



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #682

### **PR-Funded Building Projects and Self-Amortizing Bonding (UW System)**

[LFB 2015-17 Budget Summary: Page 486, #37, #38, and #39]

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#### **CURRENT LAW**

The state issues general obligation bonds to fund capital projects for the UW System. Debt service on these bonds may be paid with GPR for academic facilities or by program revenue for other projects such as dormitories or student unions. The Legislature must authorize all general obligation debt, which is then issued by the Building Commission to fund the related project.

The Building Commission can authorize any project exceeding \$760,000 regardless of funding source only if the project is enumerated in the building program, with certain limited exceptions. To enumerate a project, the Legislature lists the project title, budget, and funding source in a nonstatutory provision enacted as part of the biennial budget bill.

#### **GOVERNOR**

Provide that the UW System Authority could issue bonds for any corporate purpose. Specify that all bonds would be negotiable for all purposes, notwithstanding their payment from a limited source. Specify that all bonds issued by the Authority would be payable solely from the funds pledged for their payment in accordance with the bond resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security for the bonds.

Specify that bonds issued by the Authority would not be debt of the state and that the state would not be liable for such bonds. Require that all bonds issued by the Authority would contain a statement to this effect on their face. Provide that a bond issue would not obligate the state or a political subdivision to levy a tax or make any appropriation to pay the bonds. Specify that nothing in these disclaimers would prevent the Authority from pledging its full faith and credit to the payment of these bonds.

Provide that the state would pledge not to limit or alter the rights vested in the Authority before the Authority has fully met and discharged the bonds, and any interest due on the bonds, and has fully performed its contracts, unless adequate provision is made by law for the protection of the bondholders or those entering into contracts with the Authority.

Provide that only UW System Authority building projects that are financed with general purpose revenues would require prior approval by the Building Commission. Provide that the Building Commission's biennial recommendations regarding the long-range state building program would include building projects proposed by the UW System Authority.

## **DISCUSSION POINTS**

1. Over the last five biennia, the Legislature has authorized approximately \$9.0 billion of state general obligation bonding for all borrowing purposes. Of the amount, approximately \$1.7 billion was authorized for UW System self-amortizing projects (19% of the total). Debt service on this bonding is paid from program revenue derived from UW facilities (dormitories, parking facilities, and student unions). However, because it is state issued general obligation bonding, it is considered state debt under the constitutional debt limits.

2. For certain other state programs, the Legislature has authorized the issuance of revenue bonds by the state Building Commission to reduce the amount of general obligation debt issued by the state. In recent years, the state has issued transportation revenue bonds, clean water fund revenue bonds, and petroleum environmental cleanup fund award (PECFA) revenue bonds. The largest revenue bond program is for transportation purposes (\$3.8 billion authorized since 1983-85), with \$2.7 billion authorized since 1989-91 for the clean water fund and \$387 million authorized since 1999-01 for PECFA.

3. One argument in favor of revenue bonding is that if an agency has a separate source of revenue, the state's general obligation pledge is not needed for bonds to be issued. A revenue bond supported by specific pledged revenues can receive a favorable bond rating and provide a low-cost source of capital financing.

4. This paper addresses three questions relating to the level of authority for PR funded projects that could be provided to the Board of Regents. These questions include: (a) would the Legislature approve the specific projects (enumeration) after being recommended for inclusion in the state's building program by the Building Commission; (b) would the Legislature approve the level of bonding; and (c) would the projects be subject to oversight by the Department of Administration.

### **Legislative Project Enumeration**

5. One approach to providing flexibility to the Board of Regents would be to allow the Board to select the projects to be financed with PR supported bonding without legislative enumeration. This would allow the Regents to establish the scope and timing of such projects subject to availability of funding without needing legislative approval. Under this option, the

Regents would not be constrained by the two-year building program cycle and would not have to wait for passage of the biennial budget in odd-number years to know which PR funded projects would receive approval by the Governor, Building Commission, Joint Finance Committee, and Legislature and be incorporated in the state's building program.

6. One argument in favor of legislative enumeration is that capital projects can affect agency operating costs, and there may be an advantage to maintaining this level of oversight, even for PR funded projects. In addition, since these projects are built on state land, it may be appropriate for the Legislature to approve their construction, rather than delegating this authority to the Board of Regents. A counter argument could be that the Legislature has already provided the Board of Regents with a significant amount of authority to manage its operating budget by creating block grants for its GPR, PR, and FED operating funds. Permitting the Board of Regents to authorize its own PR supported capital projects could be consistent with the approach the Legislature has taken related to the UW System's operating budget. If the Legislature retains state-issued bonds for UW projects, it could authorize a set amount of bonding and allow the Board to implement its projects within that bonding amount.

7. The current law practice of having state agencies submit capital projects to DOA, with the Governor's recommendations being subject to approval by the state Building Commission provides oversight in the preparation of the state's building program. This procedure allows the Governor and Building Commission to prioritize the capital projects requested by state agencies before the Legislature incorporates the building program in the budget bill. However, if the state were to continue to issue state general obligation bonds to fund UW System PR projects, the Building Commission would still have to authorize the issue of those bonds which would maintain some level of oversight by that body. One drawback to allowing the Board of Regents to construct PR projects without enumeration by the Legislature while retaining the Building Commission's role in authorizing bonds to fund those projects could be an increase in uncertainty if the Building Commission opts not to issue bonds for PR projects approved by the Regents.

### **Legislative Approval of Revenue Bonding**

8. The Legislature authorizes the issuance of state-issued and authority issued revenue bonds in different ways. For the three state-issued revenue bonding programs, the Legislature authorizes specific bonding amounts in each biennium, which are included in the bonding totals for each budget. For the Wisconsin Health and Educational Facilities Authority (WHEFA), the Legislature has authorized unlimited bonding, so that WHEFA can issue bonds to finance any eligible project. For the University of Wisconsin Hospitals and Clinics Authority (UWHCA), the Legislature has authorized debt issuance if the Authority has an unenhanced bond rating of A or better, the Authority has provided notice to the Joint Committee on Finance and the Secretary of Administration, and the Committee and Secretary have not provided notice within 30 working days that the Committee will meet, or the Secretary will further review the proposed bond issue. If notice is provided by the Committee, then bonds can only be issued if the Committee votes to approve the issue and if notice is provided by the Secretary, then bonds can only be issued if the Secretary approves such issuance in writing.

9. Using these current law examples, there are three approaches under which the

Legislature could authorize the UW System Board of Regents to issue revenue bonds. First, the Legislature could authorize a specific amount of bonding in each budget. This would provide legislative oversight, but this bonding would be included in the bonding amounts for that budget. This would have the disadvantage that this debt would still compete against other bonding programs because of its inclusion in the biennial bonding totals, even though it would be entirely paid by revenues derived from the UW System. In addition, the Regents could not establish their own borrowing priorities based on their assessment of program needs, because debt would require authorization by the Legislature.

10. A second option for authorizing revenue bond issuance by the Board of Regents would be to use an approach similar to current law governing debt issuance by the UWHCA. This would authorize revenue bond issuance by the UW Board of Regents subject to a 30-day passive review by the Joint Committee on Finance and the Secretary of Administration. Under this approach, the Legislature would not authorize specific debt amounts and the reported biennial debt authorization amounts would not reflect these revenue bonds. The requirement for passive approval by the Committee and the Secretary of Administration would retain a measure of oversight. However, the need for approval by other bodies would mean that the Board of Regents would not be able to establish and implement its priorities without outside approval.

11. A third option for authorizing revenue bond issuance by the Board of Regents would be to use an approach similar to current law governing debt issuance by WHEFA. This would allow the Board of Regents to issue revenue bonds for any capital project. These revenue bonds would be backed by whatever revenue that the Board chooses to pledge for their repayment. The bonds would specify that repayment would be made solely from the pledged revenues, and that the bonds are in no way an obligation of the state of Wisconsin. Under this approach, Chapter 36 of the statutes would be modified to authorize the Board of Regents to issue revenue bonds in the same way that the Building Commission is authorized to issue revenue bonds on behalf of other state agency borrowing programs.

12. One decision that the Committee would have to make if the Board of Regents were to be authorized to issue bonds relates to the types of projects that the bonds would fund and the revenues that could be pledged. The Legislature could specify that only revenue producing projects (dormitories, parking facilities, student unions) could be financed and that only the revenues derived from those sources could be pledged. This would prohibit the Board from pledging tuition to pay the principal and interest on any bonds issued. Under current practice, tuition is not used to fund debt service costs. Alternatively, the Legislature could allow any capital project to be financed, with the Board able to pledge any of its revenues to support the bond issue.

### **DOA Oversight of Projects**

13. The Division of Facilities Development (DFD) within DOA provides architectural, engineering, project management, and other services to state building projects. Under current practice, building program projects include a line item for DFD fees equal to 4% of the construction and contingency lines established for the project. In the past, there have been concerns that the fees collected by DFD exceed the value of the services provided. This is of particular concern when student fees or gift moneys provided to support a specific project may be used to fund unrelated

costs of a state agency or be lapsed to the general fund.

14. As DOA bids the contracts and is ultimately the payer, individual contractors or the construction firm may have little incentive to address the concerns of the UW institution for which the project is being built. While this is a concern for all projects, it is a particular issue in cases where projects are funded entirely through student fees or gifts. In addition, while the UW System and the UW institution where the project will be located are part of the architect selection team, DOA representatives make up the majority of such teams, reducing the institution's ability to select its preferred architect. Not knowing to what extent their input will be considered may deter potential donors and may serve as a disincentive for chancellors and deans responsible for raising funds to support a project.

15. It may be desirable to have a consistent approach to oversight of capital projects with procedures that do not change because a different source of funds is used. Oversight by DOA may also provide a certain level of uniformity across UW institutions. Coordination by DOA also allows for greater uniformity amongst the internal systems of all state buildings, such as electrical and heating and cooling, which may create efficiencies in terms of maintenance and repairs. In addition, operating costs may be borne by state funds, even if the project is funded by gifts. As a result, state oversight may be appropriate to monitor the potential effects on the state's budget.

16. One alternative could be to require DFD to charge the UW for services provided related to PR supported projects using a fee-for-service model, instead of charging the UW a percentage fee based on project costs. This could potentially remedy the UW System's concerns that the fees charged by DFD have exceeded the value of the service provided and that construction management services have been insufficient.

## **ALTERNATIVES**

### **A. Legislative Enumeration of Non-GPR Supported Projects**

1. Specify that the Board of Regents would not be subject to current law requiring legislative enumeration for projects with a project budget exceeding \$760,000 if the project is fully funded by non-GPR sources of revenue. Authorize the Board to implement such projects without oversight by the Building Commission.

2. Maintain current law.

### **B. Issuance of Revenue Bonds for UW System Self-Amortizing Projects**

1. Authorize the Board of Regents to issue revenue bonds that would be backed by revenues pledged by the Board, applying current law governing the issuance of revenue bonds (Subchapter 2 of Chapter 18 of the statutes) to the Board. Specify that these bonds would not be debt of the state and that the state would not be liable for repayment. Authorize the issuance of bonds using one of the following approaches:

a. Specify the dollar amount of bonding the Board can issue;

b. Allow bond issuance subject to a 30-day passive review by the Joint Committee on Finance and 30-day passive approval by the Secretary of Administration, as long as the bonds would have at least an A rating; or

c. Allow bond issuance for any capital project for the Board without any statutory limit on such bonding.

2. Authorize the Building Commission to issue revenue bonds that would be backed by revenues pledged by the Board, applying current law governing the issuance of revenue bonds (Subchapter 2 of Chapter 18 of the statutes) to the Board. Specify that these bonds would not be debt of the state and that the state would not be liable for repayment. Authorize the issuance of bonds using one of the following approaches:

a. Specify the dollar amount of bonding the Board can request to have issued;

b. Allow bond issuance by the Commission at the request of the Board subject to a 30-day passive review by the Committee and 30-day passive approval by the Secretary of Administration, as long as the bonds would have at least an A rating; or

c. Allow bond issuance by the Commission for any capital project at the request of the Board without any statutory limit on such bonding.

3. In addition to B1 or B2, specify that these bonds could only be used to finance self-amortizing facilities and prohibit the Board from pledging tuition revenues to support these bonds.

4. Maintain current law.

### **C. Oversight by DOA**

1. Provide that the Board of Regents would not be subject to current law requiring DOA oversight for architectural, engineering, project management, and other services for any project that is fully funded by non-GPR sources of revenue. Authorize the Board to contract with DOA for these services if it so chooses.

2. Require DFD to charge the UW System for services provided related to PR supported projects using a fee-for-service model, instead of charging the UW a percentage fee based on project costs.

3. Maintain current law.

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