

# **Bond Case Briefs**

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## **Little-Known Wisconsin Finance Authority Draws Scrutiny for Debt Deals Worth Billions.**

MADISON – With the aid of a few local governments, a prominent lobbyist and politicians of both parties, a Wisconsin group has carved out a niche doing billions of dollars in tax-free debt deals, becoming a national player that's virtually unknown in its nominal home state.

But that may be changing for this entity with a Madison address but no direct employees in Wisconsin and relatively little business here.

One deal done by the Public Finance Authority of Wisconsin has angered lawmakers in Kansas and another has received some unwanted attention from federal tax officials and investment regulators.

The once-obscure group is also getting more scrutiny in Wisconsin. State lawmakers are now asking why the Finance Authority should have powers such as the ability to issue bonds for projects that are outside Wisconsin and even potentially outside the country.

"I'm skeptical of the public benefit," said Rep. Scott Allen (R-Waukesha), who voted against the state budget in large part because of Finance Authority provisions. "It doesn't make sense to have a local public agency created by Wisconsin taxpayers and the Wisconsin Legislature that doesn't provide public benefit to the people of Wisconsin."

"As more people learn about this, I've got a feeling I'm not going to be the only one scratching (my) head," he said.

Authorized in 2010 by lawmakers and then created by five local governments, the Finance Authority helps clients around the country borrow money from investors using tax-exempt bonds. The group generates some revenue for local governments in Wisconsin and government associations, but critics question whether it's providing more benefit to out-of-state developers than to the public.

Though the Wisconsin group has a board of largely former local elected officials and a local law firm, much of the Public Finance Authority's work is done by a California bond firm, GPM Municipal Advisors, and a law firm based in San Francisco.

The Finance Authority has done 238 bond deals around the country totaling \$8.3 billion for projects ranging from a conference center and parking garage to charter schools and a massive shopping mall and entertainment complex in New Jersey. One project was in the U.S. Pacific island territory of Guam.

Only \$168 million of the deals — or about 2% — have been in Wisconsin. Many of the bond offerings were sold to sophisticated investors and did not receive a credit rating from an independent agency that would assess how risky they were.

The Finance Authority pays fees to the five local governments and to several sponsoring groups like the Wisconsin Counties Association. Mark O'Connell, the executive director of the counties

association, said the Finance Authority brings benefits to the state with no risks.

“Wouldn’t we want this entity to engage in business everywhere? There’s no risk to the state of Wisconsin. There’s no taxpayer dollars put into it or at risk,” O’Connell said in an interview.

Part of the controversy around the Finance Authority focuses on whether one of its bond deals produces the kind of public benefit needed to qualify for tax-free status from the U.S. government.

In July, the federal Internal Revenue Service [told the Finance Authority](#) of its proposed conclusion that the bonds for a Dallas luxury tower development shouldn’t be exempt from federal taxes.

That matters because the investors who had bought the bonds had done so expecting that the interest they would be paid on them would be free from federal income taxes. The Finance Authority’s outside attorney, the San Francisco firm of Orrick, Herrington & Sutcliffe, concluded the bonds should be tax free.

O’Connell insists that the Finance Authority has no legal risk from a potential investor lawsuit and that the group will be successful in challenging the IRS finding.

“The PFA will not do a project unless there’s a public benefit attached to it,” said Andrew Phillips, an attorney with von Briesen & Roper in Milwaukee who serves as general counsel to the Finance Authority and the counties association.

In the meantime, the U.S. Securities and Exchange Commission has also asked the Finance Authority to turn over documents related to the Dallas deal. It’s not clear why the investment regulators are looking at this particular deal, but in the past the SEC has charged participants in bond deals with fraud for misleading investors about whether the bond are tax free.

In a statement, O’Connell said the SEC inquiry may have arisen out of a dispute between partners in the tower’s development company and that there’s “nothing to suggest that the investigation involves PFA in any fashion.”

But Mark Scott, an attorney in the field, said it was unusual that the IRS had taken note of the bonds so quickly after they were issued last year. Scott, the head of the IRS tax-exempt bond office from 2000 to 2005, said auditing can take years to reach such a finding unless the IRS is tipped off or has a local employee who raises a concern.

Typically, Scott said, “it would have been years after the issue, not months.”

Scott said he wasn’t as sure as O’Connell that the Finance Authority has no potential liability from the deal.

“They’re probably right but there’s no guarantees,” he said.

Another Finance Authority deal sparked controversy in 2016 when the University of Kansas borrowed nearly \$330 million through the authority for a science building, dormitory and student union. If the university had used a Kansas agency to borrow the money, it would have needed the approval of that state’s legislature, [the Wichita Eagle has reported](#).

The Public Finance Authority started out without controversy.

A group in California had been doing similar deals in that state but had been unable to get lawmakers there to sign off on the group doing such projects in other states, O’Connell said. Staff

from the National Counties Association reached out to their counterparts in Wisconsin to see if they'd be willing to seek legislation to do that here, he said.

In 2010, the Wisconsin Legislature, then controlled by Democrats, passed a measure unanimously that allowed the creation of the authority and Democratic Gov. Jim Doyle signed it into law.

The legislation allowed a group of Wisconsin communities to form a government entity that can issue bonds on behalf of certain other borrowers around the country, who then hold the responsibility of paying off the loans.

Five communities then formed the Finance Authority — the City of Lancaster and the counties of Adams, Bayfield, Marathon and Waupaca.

As part of the 2011 state budget, Gov. Scott Walker and GOP lawmakers then gave the Finance Authority the power to refinance projects, purchase bonds and delegate some of its powers to its officers or board members.

In the 2013 budget, lawmakers went along with a Walker plan allowing the authority to issue bonds for projects outside the country if the borrowing entity was incorporated in the United States.

GOP legislators approved additional powers for the Finance Authority in both the 2015 and 2017 budgets, but Walker vetoed them.

The Finance Authority's lobbyist is Eric J. Petersen, whose clients include insurers, road builders, a title loan company, a tobacco maker and a trade group for liquor wholesalers.

"He has a high profile and a record of getting things done," O'Connell said of Petersen.

The Finance Authority is sponsored by the National Association of Counties, National League of Cities, Wisconsin Counties Association and League of Wisconsin Municipalities. The League of Wisconsin Municipalities received \$74,500 from the Finance Authority in 2016 and O'Connell said the other three groups or their affiliates got about the same amount each.

Since 2010, the five communities that formed the authority have received about \$26,000 each — or \$130,000 in total — to carry out certain duties on behalf of the Finance Authority.

**Jason Stein and Patrick Marley, Milwaukee Published 3:05 p.m. CT Oct. 13, 2017 |**