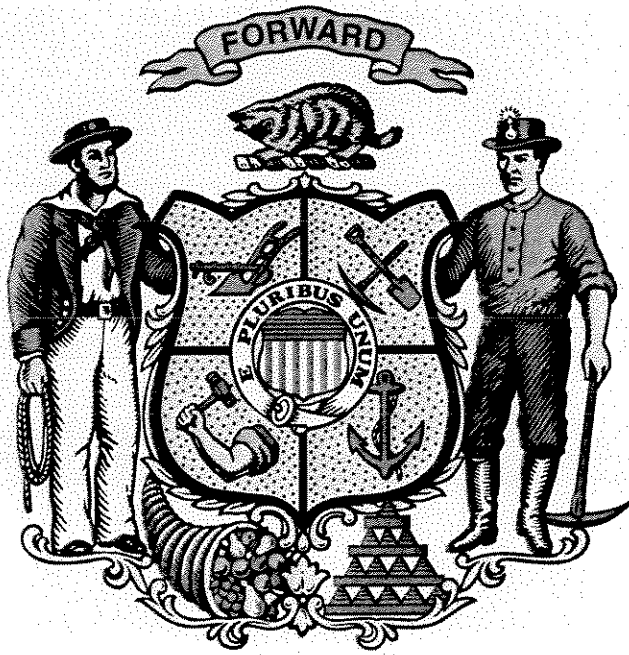
**WAHSA members oppose WLC: 0186/2. However, we could support the special committee's final recommendation if it were amended by WLC: 0204/1, which would exempt from property taxation "housing for older persons" which is affiliated with a not-for-profit nursing home, community-based residential facility (CBRF), or residential care apartment complex (RCAC) located within the same county.**

Our members oppose WLC: 0186/2, the special committee's final recommendation, because it would:

- 1) Without a stated or articulated rationale, place all non-low income, not-for-profit ILCs on the property tax rolls. We estimate approximately 70 of WAHSA's 104 ILCs would lose their property tax-exempt status under WLC: 0186/2; we cannot even estimate how many non-WAHSA ILCs would be similarly impacted.
- 2) Assuming any property tax would be passed on to its tenants by an ILC, a recent WAHSA-member survey found that 1,063 tenants (24.9% of the 53 survey respondents, or 51% of the 104 WAHSA ILCs) indicated they would be unable to pick up any additional "property tax" costs. If that were to be the case, the future service costs of those 1,063 tenants would have to be subsidized by their individual ILCs, at least if those ILCs wish to remain exempt from federal income taxes.
- 3) Tenants of tax-exempt housing are ineligible for the Homestead tax credit. However, if WLC: 0186/2 were to become law and effectively remove the tax-exempt status of those estimated 70 WAHSA ILCs, the tenants in those ILCs who otherwise would be eligible for the Homestead tax credit would become eligible for the credit. We estimate such a change would generate a fiscal effect of \$1.3 million in increased GPR expenditures from WAHSA members alone; its impact on all remaining ILCs is unknown.
- 4) Over 70% of the tenants of WAHSA-member ILCs are women; the average age of a WAHSA-member ILC tenant is 82.8 years. They entered the ILC primarily for security (both physical and financial) reasons; many, if not most, no longer were able to maintain their own homes safely. They signed a contract in good faith which specified the entrance fees and the monthly service fees (if any) they would be required to pay. WLC: 0186/2 would break that good faith agreement.
- 5) **Why is it that the only citizens of Wisconsin who would appear to be out from under the "no tax increase" umbrella are 83 year old widows living in senior housing? Why is it only for this group of individuals that income levels seem to be relevant to property taxes paid or whether property taxes**

***should be paid (except for the Homestead tax credit, there really is no correlation between an individual's income and the property taxes that an individual pays)? Why is it some choose to ignore the fact that the fees paid by ILC tenants help subsidize the Medicaid deficits in their affiliated nursing home or that there is a societal benefit (specifically to our state's income tax payers) provided by ILC tenants who choose to "pre-pay" their future long-term care costs and avoid future exposure to the Medicaid program? Without the fees paid by these ILC tenants, who will subsidize the care and services provided to those ILC or CBRF/RCAC tenants who run out of funds?***

Please oppose recommending WLC: 0186/2 for introduction in the 2005-06 Legislature unless it is amended by WLC: 0204/1. Thank you for your consideration of this most important issue.



**Krieser, Steve**

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**From:** Greg Weisheipl [stbassessor@charterinternet.com]  
**Sent:** Wednesday, June 01, 2005 12:44 PM  
**To:** Sen.Lasee; Rep.Wieckert  
**Cc:** cityadministrator@sturgeonbaywi.org  
**Subject:** WLC: 0186/2 Tax Exemptions for Residential Property

June 1, 2005

Senator Allan Lasee  
Representative Steven Weikert  
Co-chairs, Legislative council

Dear Senator Lasee and Representative Weikert,

I am writing to you as the City Assessor of Sturgeon Bay, Two Rivers and New London. I am asking you to forward the proposal before your committee as drafted by the Special Committee on Tax Exemptions for Residential Property.

The special committee's efforts should not be nullified by taking no action. The Supreme Court decision in the Columbus Park case highlighted the disparity in residential property tax exemptions for the "poorest of the poor" and the high-end living centers housing independent seniors. The special committee's study of the public policy regarding these exemptions resulted in a clearer definition of which properties should have their exemptions continued.

Those Committee members representing the City's perspective raised several issues that are of continuing concern to us:

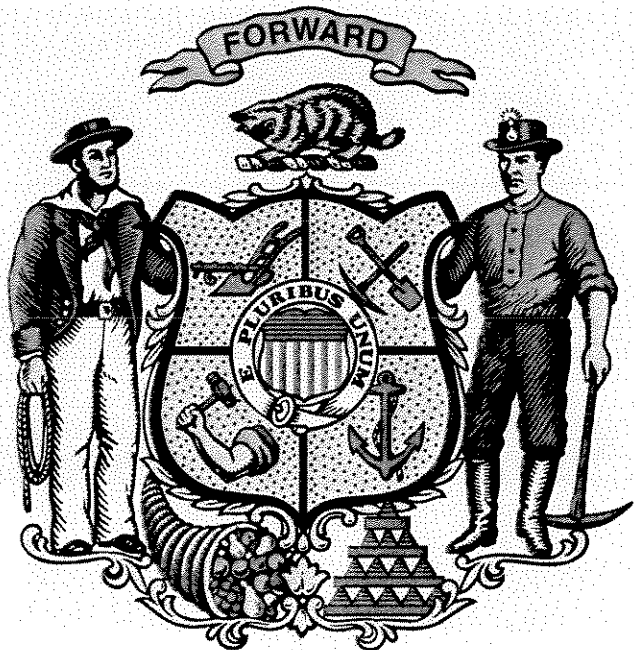
- In the rent use provision, require that the benevolent activities for which a property is exempt take place in that municipality,
- Prohibit exemptions for independent living units in residential care complexes, and,
- Making the provisions of the bill prospective to January 1 of the year after passage.

Again, we appreciate the work of the Special Committee and the progress it made in bringing together many disparate perspectives in working through and responding to these public policy concerns.

Again, I urge you to pass the draft bill that is currently before you without amendment. While refinements may be needed, it is more important not to allow the current proposal to be "watered down" or voided by inaction or clever amendments.

Sincerely,

Greg Weisheipl - Assessor  
Cities of Sturgeon Bay, New London & Two Rivers





## WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director  
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE STEVE WIECKERT

FROM: Mary Matthews, Senior Staff Attorney

RE: Constitutionality of "Grandfathering" Certain Existing Tax-Exempt Properties in 2005  
Assembly Bill 573

DATE: January 25, 2006

This memorandum responds to your request for a discussion of the constitutionality, under the Equal Protection and Uniformity Clauses of the Wisconsin Constitution, of a proposal to amend 2005 Assembly Bill 573, which repeals certain property tax exemptions, to "grandfather" certain property that is currently exempt from the property tax. Under this proposal, generally, residential property owned by a benevolent association that is currently used as retirement housing would remain tax-exempt, even though the bill would impose property taxes on similar retirement housing established after passage of the bill. As discussed below, the proposed grandfathering provision could be challenged as violating the Uniformity Clause of the Wisconsin Constitution and the Equal Protection clauses of the Wisconsin and U.S. Constitutions.

### The Uniformity Clause

The Wisconsin Constitution gives the Legislature the ability to empower units of government to collect taxes. The "Uniformity Clause" (art. VIII, s. 1) of the Wisconsin Constitution imposes limitations on how property taxes may be levied. The Uniformity Clause was intended to prevent the Legislature and local officials from granting preferential tax treatment to influential property owners and "to protect the citizen against unequal, and consequently unjust taxation." *Weeks v. Milwaukee*, 10 Wis. 186, 201 (1860).

The Uniformity Clause provides as follows:

Art. VIII, Section 1. Rule of taxation uniform; income, privilege and occupation taxes. [As amended Nov. 1908, April 1927, April 1941, April 1961 and April 1974] The rule of taxation shall be uniform but the legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods. Taxes shall be

levied upon such property with such classifications as to forests and minerals including or separate or severed from the land, as the legislature shall prescribe. Taxation of agricultural land and undeveloped land, both as defined by law, need not be uniform with the taxation of each other nor with the taxation of other real property. Taxation of merchants' stock-in-trade, manufacturers' materials and finished products, and livestock need not be uniform with the taxation of real property and other personal property, but the taxation of all such merchants' stock-in-trade, manufacturers' materials and finished products and livestock shall be uniform, except that the legislature may provide that the value thereof shall be determined on an average basis. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.

The general principles of the Uniformity Clause were set forth in *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 147 N.W.2d 633 (1967). In that case, the Wisconsin Supreme Court stated that the Uniformity Clause requires that for direct taxation of property, there can be but one constitutional class. All property within that class must be taxed on a basis of equality so far as practicable and all property taxed must bear its burden equally on an ad valorem basis. All property not included in that class must be absolutely exempt from property taxation. The legislature may classify between property that is to be taxed and that which is to be wholly exempt and the test of such classification is reasonableness.

"Grandfathering" currently exempt property when an existing exemption is repealed is essentially the creation of a new class of tax-exempt property. The new class of exempt property would generally consist of property that, on the date of the bill's passage, was exempt under s. 70.11 (4) because it was owned by a benevolent association and used to provide retirement housing. Because this class of property would be totally exempt from property taxes, the proposal does not violate the Uniformity Clause's requirement that property be either totally taxed or totally exempt. However, the classification may violate the Uniformity Clause principle that classifications of property for purposes of property tax exemption must be "reasonable." Although the courts have stated that the Uniformity Clause requires property tax classifications to be "reasonable," the case law does not provide much guidance regarding how "reasonableness" is to be determined. Most Uniformity Clause cases are primarily concerned with determining whether a legislative enactment, such as a tax credit based on ownership of property, is in actuality a partial exemption from the property tax. When the propriety of a classification is at issue, the courts have analyzed the classification using an Equal Protection analysis. As discussed below, the proposal at issue would likely face significant difficulties withstanding an equal protection challenge.

### **Equal Protection**

In *State ex rel. LaFollette v. Torphy*, 85 Wis. 2d 94, 270 N.W.2d 187 (1978), the court considered the constitutionality, under the Uniformity and Equal Protection Clauses, of a statute that provided tax credits to two classes of property owners for improvements that resulted in increased property tax assessments. The court analyzed whether the classifications established by the Legislature violated the Equal Protection Clauses of the Wisconsin and U.S. Constitutions. The court stated that the accepted standards for analyzing whether equal protection is violated by legislative classifications are as follows:

1. All classifications must be based upon substantial distinctions which make one class really different from another.
2. The classifications adopted must be germane to the purpose of the law.
3. The classifications must not be based upon existing circumstances only. They must not be so constituted as to preclude additions to the numbers included within a class.
4. To whatever class a law may apply, it must apply equally to each member thereof.
5. The characteristics of each class should be so far different from those of other classes as to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation. These standards are to be applied in light of the presumption of constitutionality.

Applying the requirements set forth above to the proposed "grandfather" clause reveals several potential difficulties with the proposal. The first requirement is that all classifications must be based upon substantial distinctions which make one class really different from another. It is unclear whether the court would find that classifying parcels of property solely on the basis of how a parcel was used on a certain date is a substantial distinction that makes that property really different from other property that, for example, first began to be used for that same purpose one week or one month later. By way of illustration, if the grandfather clause were enacted, a situation could occur in which a benevolent association that currently operated retirement housing built or purchased a similar building after the bill's passage and operates it as retirement housing, serving identical populations, yet one of the buildings would be subject to property taxes and one would not.

The second requirement, that the classifications adopted must be germane to the purpose of the law, is problematic because retaining tax-exempt status for some properties is by its nature at odds with the purpose of a bill that repeals the same exemption. Presumably, in enacting legislation repealing a tax exemption, there must be a purpose or reason the exemption is repealed. For example, the purpose for repealing property tax exemptions that has been most often put forth in discussions surrounding Assembly Bill 573 is to provide fairness to seniors (and others) who own their own homes and must pay property taxes. It may be difficult to explain how allowing many properties to retain their exemption is germane to the purpose of providing fairness in taxation.

The third requirement appears to pose the most difficulty for the grandfather proposal. A grandfather clause by its nature would violate the requirement that a classification must not be based upon existing circumstances only. Limiting the exemption to only those properties that qualified for the exemption before it was repealed clearly precludes additions to the numbers included in the class.

The fifth requirement, that the characteristics of each class should be so far different from those of other classes as to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation, is problematic for the same reason as the first. That is, under the grandfather clause, most of the characteristics of the class of exempt property, such as the use of the property as retirement housing, its ownership, physical characteristics and the demographics of the population residing in the property, could be identical to those of property that is not exempt.



If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

MM:ksm:tlu

To: Members of the Wisconsin State Assembly and Senate

From: League of Wisconsin Municipalities  
Wisconsin Alliance of Cities  
Wisconsin Association of School Boards  
Wisconsin Counties Association  
Wisconsin Homeowners for Tax Fairness  
Wisconsin Property Taxpayers, Inc.  
Wisconsin Realtors Association

Date: January 6, 2006

Re: **An Explanation of AB 573, the Columbus Park Legislation**

**In general:** AB 573 clarifies the property tax exemption for residential property owned by benevolent associations. Specifically, it provides that such property is tax exempt if it is used to provide housing for persons of low-income or with special needs. It also modifies a requirement that benevolent associations use all of the income earned from leasing residential property for maintenance or construction debt retirement of the leased property in order for that property to remain tax-exempt. This is known as the "rent use" requirement.

**What types of residential property owned by benevolent associations remain tax-exempt under the bill?**

- a. Licensed nursing homes.
- b. Licensed community based residential facilities.
- c. Certified or licensed adult family homes.
- d. Registered or certified residential care apartment complexes.
- e. Domestic abuse shelters.
- f. Shelters for the homeless, including transitional housing facilities.
- g. Housing for low-income persons.
- h. Residential facilities that provide alcohol or other drug abuse (AODA) treatment services or housing for persons with or recovering from AODA problems.
- i. Residential housing for persons with permanent disabilities.

**What types of residential property owned by benevolent associations are placed on the tax rolls under the bill?**

Any housing that does not fit within any of the categories described above is subject to taxation. So, for example, high-end senior housing for middle and upper income elderly would no longer be exempt since only housing for low-income persons is exempt under the bill. This is a key change made by the bill. It establishes an endpoint to the tax exemption and prevents the unfair shifting of the property tax burden onto residential homeowners that is occurring under current law.

**What qualifies as tax-exempt housing for low-income persons under the bill?**

In a nutshell, to be exempt as low-income housing under AB 573, a housing project must have:

- At least 75 percent of the units occupied by residents that qualify as "low-income" (generally, an income at or below 80 percent of an area's median income); *and*
- Either at least 20 percent of the units occupied by residents that also meet the "very low-income" limit for the area (generally, an income at or below 50 percent of an area's median income) or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit.

For example, listed below are the incomes that qualify as "low-income" and "very-low income" for two-person families in several Wisconsin cities as computed and published by the federal Department of Housing and Urban Development (HUD):

	<u>very low income</u>	<u>low-income</u>
Kenosha	\$25,900	\$41,450
La Crosse	\$23,150	\$37,050
Madison	\$29,300	\$46,400
Milwaukee	\$26,900	\$43,000
Ashland	\$21,750	\$34,800
Green Bay	\$25,850	\$41,350
Sheboygan	\$25,100	\$40,150
Eau Claire	\$22,600	\$36,150

**Haven't some legislators raised concerns about the fairness of suddenly changing the tax status of property occupied by persons who reside in high-end tax-exempt senior housing?**

To address this concern we support a substitute amendment that Rep. Mark Gottlieb (R-Port Washington) and Rep. Terese Berceau (D-Madison) have introduced, delaying the bill's effective date by 5 years to allow for a period of adjustment.

**How does the bill change the rent use requirement?**

Under current law, residential property retains its tax exemption only if the benevolent association uses all of the leasehold income for maintenance or construction debt retirement of the leased property. The bill eliminates this condition and replaces it with a requirement that the property owner use all of the lease income to further its benevolent or educational activities in general. In addition, the bill provides that a property owner may not discriminate based on race.

We are concerned this change goes too far. It would allow benevolent associations to use lease income to fund the organization's activities outside the community or even the state or country while allowing the housing facility to deteriorate. That is another reason we support the Gottlieb/Berceau Substitute Amendment. It requires benevolent associations to use lease income to support organization activities *in the county* where the tax-exempt property is located, except that rental proceeds from tax exempt property used to provide low income housing (e.g., WHEDA projects), may be used to support the provision of low-income housing anywhere in the state.



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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE MARK GOTTLIEB

FROM: Mary Matthias, Senior Staff Attorney

RE: Comparison of 2005 Assembly Bill 573, Relating to Property Tax Exemptions, and LRB-0333/2, an Assembly Substitute Amendment to the Bill

DATE: December 8, 2005

This memorandum compares the provisions of 2005 Assembly Bill 573 (the bill), relating to revision and elimination of the exemption from the property tax for certain property and the use of income from certain tax-exempt leased property, and LRB-0333/2, an Assembly Substitute Amendment to the bill.

### **ELIMINATION OF THE PROPERTY TAX EXEMPTION FOR CERTAIN RESIDENTIAL PROPERTY**

Under **current law**, with certain exceptions, all property owned by a church or a religious or benevolent association is exempt from property taxes. **2005 Assembly Bill 573** eliminates the property tax exemption for certain residential property owned by these entities.

Under the bill, only the following types of residential property owned by a church or a religious or benevolent association are exempt from the property tax:

- a. Licensed nursing homes.
- b. Licensed community-based residential facilities.
- c. Certified or licensed adult family homes.
- d. Registered or certified residential care apartment complexes.
- e. Domestic abuse shelters.
- f. Shelters for the homeless, including transitional housing facilities.

- g. Housing for low-income persons that is operated in compliance with certain federally established requirements.
- h. A residential facility that provides alcohol or other drug abuse (AODA) treatment services or housing for persons with or recovering from AODA problems.
- i. Residential housing for persons with permanent disabilities.
- j. Property that is not residential housing.

Also exempt under the bill is residential property owned by a church or religious association that is used as housing for pastors or their ordained assistants, members of religious orders or communities, or ordained teachers.

Under the bill, the changes described above apply to property tax assessments as of January 1, 2007, which are payable in 2008.

LRB-0333/2 contains provisions identical to those in the bill, described above. However, LRB-0333/2 postpones the effective date of those provisions by five years. Under LRB-0333/2, the changes to the tax exempt status of property owned by a church or a religious or benevolent association first apply to assessments as of January 1, 2011, payable in 2012.

#### **"RENT USE" PROVISIONS**

Under current law, if tax-exempt property is leased, the property retains its tax exemption only if the property owner uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property, or both. This is commonly referred to as the "rent use" requirement.

Assembly Bill 573 expands the purposes for which rental proceeds from tax-exempt property that is leased as residential housing may be used. Specifically, the bill provides that rental proceeds from property described in s. 70.11 (4), Stats. (which includes all the types of property listed in section 1., above, as well as several other types of tax-exempt property) that is leased as residential housing does not render the property taxable if the property owner uses all of the rental proceeds to *further its benevolent or educational activities*, or in the case of a church or religious association, to *further the activities of the church or association*.

LRB-0333/2 makes three changes to the rent use provisions in the bill:

- a. LRB-0333/2 limits the use of rental proceeds from tax-exempt property, other than low-income housing, that is leased as residential housing to benevolent or educational activities of the property owner that are *undertaken in the same county in which the tax-exempt property is located*.
- b. LRB-0333/2 provides that rental proceeds from tax-exempt property used to provide low-income housing may be used to support the provision of low-income housing anywhere in the state.
- c. The bill authorizes the use of leasehold income to "further" the benevolent, educational, or other activities of the property owner. LRB-0333/2 changes "further" to "support," to

clarify that the use of rental proceeds is not limited to activities that increase or expand the benevolent or educational activities of the property owner, but may be used to maintain the existing activities of the property owner.

**EFFECTIVE DATE OF RENT USE PROVISIONS; PROHIBITION ON COLLECTION OF PROPERTY TAXES FOR "OMITTED" PROPERTY**

Under the bill, the changes to the rent use provision, described above, apply retroactively to property tax assessments as of January 1, 2003, which were payable in 2004. The provision was made retroactive to protect owners of tax-exempt property that may not be in compliance with current rent use requirements from being assessed property taxes for the two years prior to enactment of the bill under the "omitted property" provisions of s. 70.44, Stats.

If the bill were enacted, because the changes to the rent use provisions would be retroactive, owners of tax-exempt property who were assessed and paid property taxes on the basis of failure to comply with the rent use provisions in current law may have a valid claim for recovery of unlawful taxes under s. 74.35, Stats.

LRB-0333/2 eliminates the retroactivity of the changes to the rent use provision. Under LRB-0331/2, the rent use changes go into effect on the effective date of the bill. To address the issue of potential tax liability for owners of tax-exempt property as "omitted property" under s. 70.44, Stats., LRB-0333/2 amends s. 70.44, Stats., to specify that the provisions of that section do not apply to property previously omitted from the tax rolls solely on the basis of failure of the property owner to comply with the rent use provisions during the years the property was omitted. Also, because the rent use provisions are not retroactive under LRB-0333/2, owners of tax-exempt property who paid taxes in prior years on the basis of failure to comply with rent use provisions would not have a valid claim for recovery of unlawful taxes under s. 74.35, Stats.

**EXEMPTION FOR WHEDA-FINANCED LOW-INCOME HOUSING**

Under current law, all low-income housing financed by the Wisconsin Housing and Economic Development Authority (WHEDA) is exempt from the property tax under the exemption for benevolent associations.

The bill creates an exemption for property owned by a church or a religious or benevolent association that is used as low-income housing that meets certain federal guidelines. According to WHEDA personnel, the exemption for low-income housing in the bill encompasses all low-income housing currently financed by WHEDA.

LRB-0333/2 creates a property tax exemption specifically for low-income housing financed by WHEDA. The new category of tax-exempt property consists of "property owned by an eligible sponsor under s. 234.01 (5), Stats., that is used to provide housing for persons and families of low and moderate income." An "eligible sponsor" is a housing corporation, limited-profit entity or nonprofit corporation or any other entity meeting criteria established by WHEDA which is organized to provide housing for persons and families of low- and moderate-income. The purpose of this provision is to ensure that all WHEDA-financed low-income housing that may be developed in the future is exempt from property taxes.

**MODIFICATION OF THE EXEMPTION FOR RESIDENTIAL CARE APARTMENT COMPLEXES**

A residential care apartment complex (RCAC) is a place where five or more adults reside that consists of independent apartments, and that provides not more than 28 hours per week of supportive, personal, or nursing services to each resident. RCACs must meet requirements set forth in Department of Health and Family Services (DHFS) administrative rules and must be either registered or certified by DHFS.

Under **current law**, RCACs are exempt from the property tax under the exemption for benevolent associations.

**The bill** exempts RCACs from the property tax.

LRB-0333/2 amends this provision exempting RCACs from property taxes to specify that an RCAC is tax-exempt only if at least 25% of the residents of the RCAC receive, on a daily basis, personal or nursing services, as defined by DHFS administrative rules pursuant to a written service agreement between the resident and the RCAC. This provision addresses concerns that owners of senior housing that would become taxable under the bill may attempt to convert the housing to RCAC status in order to remain tax exempt. Under current law, it is possible that a senior housing facility could be eligible to be registered as an RCAC without providing significant services to residents.

**METHOD OF ASSESSING RESIDENTIAL PROPERTY OWNED BY A CHURCH OR BENEVOLENT OR RELIGIOUS ASSOCIATION**

**Current law** specifies that real property shall be valued by the assessor in the manner specified in the Wisconsin Property Assessment Manual and that the assessor shall consider recent sales of reasonably comparable property in determining value of property.

**The bill** does not amend current law on this issue.

LRB-0333/2 specifies that with regard to determining the value of residential property owned by a benevolent association, church, or religious association, if information on the sale of reasonably comparable property is not available to the assessor, the assessor shall determine the value of the property by using the income approach specified in the Wisconsin Property Assessment Manual. Under the income approach, the present value of a property is determined from the estimated future income of the property, using the "market rent," which is the rent that a property would receive based on the current arm's-length rent commanded by similar properties in the marketplace.

**REQUIREMENT OF EXCLUSIVE USE OF PROPERTY FOR EXEMPT PURPOSES**

**The bill** provides that property owned and *used exclusively by any of the designated entities* is exempt while such property is used not for profit.

LRB-0333/2 provides, in addition, that the property must be *used exclusively for the specific purpose* for which the property is exempt in order to be tax exempt. For example, LRB-0333/2 requires property owned by a women's club to be used exclusively for the purposes of the club in order to be tax exempt.

**OCCUPANCY REQUIREMENT FOR HOUSING FOR THE DISABLED**

Under **current law**, housing for persons with permanent disabilities exempt from the property tax under the exemption for benevolent associations.

**The bill** specifies that residential housing for persons with permanent disabilities owned by a church or a religious or benevolent association is exempt from property taxes. Persons with permanent disabilities means persons for whom evidence is available that demonstrates that these persons meet the medical definition of permanent disability used to determine eligibility for programs administered by the federal Social Security Administration.

**LRB-0333/2** requires that in order for residential housing for persons with permanent disabilities to be tax-exempt, at least 75% of the housing units must be occupied by one or more persons with permanent disabilities.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices at 266-0932.

MM:rv



MOHS, MACDONALD, WIDDER & PARADISE

ATTORNEYS AT LAW

20 N. CARROLL STREET

MADISON, WISCONSIN 53703

FREDERIC E. MOHS  
DANIEL A. MACDONALD  
THEODORE C. WIDDER III  
GREGORY J. PARADISE  
JOHN W. VAN NOTE

608-256-1978  
FAX 608-257-1106

February 9, 2006

RE: AB 573 Columbus Park, Tax Exempt Housing

Dear Representative *Wieckert*

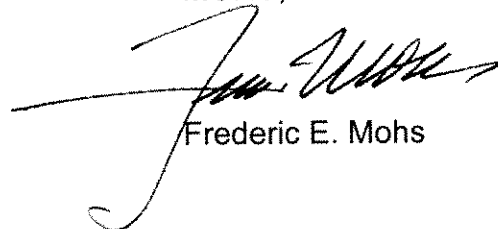
The following is a response I would make to the Vukmir / Kapanke SB 570 advocates. As a member of the Leg. Study Committee that produced AB 573, I have been involved in this issue from the start:

- When Wisconsin Act 195 was being considered in the final hours of the 2003 Legislative Session, concerns about effect on WHEDA were an important consideration. Broadly encompassing language resolving WHEDA's issues is included in AB 573 and also verbatim in the Vukmir / Kapanke SB 570 bill finally resolving any issues that WHEDA could conceivably have. It should be noted that while WHEDA may have had issues affecting their ability to do business that WHEDA's interests should never be an excuse to ignore the effect that the erosion of tax base has upon the remaining Wisconsin families who pay taxes as homeowners or renters.
- Of the nine public members on the Leg. Study Committee, six represented owners and developers of tax exempt housing interests or their associations. In spite of that, after hearing many hours of testimony by both the public and experts, the committee produced AB 573 representing a generous compromise exempting many classes of property that had not been entitled to exemption prior to 2003 Wisconsin Act 195.
- After a great deal of consideration, the committee rejected the "continuum of care" argument on the basis that Wisconsin citizens who make arrangements to provide financial security for their old age including savings, insurance or "continuum of care" arrangements should not be rewarded with tax free living. The compromise included nursing homes, assisted living facilities and CBRFs, but drew the line at independent living apartments owned by churches or benevolent societies that are virtually indistinguishable from ordinary apartments.

- The Leg. Study Committee also carefully considered "rent use" and with a heavy heart, a majority compromised to allow profits from tax exempt housing to be used in the county where the property was located. It was recognized that the State is requiring reluctant local units of government to give up tax base and was weakening the possibility that there would be some beneficial effect to local communities. For instance, in low income housing, money diverted away from the property would be unavailable for lower rents, better maintenance or important social services to the residents.
- Wisconsin Act 195 reversed Columbus Park bestowed tax exemption on a broad class of real estate and forgave back taxes, but set up a Leg. Study Committee alerting churches and benevolent societies that owned residential real estate that they should not rely on the status quo. The effect of AB 573 with the Gottlieb / Berceau sub, will entitle those owners to another five years of tax exempt operation before their independent living apartments become taxable, and then only if they do not qualify as low income. This gives the owner's time to reprice their units and for truly needy to move into facilities that are low income.
- The Leg. Study Committee recognized that a substantial expansion of luxury tax exempt senior housing was underway and that there would be a great more to follow if nothing was done. The Study Committee wanted to resolve the unfair transfer of the cost of local government from the residents of the tax exempt housing to other taxpayers, many of whom were less capable of paying than those in the facilities claiming tax exemption. They further recognized that Wisconsin Act 195 created a "roadmap" that would lead to a further expansion and hunger for tax exempt living that needed to be eliminated. Even with its generous compromises, AB 573 with the substitute proposed by Gottlieb and Berceau achieves that result.

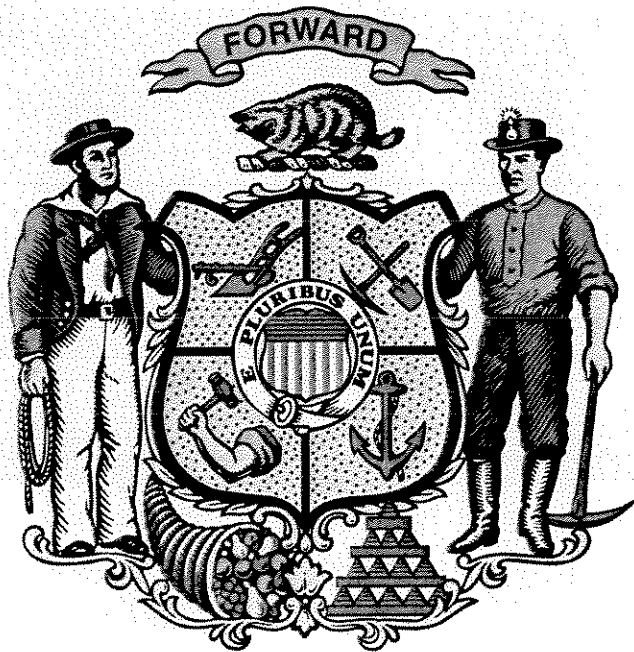
Sincerely,

MOHS, MACDONALD, WIDDER & PARADISE



Frederic E. Mohs

FEM:kjc



in 0186/2  
insert after (c) 9.:

10 Housing that:

① 95% occupied by households at least age 65; and

② either:

(A) 20% of the units occupied by households at or below 50% area median income, ~~adjusted~~ for households of the same size; or

(B) 40% of the units occupied by households at or below 60% area median income for households of the same size

(ce) For housing described in (c) 10, the municipality in which the housing is located may charge the owner for services provided by the municipality, in an annual aggregate amount not to exceed what the taxes payable to the municipality would be if the housing were on the tax rolls.

60%

1- 95% by series

2- extra/ea

20% > 50% min

3-

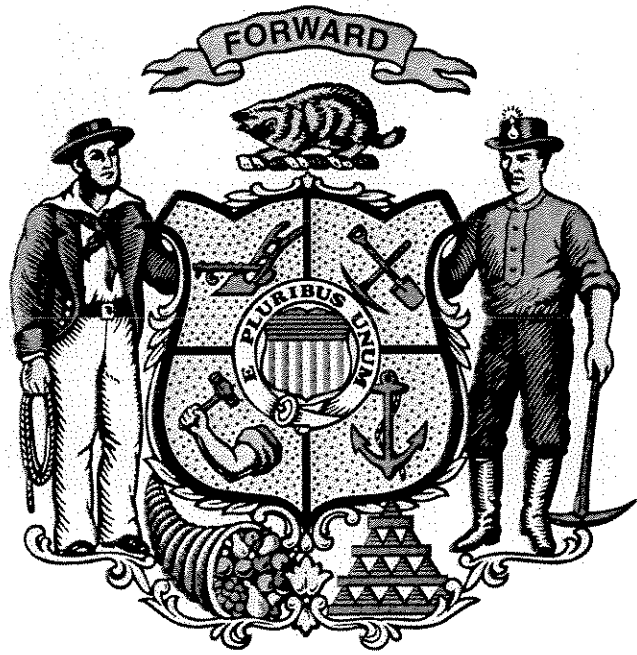
40% > 60%

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## Becher, Scott

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**Full Name:** Tom Ramsey  
**Last Name:** Ramsey  
**First Name:** Tom  
**Job Title:** Government Relations Director  
**Company:** Wisconsin Association of Homes and Services for the Aging, Inc.  
**Business Address:** 204 South Hamilton Street  
Madison, WI 53703  
**Business:** (608) 255-7060  
**Business Fax:** (608) 255-7064



## Columbus Park Hill

NO

1. NISCHKE
2. HUESCH
3. AINSWORTH
4. KAPANKE
5. ZIEN

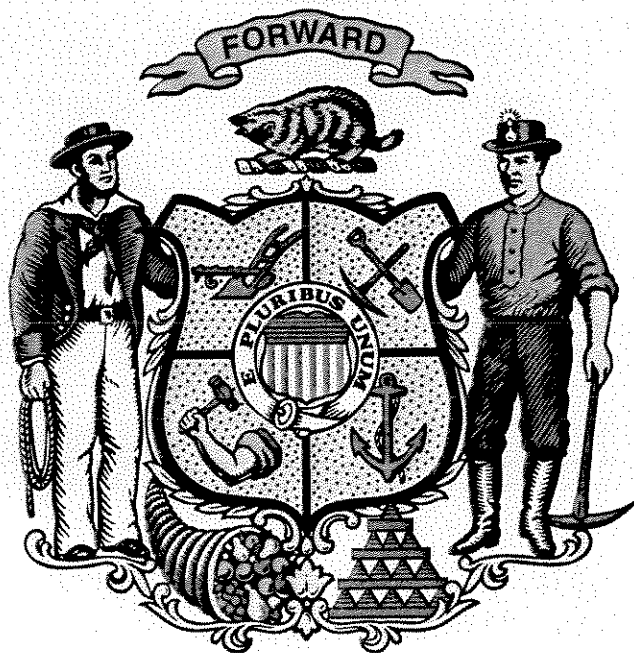
?

1. FREESE
2. RISSEK
3. GROTHMAN

YES

1. GARD





## PROPOSED AMENDMENT TO WLC: 0186/2

At the location indicated, amend the draft as follows:

**1.** Page 6, line 9, after "administration.", add: "10. Housing for older persons as defined in s. 106.50 (1m) (m) that satisfies the requirements under s. 106.50 (5m) (a) and which is affiliated with a nursing home licensed under s.50.03, a community-based residential facility licensed under s. 50.03, or a residential care apartment complex registered or certified under s.50.034, any one of which is located within the same county. Housing for older persons will be considered affiliated if it meets the definition of an affiliate under s.180.0103 and the affiliated entity is not-for-profit."

**NOTE 1:** (as taken from WLC: 0099/1) "Housing for older persons" is defined in s. 106.50 (1m) (m), stats., as any of the following:

1. Housing provided under any state or federal program that the secretary of the department of workforce development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.

2. Housing solely intended for, and solely occupied by, persons 62 years of age or older.

3. Housing primarily intended and primarily operated for occupancy by at least one person 55 years of age or older per dwelling unit. Section 106.50 (5m) (a), stats., provides that Wisconsin's open housing law does not prohibit discrimination based on age or family status with respect to housing for older persons. Housing primarily intended and primarily operated for occupancy by at least one person 55 years of age or older per dwelling unit may qualify as housing for older persons only if the owner of the housing maintains records containing written verification that all of the following factors apply to the housing:

A. At least 80% of the dwelling units in housing that is primarily intended and primarily operated for occupancy by at least one person 55 years of age or older per dwelling unit, are occupied by at least one person 55 years of age or older.

B. Policies are published and procedures are adhered to that demonstrate intent by the owner or manager to provide housing for persons 55 years of age or older. The owner or manager may document compliance with this requirement by maintaining records containing written verification of the ages of the occupants of the housing. In addition, under s. 106.50 (5m) (a), stats., no person may discriminate by refusing to continue renting to a person living in housing for older persons that is housing primarily intended and primarily operated for occupancy by at least one person 55 years of age or older per dwelling unit who is subject to a hardship condition. Finally, under s. 106.50 (5m) (a), stats., housing may qualify as housing for older persons with respect to persons first occupying the housing on or after September 1, 1992, regardless of whether a person who had not attained the age of 62 resided in

the housing on that date or regardless of whether one or more dwelling units were unoccupied on that date, if the persons who first occupy the housing on or after that date have attained the age of 62.

**NOTE 2:** "Affiliate" is defined under s.180.0103 to mean "a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person." Section 180.0103 defines "Person" to include "an individual and an entity." Section 180.0103 defines "Entity" to include "a domestic corporation; a foreign corporation; a limited liability company; a nonstock corporation; a stock or nonstock cooperative association; a profit or nonprofit unincorporated association; a business trust; an estate; a partnership; a trust; 2 or more persons having a joint or common economic interest; a state or an agency, commission, department, authority, bureau or other instrumentality of a state; a governmental subdivision; the United States; and a foreign government." For purposes of this amendment, only not-for-profit entities could be considered affiliates.

(END)