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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2023 Senate Bill 539**

**Senate Substitute  
Amendment 1**

### BACKGROUND

The Wisconsin Supreme Court has interpreted statutes that provide “administrative home rule” authority to counties as allowing county boards to exercise powers other than those specifically enumerated in the statutes, unless that power is preempted by state law. [See, e.g., *Hart v. Ament*, 176 Wis. 2d 694, 702-03 (1993).] However, an Attorney General’s opinion issued to the Shawano County corporation counsel on September 1, 2017, concluded that counties lack the authority to make a grant to a nonprofit food pantry. [OAG-01-17.] In part, the opinion emphasized that the statutes expressly allow county boards to provide funds to nonprofit organizations for certain other purposes, but not to support the operation of a food pantry.

### 2023 SENATE BILL 539

2023 Senate Bill 539 provides express statutory authority for county boards to make payments to nonprofit organizations<sup>1</sup> that have a primary purpose of operating a food bank or food pantry and that serve the relevant county as part of their organization.

### SENATE SUBSTITUTE AMENDMENT 1

Senate Substitute Amendment 1 also provides that statutory authority, but it takes a different approach. Rather than create a stand-alone provision authorizing county boards to provide funds to nonprofit food banks and food pantries, in particular, the substitute amendment amends a provision of current law that allows county boards to establish and operate relief programs. The substitute amendment specifies that a county may provide relief under such a program either by directly providing relief or by appropriating funds to a nonprofit organization for the purpose of funding a relief program.

### BILL HISTORY

Senator Tomczyk offered Senate Substitute Amendment 1 on January 9, 2024. On February 15, 2024, the Senate Committee on Transportation and Local Government recommended adoption of the substitute amendment and passage of the bill, as amended, on votes of Ayes, 5; Noes, 0.

For a full history of the bill, visit the Legislature’s [bill history page](#).

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<sup>1</sup> In this context, “nonprofit organization” means a nonprofit corporation, a charitable trust or other nonprofit association that is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income tax under section 501(a) of the Internal Revenue Code.