



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

---

May 5, 2011

Joint Committee on Finance

Paper #795

### **Financing for Out-of-State Projects (Wisconsin Health and Educational Facilities Authority)**

[LFB 2011-13 Budget Summary: Page 529, #1]

---

#### **CURRENT LAW**

The Wisconsin Health and Educational Facilities Authority (WHEFA) is a public corporation that provides tax-exempt capital financing for nonprofit health care institutions, private nonprofit educational facilities, nonprofit continuing care facilities, and research facilities engaged in basic research.

Bonds issued by WHEFA are not considered state debt and the state has no obligation to repay WHEFA debt if project revenues are insufficient to meet debt service costs. As of June 30, 2011, WHEFA had outstanding revenue bonds totaling approximately \$8.9 billion.

#### **GOVERNOR**

Provide that projects eligible for financing by WHEFA would include any project located within or outside of this state. Modify the definition of project so that in issuing bonds, a project could include more than one project, as well as any combination of projects undertaken jointly with other institutions as under current law. Specify that the proceeds of a WHEFA bond issue could be used for a project in Wisconsin or any other state, except that if the bonds proceeds would be used for a project in another state, that project would have to include a substantial component located in Wisconsin, as determined by the Executive Director of WHEFA. The bill would also modify the definition of a participating institution to include an affiliate.

#### **DISCUSSION POINTS**

1. WHEFA is an active issuer of debt on behalf of eligible facilities located in

Wisconsin. Under the budget proposal, WHEFA could finance projects located in other states, if the project includes a substantial component located in Wisconsin, as determined by the Executive Director of WHEFA.

2. Staff from WHEFA indicates that this change would allow WHEFA to provide financing to organizations that operate regionally and may undertake a single project that finances capital improvements at a number of sites. As an example, it may be more efficient to have one bond issue from WHEFA that is used to finance projects in Wisconsin and Michigan, rather than a WHEFA bond issue for the Wisconsin component and a separate issue by another entity for the sites in Michigan.

3. In 2009 Act 205, the Legislature authorized the formation of an authority for the issuance of conduit revenue bonds for projects located in Wisconsin as well as projects located anywhere in the United States. Under the provisions of Act 205, the Public Finance Authority (PFA) was formed and has begun issuing bonds. Act 205 specified that WHEFA approval is required for any project, as defined under the statutes governing WHEFA, which is located in Wisconsin. Because currently WHEFA can only finance projects in Wisconsin, this restriction has the effect of allowing PFA to finance any allowable projects in other states. However, for the categories of projects that WHEFA can finance, if the project is in Wisconsin, prior written approval from WHEFA is required. A similar provision was included in Act 205 relating to the Wisconsin Housing and Economic Development Authority.

4. Staff from PFA has identified a concern relating to the potential interaction of the bill provision to allow WHEFA to finance projects out of state with the Act 205 provision requiring prior written approval by WHEFA for certain in-state projects. Under current law, there is a clear demarcation, where PFA can finance any out-of-state project without approval by WHEFA, and WHEFA is limited to financing in-state projects. Under the bill, a potential borrower could have a project that either WHEFA or PFA would be authorized to finance, but PFA would have to receive prior written approval from WHEFA if there is any in-state component to the project. In this case, PFA's ability to compete, or issue bonds, for this type of project could be impaired, because the definition of whether there is a substantial component in Wisconsin would be left to the determination of the Executive Director of WHEFA. In this case, bond counsel could find it difficult to give an opinion on the legality of a proposed bond issue, if there is any nexus to Wisconsin.

5. One modification to the bill that would provide additional statutory guidance, would be to delete the reference to "substantial component" and, instead, specify that WHEFA could finance an out-of-state project if, prior to bond issuance, the Executive Director certifies that at least 20% of the projected expenditures of bond proceeds would be made on project sites located in Wisconsin. A corresponding change to the WHEFA approval provision relating to the PFA could be made, where WHEFA approval for a PFA financing of WHEFA types of projects would only be required if, prior to bond issuance, staff at PFA determine that at least 20% of the projected expenditures of bond proceeds would be made on project sites located in Wisconsin.

## **ALTERNATIVES**

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation to delete the reference to "substantial component" and, instead, specify that WHEFA could finance an out-of-state project if, prior to bond issuance, the Executive Director certifies that at least 20% of the projected expenditures of bond proceeds would be made on project sites located in Wisconsin. Provide that the current law requirement for WHEFA approval for a PFA financing of WHEFA types of projects would only apply if, prior to bond issuance, staff at PFA certify that at least 20% of the projected expenditures of bond proceeds would be made on project sites located in Wisconsin.
3. Delete provision.

Prepared by: Dave Loppnow