Wisconsin Association of Homes and Services for the Aging, Inc.

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To: Members of the Assembly

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

Subject: Senate Bill 403

The Consequences, Unintended or Otherwise, of the Passage of Senate Bill 403 on Senior Housing

- **WAHSA members believe there is a dual purpose to SB 403: 1) Ensure the continued exemption from property taxes for low-income housing; and 2) Deny the property tax exemption for some/many/most not-for-profit senior housing organizations *without actually taking a vote to do so*.**

- **If SB 403 passes without being amended to include all residential housing, GPR expenditures for Homestead tax credits could increase by as much as $1.3 million and either nursing home Medicaid expenditures will increase, nursing home access will be impeded, and/or additional nursing home closures will result.**

BACKGROUND

1) Senate Bill 403 amends s. 70.11(4) to delineate "low-income housing," as defined by federal HUD guidelines, as a benevolent association exempt from paying property taxes. The bill also amends the "rent use" requirement under s. 70.11, which limits the use of leasehold income generated by tax-exempt property to maintenance of the leased property and construction debt retirement of that property: SB 403 would permit providers of "low-income housing" to use their leasehold income to cover twelve specific operational costs (i.e., utilities, financing costs, insurance premiums) not allowed under current law.

2) Low-income housing providers requested the introduction of SB 403 because some local assessors have begun to question the use of their leasehold income and their compliance with the "rent use" requirement.

3) Senior housing facilities, WHEDA properties, and other forms of mixed-use, nonprofit residential housing that don't meet the SB 403 "low-income housing" definition face the same "rent use" scrutiny as low-income housing providers but their concerns are not addressed in SB 403.

WAHSA SOLUTION

Amend SB 403 to apply to "residential housing," which would include but not be limited to "low-income housing," and permit residential housing providers who lease a part of their property to maintain their property tax exemption if all of their leasehold income is used "to further the benevolent activities of the owner." This language is consistent with the *Columbus Park* "fix" under 2003 Wisconsin Act 195 and 2005 AB 573, the work product of the Legislative Council Special Committee on Tax Exemptions for Residential Properties (Columbus Park).

CONSEQUENCES TO SENIOR HOUSING IF SB 403 WERE TO PASS IN ITS CURRENT FORM

The Likely Scenario: After the passage of SB 403, local assessors will continue to question the compliance of senior housing organizations with the "rent use" requirement (the city of Wauwatosa already has challenged the tax-exempt status of three senior housing organizations, with the Milwaukee County Circuit Court expected to make the final determination); that scrutiny could include the 30 WHEDA mixed-use properties identified by WHEDA Executive Director Antonio Riley as not meeting the SB 403 definition of "low-income housing." Some assessors will assess property taxes on the property of some senior housing organizations for using their leasehold income for purposes not permitted under current law, such as utilities, financing costs, and insurance premiums. Or meals for their tenants, transportation to doctors' appointments and, in some cases, to subsidize the MA losses at their campus nursing home. These senior housing organizations will pay the assessed property taxes because it is a statutory pre-condition to challenge the assessment. The challenge will go to the local circuit court but not before the property tax payment is passed on the tenants of the senior housing facility, typically an 84-year old widow. That tenant, a product of the Depression who didn't plan for this additional and sizeable payment, will fret continuously over her ability to continue to stay in the facility, even though IRS regulations prohibit a federally tax-exempt senior housing organization from discharging a tenant for nonpayment of charges. The decisions in these court cases come three years later; in one case, the court rules in favor of the senior housing organization and the city is required to pay back the property taxes collected, with interest. In another case, the circuit court in another county rules in favor of the municipality. The decisions run about even, with the municipality winning half and the senior housing organization winning the other half. The courts, not the Legislature, are deciding the meaning of the "rent use" requirement and there is no consistency in their decisions.

Homestead Tax Credits: Tenants in tax-exempt housing are not eligible for Homestead tax credits. However, they will become eligible for Homestead tax credits if their housing no longer is tax-exempt and they are otherwise eligible. It is estimated that 70 of WAHSA's 103 senior housing facilities will fail to meet the "low-income housing" test under SB 403. Those 70 facilities house approximately 5,000 tenants and a recent survey of our membership found that 59.3% of those tenants have annual household incomes at or below the Homestead tax credit eligibility level of $24,500. If those estimates are accurate, and all 70 facilities were to lose their tax-exempt status for failure to comply with the "rent use" requirement, it is conservatively estimated that GPR expenditures would increase $1.3 million with the passage of SB 403 due to increased Homestead costs.

MA Nursing Home Costs: Senior housing facilities have a choice if SB 403 were to pass: those that currently use some of their apartment rents to subsidize the MA losses in their campus nursing home could continue to do so and risk their continued tax-exempt status because such usage is prohibited under the "rent use" requirement or they could eliminate the subsidy to maintain their tax exemption. But without that subsidy, who will pay for those additional MA nursing home costs? The current "Medicaid nursing home deficit," the difference between MA costs incurred by a facility and the MA reimbursement it receives, in the aggregate is $265.7million, or an average annual loss per facility of just over $758,000. Stated differently, the average Wisconsin nursing home loses $34.47 per day for each MA resident it serves. Without the senior housing subsidy of those losses, will the State make up the difference? Will the nursing home private pay resident, who on average is already paying $66 per day higher than the facility's MA payment rate, in addition to the $75 per month bed tax, be asked to bear even more of the MA underfunding burden? How long can they do that before becoming MA eligible themselves? Without additional GPR to offset these additional MA costs, it's difficult to see how the end result isn't either a nursing home access problem or more facility closures on top of the 40 facility closures we've experienced in the past 5 years.

RESPONSES TO SOME CLAIMS BY SB 403 PROPONENTS

SB 403 is a consensus bill. We wouldn't know: senior housing organizations and WHEDA, based on Antonio Riley's testimony before the Assembly Urban and Local Affairs Committee, were not asked to participate in the SB 403 negotiations.

SB 403 does not affect in any way the tax status of any form of housing. If today a project is tax exempt, or taxable, its status will not be affected by this legislation. Absolutely correct, as far as it goes. Indeed, that statement can be taken one step further: *If SB 403 fails to pass, all residential housing providers who currently are tax exempt, including those that provide "low-income housing," will remain tax exempt.* SB 403 doesn't address the current tax-exempt status of "low-income housing;" it seeks to protect their future tax-exempt status by shielding those providers from "rent use" scrutiny. Virtually every senior housing facility, WHEDA project, and mixed-use residential housing complex that fail to meet the SB 403 definition of "low-income housing" face that same "rent use" scrutiny but are denied the protections afforded "low-income housing" under SB 403.

If SB 403 were amended to permit residential housing providers to use their leasehold income "to further the benevolent activities of the owner," we would experience the largest property tax payment shift in the last 40 years. Simply not true, at least for senior housing. Tax-exempt senior housing must meet two tests to maintain their tax-exempt status: the "benevolence" test under s. 70.11(4) and the "rent use" requirement under s. 70.11. SB 403 does not address the benevolence test, except for "low-income housing;" if a senior housing project is tax-exempt today, the passage of SB 403 will not affect its tax-exempt status on the basis of benevolence. So for the above statement to be true, there would have to be a significant number of senior housing facilities that met the benevolence test but have been denied tax-exempt status previously because they failed to comply with the "rent use" requirement. WE ARE AWARE OF NO SENIOR HOUSING FACILITY, OR ANY OTHER RESIDENTIAL HOUSING PROVIDER, WHICH HAS BEEN DENIED A PROPERTY TAX EXEMPTION BASED ON THE FAILURE TO COMPLY WITH THE "RENT USE" REQUIREMENT. SB 403 seeks to

address the prospect of future tax-exemption denials for failure to comply with the "rent use" requirement; once again, to our knowledge, there have been no past "rent use" property tax exemption denials.

WHAT IS SB 403 REALLY ABOUT?

The SB 403 debate seems to be focused more on "who" is affected than by "what" is affected. The basic premise of the bill is the "rent use" requirement doesn't make sense. What sense does it make to limit a low-income housing provider's use of leasehold income to maintenance and construction debt retirement if the building can't be maintained because the utilities haven't been paid or the financing costs haven't been met? Current statute appears to provide senior housing organizations a tax exemption because they are serving seniors but they can't use their leasehold income to provide any services, such as transportation, meals or chore services, to those seniors. But instead of focusing on the "rent use" requirement, the SB 403 debate seems to have focused on who will and who won't be tax-exempt if the bill were to pass and when.

Why won't the proponents of SB 403 accept the amendment we've proposed? After all, the amendment would provide low-income housing providers with the same benefits and protections it would provide senior housing providers and those operating WHEDA and other mixed-use housing projects.

It would appear SB 403 to some is also a way to "get" high-end senior housing condos for healthy, wealthy retirees" without actually voting to deny their property tax exemption. The debate seems all too similar to the debate last session on Assembly Bill 573 and Senate Bills 570 and 660. However, those bills at least forced those on each side of this issue to discuss what kind of housing providers they felt should be tax-exempt and why. SB 403 has the potential to simply open the floodgates to the local assessor to drop the property tax boom on those not protected by SB 403, based not on the incomes of the housing tenants in question but on how those organizations spend their leasehold income. But if the secondary intent of SB 403 is to deny by indirection certain "high end" senior housing organizations their continued property tax exemption, the bill misses its mark: 1) If 74% of the units in a senior housing facility housed tenants with annual household incomes at or below the $24,500 Homestead tax credit eligibility level, that senior housing facility would not meet the SB 403 definition of "low-income housing." Is that how we now define "high end?" and 2) If SB 403 were to pass in its current form and a local assessor denied the property tax exemption of a senior housing facility that all could agree houses very wealthy people, the exemption denial would be based not on the income of the tenants but rather on the fact the facility used some of the rents of those wealthy people to subsidize the MA losses in their nursing home. If the goal is to impose an income test on senior housing seeking a property tax exemption, then a bill similar to last session's AB 573 should be introduced. Which raises this question: Is one of the reasons SB 403 is before us, other than the obvious desire to help low-income housing providers, is because AB 573 failed to pass last session?