

1 **AN ACT** *to amend* 1.12 (1) (b), 13.172 (1), 13.48 (13) (a), 13.62 (2), 13.95 (intro.),
2 16.002 (2), 16.004 (4), 16.004 (5), 16.004 (12) (a), 16.045 (1) (a), 16.15 (1) (ab),
3 16.41 (4), 16.417 (1) (a), 16.52 (7), 16.528 (1) (a), 16.53 (2), 16.54 (9) (a) 1., 16.70
4 (2), 16.72 (2) (e) and (f), 16.75 (1m), (8) (a) 1., 2. and (9), 16.765 (1), 16.765 (2),
5 16.765 (4), 16.765 (5), 16.765 (6), 16.765 (7) (intro.), 16.765 (7) (d), 16.765 (8),
6 16.85 (2), 16.865 (8), 71.26 (1) (be), 77.54 (9a) (a), 100.45 (1) (dm), 101.055 (2) (a),
7 101.177 (1) (d) and 230.03 (3); and *to create* 13.94 (1) (dj), 13.94 (1s) (c) 5., 40.02
8 (54) (m), 70.11 (41p), chapter 260, 260.06, 260.07 and 260.08 of the statutes;
9 **relating to:** the establishment of the Wisconsin Health Exchange Authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft, relating to the establishment of the Wisconsin Health Exchange Authority (WHEA or Exchange Authority), was prepared for the Joint Legislative Council's Special Committee on Health Care Reform Implementation.

Background

The federal Patient Protection and Affordable Care Act (PPACA) requires the establishment of health insurance exchanges in each state in order to expand access to health insurance. The PPACA provides each state the opportunity to establish its exchange. If not established by each state, the Secretary of Health and Human Services is responsible for establishing and operating exchanges where states choose not to establish an exchange, or where the secretary determines a state will not have an exchange operational by January 1, 2014.

The PPACA requires that either a governmental agency or a nonprofit entity established by a state run the exchange. Exchanges are required to make qualified health plans available to eligible individuals and employers and must consult with various stakeholders in carrying out their responsibilities. Exchanges must inform individuals of eligibility requirements, assign ratings to each qualified health plan, present plan

options in a standard format, and establish a “navigator” program to facilitate enrollment.

States must submit an annual report to the secretary on the Exchange Authority’s activities and on receipts and expenditures, and must publish pertinent information about the average costs of licensing, regulatory fees, administrative costs, and moneys lost to waste, fraud, and abuse.

Bill Draft

This bill draft establishes the Exchange Authority with a structure that is modeled similarly to Wisconsin’s Health Insurance Risk-Sharing Plan (HIRSP) Authority. The Exchange Authority is created in a new ch. 260 of the Wisconsin statutes and is added as a cross-reference in other statute sections in order to define its powers and duties.

The Exchange Authority is established as a quasi-public entity that is accountable to but also independent of state government. This bill draft requires the Exchange Authority to: comply with the processes for submitting agency reports to the legislature; follow state agency lobbying provisions; provide access to the Legislative Fiscal Bureau, Legislative Audit Bureau, and Department of Administration (DOA); comply with purchasing, accounting, and financial requirements as prescribed by DOA; and comply with nondiscriminatory contract compliance requirements.

This bill draft exempts the Exchange Authority from the definition of “departments” in ch. 16 of the Wisconsin statutes that are subject to the coordinated management services of the DOA.

This bill draft establishes a board for the Exchange Authority, to consist of 3 nonvoting members, and [] voting members. The nonvoting members are the secretaries of employee trust funds and health services, and the commissioner of insurance. The voting members are nominated by the governor with the advice and consent of the senate, and appointed for staggered []-year terms, representing labor or union coalitions, business and employer organizations, self-employed persons, health care consumer organizations, health plans and the insurance industry, hospitals, and the public.

This bill draft provides for the board members’ terms of office and quorum requirements for the purpose of conducting business. The bill draft requires the board to appoint an executive director for the Exchange Authority to serve at the pleasure of the board.

This bill draft requires that in the duties of the board, it shall seek to attain: (1) the retention of a pluralistic insurance marketplace; (2) the promotion of value and transparency in the health care system, with an

emphasis on quality, prevention, and cost-effectiveness; and (3) the provision of patient-centered, coordinated care.

This bill draft requires the board to ensure that the Exchange Authority meets the PPACA requirements, including: determining and coordinating eligibility; creating standardized benefit plan options at specified actuarial values; maintaining a call center; establishing a website for comparative quality and cost information; informing individuals about the existence of and their eligibility for public programs such as Medicaid, BadgerCare, and the Children's Health Insurance Program (CHIP); administering premium payment calculation and collection; paying brokers or agents; conducting risk adjustment; determining qualifications for low-income subsidies or waivers from the mandate for individual coverage; and providing an economic calculator for consumers to determine the actual cost of coverage after application of any premium tax credit or cost-sharing reduction.

This bill draft establishes the powers of the Exchange Authority, including: adopting policies and procedures for the regulation of its own affairs and the conducting of its business; maintaining an office; accepting gifts, grant, or loans; establishing its annual budget; executing contracts for professional services; hiring employees; incurring debt; requiring that qualified health plans in the exchange offer benefits in addition to essential health benefits; and [allowing all qualified health plans to participate in the exchange] **OR** [allowing only select qualified health plans to participate in the exchange through a competitive bidding process].

This bill draft sets forth a process for the Exchange Authority when contracting for professional services, limits the liability of the Exchange Authority, and prohibits employees of the Exchange Authority from engaging in partisan political activities while engaged in official duties as an employee.

This bill draft sets forth "legislative findings" in a nonstatutory provision that are based on the guiding principles for an exchange approved by the committee at its meeting on November 9, 2010.

1 **SECTION 1.** 1.12 (1) (b) of the statutes is amended to read:

2 1.12 (1) (b) "State agency" means an office, department, agency, institution of higher
3 education, the legislature, a legislative service agency, the courts, a judicial branch agency, an
4 association, society, or other body in state government that is created or authorized to be
5 created by the constitution or by law, for which appropriations are made by law, excluding the

1 Health Insurance Risk-Sharing Plan Authority and the Wisconsin Health Exchange
2 Authority.

NOTE: Excludes WHEA from the definition of “state agency” for energy conservation statutes.

3 **SECTION 2.** 13.172 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is amended
4 to read:

5 13.172 (1) In this section, “agency” means an office, department, agency, institution of
6 higher education, association, society, or other body in state government created or authorized
7 to be created by the constitution or any law, that is entitled to expend moneys appropriated by
8 law, including the legislature and the courts, and any authority created in subch. II of ch. 114
9 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, 260, or 279.

NOTE: This statute sets out the processes for submitting agency reports to the legislature. This amendment includes WHEA in the agencies that must comply with this statute.

10 **SECTION 3.** 13.48 (13) (a) of the statutes is amended to read:

11 13.48 (13) (a) Except as provided in par. (b) or (c), every building, structure or facility
12 that is constructed for the benefit of or use of the state, any state agency, board, commission
13 or department, the University of Wisconsin Hospitals and Clinics Authority, the Fox River
14 Navigational System Authority, the Wisconsin Health Exchange Authority, or any local
15 professional baseball park district created under subch. III of ch. 229 if the construction is
16 undertaken by the department of administration on behalf of the district, shall be in
17 compliance with all applicable state laws, rules, codes and regulations but the construction is
18 not subject to the ordinances or regulations of the municipality in which the construction takes
19 place except zoning, including without limitation because of enumeration ordinances or

1 regulations relating to materials used, permits, supervision of construction or installation,
2 payment of permit fees, or other restrictions.

NOTE: Subjects WHEA to state laws, rules, codes, and regulations with regard to construction that is undertaken for the benefit of the Exchange Authority.

3 **SECTION 4.** 13.62 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is amended
4 to read:

5 13.62 (2) “Agency” means any board, commission, department, office, society,
6 institution of higher education, council, or committee in the state government, or any authority
7 created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 232, 233, 234, 237,
8 260, or 279, except that the term does not include a council or committee of the legislature.

NOTE: Includes WHEA under the definition of “agency” in the lobbying provisions in ch. 13, subch. III. This subchapter confers certain lobbying exemptions to agency employees when acting on behalf of their agency.

9 **SECTION 5.** 13.94 (1) (dj) of the statutes is created to read:

10 13.94 (1) (dj) Annually, conduct a financial audit of the Wisconsin Health Exchange
11 Authority under ch. 260 and file copies of each audit report under this paragraph with the
12 distributees specified in par. (b).

NOTE: Requires the Legislative Audit Bureau to conduct an annual financial audit of WHEA.

13 **SECTION 6.** 13.94 (1s) (c) 5. of the statutes is created to read:

14 13.94 (1s) (c) 5. The Wisconsin Health Exchange Authority for the cost of the audit
15 under sub. (1) (dj).

16 **SECTION 7.** 13.95 (intro.) of the statutes, as affected by 2009 Wisconsin Act 28, is
17 amended to read:

18 13.95 **Legislative fiscal bureau.** (intro.) There is created a bureau to be known as the
19 “Legislative Fiscal Bureau” headed by a director. The fiscal bureau shall be strictly

1 nonpartisan and shall at all times observe the confidential nature of the research requests
2 received by it; however, with the prior approval of the requester in each instance, the bureau
3 may duplicate the results of its research for distribution. Subject to s. 230.35 (4) (a) and (f),
4 the director or the director's designated employees shall at all times, with or without notice,
5 have access to all state agencies, the University of Wisconsin Hospitals and Clinics Authority,
6 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the
7 Wisconsin Health Exchange Authority, the Lower Fox River Remediation Authority, the
8 Wisconsin Quality Home Care Authority, and the Fox River Navigational System Authority,
9 and to any books, records, or other documents maintained by such agencies or authorities and
10 relating to their expenditures, revenues, operations, and structure.

NOTE: Requires WHEA to provide access to the Legislative Fiscal Bureau's director and employees.

11 **SECTION 8.** 16.002 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is amended
12 to read:

13 16.002 (2) "Departments" means constitutional offices, departments, and independent
14 agencies and includes all societies, associations, and other agencies of state government for
15 which appropriations are made by law, but not including authorities created in subch. II of ch.
16 114 or subch. III of ch. 149 and in chs. 52, 231, 232, 233, 234, 235, 237, 260, and 279.

NOTE: Excludes WHEA from the definition of "departments" in ch. 16, stats., the DOA statutory chapter.

17 **SECTION 9.** 16.004 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is amended
18 to read:

19 16.004 (4) FREEDOM OF ACCESS. The secretary and such employees of the department
20 as the secretary designates may enter into the offices of state agencies and authorities created
21 under subch. II of ch. 114 or subch. III of ch. 149 and under chs. 52, 231, 233, 234, 237, 260,

1 and 279, and may examine their books and accounts and any other matter that in the secretary's
2 judgment should be examined and may interrogate the agency's employees publicly or
3 privately relative thereto.

NOTE: Includes the Exchange Authority in the agencies and authorities whose books, accounts, and other matters that DOA may access.

4 **SECTION 10.** 16.004 (5) of the statutes, as affected by 2009 Wisconsin Act 28, is
5 amended to read:

6 16.004 (5) AGENCIES AND EMPLOYEES TO COOPERATE. All state agencies and authorities
7 created under subch. II of ch. 114 or subch. III of ch. 149 and under chs. 52, 231, 233, 234,
8 237, 260, and 279, and their officers and employees, shall cooperate with the secretary and
9 shall comply with every request of the secretary relating to his or her functions.

NOTE: Includes WHEA in the list of authorities which must cooperate with the secretary of the DOA and comply with the secretary's requests relating to his or her functions.

10 **SECTION 11.** 16.004 (12) (a) of the statutes, as affected by 2007 Wisconsin Act 20, is
11 amended to read:

12 16.004 (12) (a) In this subsection, "state agency" means an association, authority,
13 board, department, commission, independent agency, institution, office, society, or other body
14 in state government created or authorized to be created by the constitution or any law,
15 including the legislature, the office of the governor, and the courts, but excluding the
16 University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority,
17 the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Health Exchange
18 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care
19 Authority, and the Fox River Navigational System Authority.

NOTE: Excludes WHEA from the definition of “state agency” in regard to rules on surveillance of state agency employees developed by the Secretary of the DOA.

1 **SECTION 12.** 16.045 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 28, is
2 amended to read:

3 16.045 (1) (a) “Agency” means an office, department, independent agency, institution
4 of higher education, association, society, or other body in state government created or
5 authorized to be created by the constitution or any law, that is entitled to expend moneys
6 appropriated by law, including the legislature and the courts, but not including an authority
7 created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 232, 233, 234, 235,
8 237, 260, or 279.

NOTE: Excludes WHEA from the definition of “agency” in regard to the DOA statutes on gasohol, alternative fuels and hybrid–electric vehicles.

9 **SECTION 13.** 16.15 (1) (ab) of the statutes is amended to read:

10 16.15 (1) (ab) “Authority” has the meaning given under s. 16.70 (2), but excludes the
11 University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation
12 Authority, the Wisconsin Quality Home Care Authority, the Wisconsin Health Exchange
13 Authority, and the Health Insurance Risk–Sharing Plan Authority.

NOTE: Excludes WHEA from the definition of “authority” for recovery and recycling programs.

14 **SECTION 14.** 16.41 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is amended
15 to read:

16 16.41 (4) In this section, “authority” means a body created under subch. II of ch. 114
17 or subch. III of ch. 149 or under ch. 52, 231, 233, 234, 237, 260, or 279.

NOTE: Includes WHEA in the definition of “authority” for purposes of accounting and financial requirements as prescribed the Secretary of the DOA.

1 **SECTION 15.** 16.417 (1) (a) of the statutes is amended to read:

2 16.417 (1) (a) “Agency” means an office, department, independent agency, institution
3 of higher education, association, society, or other body in state government created or
4 authorized to be created by the constitution or any law, that is entitled to expend moneys
5 appropriated by law, including the legislature and the courts, but not including an authority
6 or the body created under subch. III of ch. 149 or under ch. 260.

NOTE: Excludes WHEA from the definition of “agency” for purposes of
dual employment prohibitions.

7 **SECTION 16.** 16.52 (7) of the statutes, as affected by 2009 Wisconsin Act 28, is amended
8 to read:

9 16.52 (7) PETTY CASH ACCOUNT. With the approval of the secretary, each agency that
10 is authorized to maintain a contingent fund under s. 20.920 may establish a petty cash account
11 from its contingent fund. The procedure for operation and maintenance of petty cash accounts
12 and the character of expenditures therefrom shall be prescribed by the secretary. In this
13 subsection, “agency” means an office, department, independent agency, institution of higher
14 education, association, society, or other body in state government created or authorized to be
15 created by the constitution or any law, that is entitled to expend moneys appropriated by law,
16 including the legislature and the courts, but not including an authority created in subch. II of
17 ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, 237, 260, or 279.

NOTE: Excludes WHEA from the definition of “agency” for purposes of
DOA petty cash statutes.

18 **SECTION 17.** 16.528 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 28, is
19 amended to read:

20 16.528 (1) (a) “Agency” means an office, department, independent agency, institution
21 of higher education, association, society, or other body in state government created or

1 authorized to be created by the constitution or any law, that is entitled to expend moneys
2 appropriated by law, including the legislature and the courts, but not including an authority
3 created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, 237, 260,
4 or 279.

NOTE: Excludes WHEA from the definition of “agency” for purposes of
DOA statutes regarding interest on late payments.

5 **SECTION 18.** 16.53 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is amended
6 to read:

7 16.53 (2) IMPROPER INVOICES. If an agency receives an improperly completed invoice,
8 the agency shall notify the sender of the invoice within 10 working days after it receives the
9 invoice of the reason it is improperly completed. In this subsection, “agency” means an office,
10 department, independent agency, institution of higher education, association, society, or other
11 body in state government created or authorized to be created by the constitution or any law,
12 that is entitled to expend moneys appropriated by law, including the legislature and the courts,
13 but not including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch.
14 52, 231, 233, 234, 237, 260, or 279.

NOTE: Excludes WHEA from the definition of “agency” for purposes of
DOA statutes regarding improper invoices.

15 **SECTION 19.** 16.54 (9) (a) 1. of the statutes, as affected by 2009 Wisconsin Act 28, is
16 amended to read:

17 16.54 (9) (a) 1. “Agency” means an office, department, independent agency, institution
18 of higher education, association, society or other body in state government created or
19 authorized to be created by the constitution or any law, which is entitled to expend moneys
20 appropriated by law, including the legislature and the courts, but not including an authority

1 created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, 237, 260,
2 or 279.

NOTE: Excludes WHEA from the definition of “agency” for DOA indirect cost reimbursement statutes.

3 **SECTION 20.** 16.70 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is amended
4 to read:

5 16.70 (2) “Authority” means a body created under subch. II of ch. 114 or subch. III of
6 ch. 149 or under ch. 52, 231, 232, 233, 234, 235, 237, 260, or 279.

NOTE: Includes WHEA in the definition of “authority” for DOA purchasing statutes.

7 **SECTION 21.** 16.72 (2) (e) and (f) of the statutes are amended to read:

8 16.72 (2) (e) In writing the specifications under this subsection, the department and any
9 other designated purchasing agent under s. 16.71 (1) shall incorporate requirements for the
10 purchase of products made from recycled materials and recovered materials if their use is
11 technically and economically feasible. Each authority other than the University of Wisconsin
12 Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, the Wisconsin
13 Health Exchange Authority, and the Health Insurance Risk–Sharing Plan Authority, in writing
14 specifications for purchasing by the authority, shall incorporate requirements for the purchase
15 of products made from recycled materials and recovered materials if their use is technically
16 and economically feasible. The specifications shall include requirements for the purchase of
17 the following materials:

18 (f) In writing specifications under this subsection, the department, any other designated
19 purchasing agent under s. 16.71 (1), and each authority other than the University of Wisconsin
20 Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, the Wisconsin
21 Health Exchange Authority, and the Health Insurance Risk–Sharing Plan Authority shall

1 incorporate requirements relating to the recyclability and ultimate disposition of products and,
2 wherever possible, shall write the specifications so as to minimize the amount of solid waste
3 generated by the state, consistent with the priorities established under s. 287.05 (12). All
4 specifications under this subsection shall discourage the purchase of single-use, disposable
5 products and require, whenever practical, the purchase of multiple-use, durable products.

NOTE: Excludes WHEA from purchasing requirements regarding recycled products.

6 **SECTION 22.** 16.75 (1m), (8) (a) 1., 2. and (9) of the statutes are amended to read:

7 16.75 **(1m)** The department shall award each order or contract for materials, supplies
8 or equipment on the basis of life cycle cost estimates, whenever such action is appropriate.
9 Each authority other than the University of Wisconsin Hospitals and Clinics Authority, the
10 Lower Fox River Remediation Authority, the Wisconsin Aerospace Authority, the Wisconsin
11 Health Exchange Authority, and the Health Insurance Risk-Sharing Plan Authority shall
12 award each order or contract for materials, supplies or equipment on the basis of life cycle cost
13 estimates, whenever such action is appropriate. The terms, conditions and evaluation criteria
14 to be applied shall be incorporated in the solicitation of bids or proposals. The life cycle cost
15 formula may include, but is not limited to, the applicable costs of energy efficiency,
16 acquisition and conversion, money, transportation, warehousing and distribution, training,
17 operation and maintenance and disposition or resale. The department shall prepare documents
18 containing technical guidance for the development and use of life cycle cost estimates, and
19 shall make the documents available to local governmental units.

20 **(8)** (a) 1. The department, any other designated purchasing agent under s. 16.71 (1), any
21 agency making purchases under s. 16.74, and each authority other than the University of
22 Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, the

1 Wisconsin Health Exchange Authority, and the Health Insurance Risk-Sharing Plan
2 Authority shall, to the extent practicable, make purchasing selections using specifications
3 developed under s. 16.72 (2) (e) to maximize the purchase of materials utilizing recycled
4 materials and recovered materials.

5 2. Each agency and authority other than the University of Wisconsin Hospitals and
6 Clinics Authority, the Lower Fox River Remediation Authority, the Wisconsin Health
7 Exchange Authority, and the Health Insurance Risk-Sharing Plan Authority shall ensure that
8 the average recycled or recovered content of all paper purchased by the agency or authority
9 measured as a proportion, by weight, of the fiber content of paper products purchased in a
10 fiscal year, is not less than 40% of all purchased paper.

11 (9) The department, any other designated purchasing agent under s. 16.71 (1), any
12 agency making purchases under s. 16.74, and any authority other than the University of
13 Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, the
14 Wisconsin Health Exchange Authority, and the Health Insurance Risk-Sharing Plan
15 Authority shall, to the extent practicable, make purchasing selections using specifications
16 prepared under s. 16.72 (2) (f).

NOTE: Excludes WHEA from life cycle cost purchasing requirements.

17 **SECTION 23.** 16.765 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
18 amended to read:

19 16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and Clinics
20 Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority,
21 the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Health Exchange
22 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care
23 Authority, and the Bradley Center Sports and Entertainment Corporation shall include in all

1 contracts executed by them a provision obligating the contractor not to discriminate against
2 any employee or applicant for employment because of age, race, religion, color, handicap, sex,
3 physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation as
4 defined in s. 111.32 (13m), or national origin and, except with respect to sexual orientation,
5 obligating the contractor to take affirmative action to ensure equal employment opportunities.

NOTE: Includes WHEA in DOA prohibition on discrimination in
contracting statutes.

6 **SECTION 24.** 16.765 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is
7 amended to read:

8 16.765 (2) Contracting agencies, the University of Wisconsin Hospitals and Clinics
9 Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority,
10 the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Health Exchange
11 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care
12 Authority, and the Bradley Center Sports and Entertainment Corporation shall include the
13 following provision in every contract executed by them: "In connection with the performance
14 of work under this contract, the contractor agrees not to discriminate against any employee
15 or applicant for employment because of age, race, religion, color, handicap, sex, physical
16 condition, developmental disability as defined in s. 51.01 (5), sexual orientation or national
17 origin. This provision shall include, but not be limited to, the following: employment,
18 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
19 termination; rates of pay or other forms of compensation; and selection for training, including
20 apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take
21 affirmative action to ensure equal employment opportunities. The contractor agrees to post
22 in conspicuous places, available for employees and applicants for employment, notices to be

1 provided by the contracting officer setting forth the provisions of the nondiscrimination
2 clause”.

NOTE: Includes WHEA in DOA nondiscriminatory clause contracting requirement statutes.

3 **SECTION 25.** 16.765 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is
4 amended to read:

5 16.765 (4) Contracting agencies, the University of Wisconsin Hospitals and Clinics
6 Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority,
7 the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Health Exchange
8 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care
9 Authority, and the Bradley Center Sports and Entertainment Corporation shall take
10 appropriate action to revise the standard government contract forms under this section.

NOTE: Includes WHEA in DOA statutory contract revision statutes.

11 **SECTION 26.** 16.765 (5) of the statutes, as affected by 2009 Wisconsin Act 28, is
12 amended to read:

13 16.765 (5) The head of each contracting agency and the boards of directors of the
14 University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System
15 Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
16 Authority, the Wisconsin Health Exchange Authority, the Lower Fox River Remediation
17 Authority, the Wisconsin Quality Home Care Authority, and the Bradley Center Sports and
18 Entertainment Corporation shall be primarily responsible for obtaining compliance by any
19 contractor with the nondiscrimination and affirmative action provisions prescribed by this
20 section, according to procedures recommended by the department. The department shall
21 make recommendations to the contracting agencies and the boards of directors of the
22 University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System

1 Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
2 Authority, the Wisconsin Health Exchange Authority, the Lower Fox River Remediation
3 Authority, and the Bradley Center Sports and Entertainment Corporation for improving and
4 making more effective the nondiscrimination and affirmative action provisions of contracts.
5 The department shall promulgate such rules as may be necessary for the performance of its
6 functions under this section.

NOTE: Includes WHEA in DOA nondiscriminatory contract compliance
statutory requirements.

7 **SECTION 27.** 16.765 (6) of the statutes, as affected by 2009 Wisconsin Act 28, is
8 amended to read:

9 16.765 (6) The department may receive complaints of alleged violations of the
10 nondiscrimination provisions of such contracts. The department shall investigate and
11 determine whether a violation of this section has occurred. The department may delegate this
12 authority to the contracting agency, the University of Wisconsin Hospitals and Clinics
13 Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority,
14 the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Health Exchange
15 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Health Care
16 Authority, or the Bradley Center Sports and Entertainment Corporation for processing in
17 accordance with the department's procedures.

NOTE: Includes WHEA in list of contracting agencies which DOA may
delegate investigations of alleged violations of nondiscrimination
provisions of such contracts.

18 **SECTION 28.** 16.765 (7) (intro.) of the statutes, as affected by 2009 Wisconsin Act 28,
19 is amended to read:

1 16.765 (7) (intro.) When a violation of this section has been determined by the
2 department, the contracting agency, the University of Wisconsin Hospitals and Clinics
3 Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority,
4 the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Health Exchange
5 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care
6 Authority, or the Bradley Center Sports and Entertainment Corporation, the contracting
7 agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River
8 Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance
9 Risk-Sharing Plan Authority, the Wisconsin Health Exchange Authority, the Lower Fox River
10 Remediation Authority, the Wisconsin Quality Home Care Authority, or the Bradley Center
11 Sports and Entertainment Corporation shall:

NOTE: Requires WHEA, along with other contracting agencies, to follow prescribed steps when nondiscrimination provisions of contracts have been violated.

12 **SECTION 29.** 16.765 (7) (d) of the statutes, as affected by 2009 Wisconsin Act 28, is
13 amended to read:

14 16.765 (7) (d) Direct the violating party to take immediate steps to prevent further
15 violations of this section and to report its corrective action to the contracting agency, the
16 University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System
17 Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
18 Authority, the Wisconsin Health Exchange Authority, the Lower Fox River Remediation
19 Authority, the Wisconsin Quality Home Care Authority, or the Bradley Center Sports and
20 Entertainment Corporation.

NOTE: Includes WHEA in list of contracting agencies that must be reported to when corrective actions have taken place by party violating the nondiscrimination provisions of contracts.

1 **SECTION 30.** 16.765 (8) of the statutes, as affected by 2009 Wisconsin Act 28, is
2 amended to read:

3 16.765 (8) If further violations of this section are committed during the term of the
4 contract, the contracting agency, the Fox River Navigational System Authority, the Wisconsin
5 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Wisconsin
6 Health Exchange Authority, the Lower Fox River Remediation Authority, the Wisconsin
7 Quality Home Care Authority, or the Bradley Center Sports and Entertainment Corporation
8 may permit the violating party to complete the contract, after complying with this section, but
9 thereafter the contracting agency, the Fox River Navigational System Authority, the
10 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the
11 Wisconsin Health Exchange Authority, the Lower Fox River Remediation Authority, the
12 Wisconsin Quality Home Care Authority, or the Bradley Center Sports and Entertainment
13 Corporation shall request the department to place the name of the party on the ineligible list
14 for state contracts, or the contracting agency, the Fox River Navigational System Authority,
15 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the
16 Wisconsin Health Exchange Authority, the Lower Fox River Remediation Authority, the
17 Wisconsin Quality Home Care Authority, or the Bradley Center Sports and Entertainment
18 Corporation may terminate the contract without liability for the uncompleted portion or any
19 materials or services purchased or paid for by the contracting party for use in completing the
20 contract.

NOTE: Allows WHEA to terminate contract and report the party to the
 DOA if further violations of the nondiscrimination provisions of contract
 occur.

21 **SECTION 31.** 16.85 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is amended
22 to read:

1 16.85 (2) To furnish engineering, architectural, project management, and other building
2 construction services whenever requisitions therefor are presented to the department by any
3 agency. The department may deposit moneys received from the provision of these services
4 in the account under s. 20.505 (1) (kc) or in the general fund as general purpose revenue —
5 earned. In this subsection, “agency” means an office, department, independent agency,
6 institution of higher education, association, society, or other body in state government created
7 or authorized to be created by the constitution or any law, which is entitled to expend moneys
8 appropriated by law, including the legislature and the courts, but not including an authority
9 created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, 237, 260,
10 or 279.

NOTE: Excludes WHEA from the definition of “agency” regarding DOA
authority to furnishing engineering, architectural, project management,
and other building construction services to agencies.

11 **SECTION 32.** 16.865 (8) of the statutes, as affected by 2009 Wisconsin Act 28, is
12 amended to read:

13 16.865 (8) Annually in each fiscal year, allocate as a charge to each agency a
14 proportionate share of the estimated costs attributable to programs administered by the agency
15 to be paid from the appropriation under s. 20.505 (2) (k). The department may charge
16 premiums to agencies to finance costs under this subsection and pay the costs from the
17 appropriation on an actual basis. The department shall deposit all collections under this
18 subsection in the appropriation account under s. 20.505 (2) (k). Costs assessed under this
19 subsection may include judgments, investigative and adjustment fees, data processing and
20 staff support costs, program administration costs, litigation costs, and the cost of insurance
21 contracts under sub. (5). In this subsection, “agency” means an office, department,
22 independent agency, institution of higher education, association, society, or other body in state

1 government created or authorized to be created by the constitution or any law, that is entitled
2 to expend moneys appropriated by law, including the legislature and the courts, but not
3 including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231,
4 232, 233, 234, 235, 237, 260, or 279.

NOTE: Excludes WHEA from DOA charges for costs associated with statewide risk management coordination.

5 **SECTION 33.** 40.02 (54) (m) of the statutes is created to read:

6 40.02 (**54**) (m) The Wisconsin Health Exchange Authority.

NOTE: Includes WHEA in the definition of “state agency” for public employee trust fund statutes.

7 **SECTION 34.** 70.11 (41p) of the statutes is created to read:

8 70.11 (**41p**) WISCONSIN HEALTH EXCHANGE AUTHORITY. All property owned by the
9 Wisconsin Health Exchange Authority, provided that use of the property is primarily related
10 to the purposes of the authority.

NOTE: Exempts WHEA property from the property tax.

11 **SECTION 35.** 71.26 (1) (be) of the statutes, as affected by 2009 Wisconsin Act 28, is
12 amended to read:

13 71.26 (**1**) (be) *Certain authorities.* Income of the University of Wisconsin Hospitals
14 and Clinics Authority, of the Health Insurance Risk-Sharing Plan Authority, ~~and~~ of the
15 Wisconsin Health Exchange Authority, of the Fox River Navigational System Authority, and
16 of the Wisconsin Aerospace Authority.

NOTE: Exempts WHEA income from taxation.

17 **SECTION 36.** 77.54 (9a) (a) of the statutes, as affected by 2009 Wisconsin Act 28, is
18 amended to read:

1 77.54 (9a) (a) This state or any agency thereof, the University of Wisconsin Hospitals
2 and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance
3 Risk-Sharing Plan Authority, the Wisconsin Quality Home Care Authority, the Wisconsin
4 Health Exchange Authority, and the Fox River Navigational System Authority.

NOTE: Exempts from sales and use taxes the sales price from sales to,
and the storage by, use by or other consumption of tangible personal
property, and items and property under s. 77.52 (1) (b) and (c), and
taxable services by WHEA.

5 **SECTION 37.** 100.45 (1) (dm) of the statutes, as affected by 2009 Wisconsin Act 28, is
6 amended to read:

7 100.45 (1) (dm) “State agency” means any office, department, agency, institution of
8 higher education, association, society or other body in state government created or authorized
9 to be created by the constitution or any law which is entitled to expend moneys appropriated
10 by law, including the legislature and the courts, the Wisconsin Housing and Economic
11 Development Authority, the Bradley Center Sports and Entertainment Corporation, the
12 University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Health and
13 Educational Facilities Authority, the Wisconsin Aerospace Authority, ~~and~~ the Wisconsin
14 Quality Home Care Authority, Fox River Navigational System Authority, and the Wisconsin
15 Health Exchange Authority.

NOTE: Includes WHEA in the definition of “state agency” for statutes
regarding mobile air conditioners.

16 **SECTION 38.** 101.055 (2) (a) of the statutes is amended to read:

17 101.055 (2) (a) “Agency” means an office, department, independent agency, authority,
18 institution, association, society, or other body in state government created or authorized to be
19 created by the constitution or any law, and includes the legislature and the courts, but excludes

1 the Health Insurance Risk-Sharing Plan Authority and the Wisconsin Health Exchange
2 Authority.

NOTE: Excludes WHEA from the definition of “agency” for statutes regarding public employee occupational safety and health statutes.

3 **SECTION 39.** 101.177 (1) (d) of the statutes is amended to read:

4 101.177 (1) (d) “State agency” means any office, department, agency, institution of
5 higher education, association, society, or other body in state government created or authorized
6 to be created by the constitution or any law, that is entitled to expend moneys appropriated by
7 law, including the legislature and the courts, the Wisconsin Housing and Economic
8 Development Authority, the Bradley Center Sports and Entertainment Corporation, the
9 University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority,
10 the Wisconsin Quality Home Care Authority, and the Wisconsin Health and Educational
11 Facilities Authority, but excluding the Health Insurance Risk-Sharing Plan Authority, the
12 Wisconsin Health Exchange Authority, and the Lower Fox River Remediation Authority.

NOTE: Excludes WHEA in the definition of “state agency” for statutes regarding refrigeration equipment and ozone-depleting refrigerant.

13 **SECTION 40.** 230.03 (3) of the statutes, as affected by 2009 Wisconsin Act 28, is
14 amended to read:

15 230.03 (3) “Agency” means any board, commission, committee, council, or department
16 in state government or a unit thereof created by the constitution or statutes if such board,
17 commission, committee, council, department, unit, or the head thereof, is authorized to
18 appoint subordinate staff by the constitution or statute, except a legislative or judicial board,
19 commission, committee, council, department, or unit thereof or an authority created under
20 subch. II of ch. 114 or subch. III of ch. 149 or under ch. 52, 231, 232, 233, 234, 235, 237, 260,
21 or 279. “Agency” does not mean any local unit of government or body within one or more

1 local units of government that is created by law or by action of one or more local units of
2 government.

NOTE: Excludes WHEA from the definition of “agency” for administrative services statutes.

3 **SECTION 41.** Chapter 260 of the statutes is created to read:

4 **CHAPTER 260**

5 **WISCONSIN HEALTH EXCHANGE AUTHORITY**

6 260.01 **Definitions.** In this chapter, except as otherwise provided:

7 (1) “Authority” means the Wisconsin Health Exchange Authority.

8 (2) “Board” means the board of trustees of the authority.

9 (3) “Fund” means the Wisconsin Health Exchange Authority under s. 260.03 (2).

10 (4) “Qualified health plan” means a health benefit plan that has met the criteria for
11 certification under the federal patient protection and affordable care act.

12 260.02 **Creation and organization of authority.** (1) CREATION AND MEMBERSHIP OF
13 BOARD. There is created a public body corporate and politic to be known as the “Wisconsin
14 Health Exchange Authority”. The 3 nonvoting members of the board shall consist of the
15 secretaries of employee trust funds and health services, and the commissioner of insurance.
16 The secretary of employee trust funds [secretary of health services or commissioner of
17 insurance] shall serve as the initial chairperson of the board until such time as the board elects
18 a chairperson from its voting membership. The board shall also consist of the following [
19] voting members, nominated by the governor and with the advice and consent of the senate
20 appointed, for staggered []-year terms:

21 (a) [] member[s] representing statewide labor or union coalitions.

22 (b) [] member[s] representing statewide business and employer organizations.

- 1 (c) [] member[s] who represents self-employed persons, including farmers.
- 2 (d) [] member[s] representing statewide health care consumer organizations.
- 3 (e) [] member[s] representing health plans and the insurance industry.
- 4 (f) [] member[s] representing hospitals.
- 5 (g) [] public member[s].

NOTE: This SECTION of the draft provides an alternative for WHEA board membership: 3 nonvoting ex officio members, a non-specified number of voting members representing various affected constituencies, and one or more public members.

Committee members made several suggestions for governing board membership. Most comments centered on having an independent, nonpartisan board with various stakeholder representation. Some member suggestions contained more specific ideas for exchange authority board membership:

- Six ex officio members (Governor, Assembly Speaker, Senate Majority Leader, Insurance Commissioner, and Employee Trust Funds and Health Services Secretaries (or designees) and 9 members (2 each representing consumers, labor unions, employers, and health care providers, and one representing the health insurance industry); appointed by the Governor and confirmed by the Senate for staggered 4-year terms. (Public Members Riemer, Kraig, and Leean.)
- Equal representation for all stakeholders, with no more than 10 to 12 members. (Public Member Zabawa.)
- Three ex officio and 5 public members, representing various business, labor, and insurance interests. (Public Member Leean.)
- A small and apolitical board. Individuals appointed should have necessary expertise, but avoid “camps” that can result from appointment by profession. Possibly requires various interest groups to agree on appointees, such as requiring endorsement by 3 statewide health groups; endorsement by 2 for-profit and 2 nonprofit insurers, or some similar mechanism. Candidates should apply for and be interviewed and vetted for these positions, assessing their qualifications and experience against established criteria. (Public Member DeMars.)

- 6 (2) TERMS OF OFFICE; VACANCIES; QUORUM; BUSINESS. (a) The terms of all members of
- 7 the board shall expire on July 1.

1 (b) Each member of the board shall hold office until a successor is appointed and
2 qualified unless the member vacates or is removed from his or her office. A member who
3 serves as a result of holding another office or position vacates his or her office as a member
4 when he or she vacates the other office or position. A member who ceases to qualify for office
5 vacates his or her office. A vacancy on the board shall be filled in the same manner as the
6 original appointment to the board for the remainder of the unexpired term, if any.

7 (c) A majority of the members of the board constitutes a quorum for the purpose of
8 conducting its business and exercising its powers and for all other purposes, notwithstanding
9 the existence of any vacancies. Action may be taken by the board upon a vote of a majority
10 of the members present. Meetings of the members of the board may be held anywhere within
11 or without the state.

12 (3) BOARD MEMBER RESPONSIBILITY AS TRUSTEE. Each member of the board shall be
13 responsible for taking care that the highest level of independence and judgment is exercised
14 at all times in administering the exchange.

15 260.03 **Administration of exchange.** (1) AUTHORITY. The authority shall be
16 responsible for the operation of the exchange, and may enter into contracts for the exchange's
17 administration.

18 (2) FUND. (a) (intro.) The authority shall pay the operating and administrative expenses
19 of the exchange from the fund, which shall be outside the state treasury and which shall consist
20 of all of the following:

- 21 1. Premiums paid by eligible persons.
- 22 2. Moneys received from the federal government under the patient protection and
23 affordable care act.
- 24 3. The earnings resulting from investments of the assets under par. (b).

1 4. Any other moneys received by the authority from time to time.

2 (b) The authority controls the assets of the fund.

3 (c) Moneys in the fund may be expended only for the purposes specified in par. (a).

4 260.04 **Duties.** The board shall:

5 **(1)** Establish and administer a health insurance exchange in this state. In establishing
6 and administering the health care exchange, the board shall seek to attain all of the following
7 goals:

8 (a) Retention of a pluralistic insurance market.

9 (b) Promotion of value and transparency in the health care system, with an emphasis
10 on quality, access, prevention, and cost–effectiveness.

11 (c) Provision of patient–centered, coordinated care.

12 **(2)** Appoint an executive director, who shall serve at the pleasure of the board. The
13 board may delegate to one or more of its members or its executive director any powers and
14 duties the board considers proper. The executive director shall receive such compensation as
15 may be determined by the board.

16 **(3)** Ensure that the exchange complies with the following requirements of the federal
17 patient protection and affordable care act:

18 (a) Assists qualified individuals and qualified employers in securing qualified health
19 plans.

20 (b) Ensures the exchange is self–sustaining by January 1, 2015.

21 (c) Implements procedures for the certification, recertification, and decertification of
22 health plans as qualified health plans, consistent with federal guidelines developed by the
23 secretary of the federal department of health and human services.

1 (d) Provides for the operation of a toll-free telephone hotline to respond to requests for
2 assistance.

3 (e) Maintains a standardized internet website through which enrollees and prospective
4 enrollees of qualified health plans may obtain standardized comparative information on such
5 plans including information on quality.

6 (f) Assigns a price and quality rating to each qualified health plan offered through the
7 exchange in accordance with criteria developed by the secretary of the federal department of
8 health and human services.

9 (g) Utilizes a standard format for presenting health benefits plan options in the
10 exchange, including the use of the uniform outline of coverage established under section 2715
11 of the public health service act.

12 (h) Informs individuals of eligibility requirements for the federal medicaid program,
13 the federal children's health insurance program, or any applicable state or local public
14 program and if through screening of the exchange application, the exchange identifies
15 individuals who are eligible for such program, provide for their enrollment in such programs.

16 (i) Establishes and makes available by electronic means a calculator to determine the
17 actual cost of coverage after the application of any premium tax credit and any cost-sharing
18 reduction.

19 (j) Credits the amount of any free choice voucher to the monthly premium of the plan
20 in which a qualified employee is enrolled, in accordance with federal law, and collects the
21 amount credited from the offering employer.

22 (k) Certifies individuals exempt from the individual responsibility requirement or from
23 the penalty imposed.

1 (L) Informs employers and the United States treasury of individual mandate
2 exemptions, of information on employees who are determined eligible to enroll in the
3 exchange and informs employers when employees cease coverage under a qualified health
4 plan during a plan year.

5 (m) Awards grants to eligible entities that establish an education and enrollment
6 navigator program as prescribed by standards established by the federal department of health
7 and human services.

8 (n) Establishes a small employer health options exchange through which qualified
9 employers may access coverage for their employees. The authority may determine whether
10 the small employer health options exchange and the individual exchange may be merged.

11 (o) Consults with stakeholders including consumers, representatives of small business
12 and self-employed individuals, the state medicaid office, those with experience in facilitating
13 health plan enrollment, Indian tribes, and advocates for enrolling hard-to-reach populations.

14 (p) Accounts for expenditures and keeps accurate accounting of all activities, receipts,
15 and expenditures and annually submit to the secretary a report of such accountings.

16 (q) Publishes on internet website the average costs of licensing, regulatory fees and
17 other payments required by the exchange, as well as administrative costs.

18 (r) Keeps an accurate account of all exchange activities and all of its receipts and
19 expenditures and annually makes a report at the end of the state fiscal years to the governor,
20 the legislature, and the state auditor.

21 (s) Includes enrollee satisfaction information in the information provided to
22 individuals and employers.

23 (t) Ensures compliance with federal requirement that health plans seeking certification
24 as qualified health plans submit to the exchange, the secretary of the federal department of

1 health and human services, and the state insurance commissioner and make available to the
2 public, accurate and timely disclosure in plain language, plan data as required by federal law
3 including claims handling policies, financial disclosures, enrollment and disenrollment data,
4 claims denials, rating practices, cost-sharing for out of network coverage, and other
5 information at required by the secretary of the federal department of health and human
6 services.

7 (u) Ensures compliance with federal regulatory standards regarding information of
8 availability of in-network and out-of-network providers including provider directories and
9 availability of essential community providers, timely information for consumers requesting
10 their amount of cost-sharing for specific services from specified providers, information for
11 participants in group health plans, and information on plan quality improvement activities.

12 (v) Allows limited scope pediatric dental plans to be offered in the exchange.

13 (w) Requires health plans to submit justifications for premium increase and post such
14 information on their website.

15 (x) Provides for an initial open enrollment, as determined by the secretary of federal
16 department of health and human services, annual open enrollment periods as determined by
17 the secretary of the department of health and human services for calendar years after the initial
18 enrollment period, and special enrollment periods as specified by federal law including special
19 monthly enrollment periods for Indians as defined in section 4 of the Indian health care
20 improvement act.

21 (y) Includes enrollee satisfaction information in the information provided to
22 individuals and employers through an internet portal in a manner that allows individuals to
23 easily compare enrollee satisfaction levels between comparable plans.

NOTE: Paragraphs (a)–(y) are required by the Patient Protection and Affordable Care Act, P.L. 11–148 (2010). Other additional powers that were suggested by committee members include:

- Publish health plan quality measures. (Public Members Huebner and DeMars.)
- Offer incentives to participating insurers that improve health by hitting established benchmarks for quality. (Public Member Huebner.)
- Insist on provider coordination of care, administrative uniformity, and efficiency. (Public Members Kraig and Zabawa.)
- Guard against adverse selection. (Public Members Kraig and Arnone.)
- Requires that plans that bid to be in the exchange be required to explain if they have a system for performing certain quality-based activities. (Public Member Riemer.)

1 (4) Submit an annual report on its activities to the governor and chief clerk of each house
2 of the legislature, for distribution under s. 13.172 (2).

3 (5) Contract for annual, independent, program evaluations and financial audits that
4 measure the extent to which the plan is achieving the goals under sub. (1) (a) to (c).

5 **260.05 Powers.** The board shall have all the powers necessary or convenient to carry
6 out the purposes and provisions of this chapter. In addition to all other powers granted the
7 board under this chapter, the board may:

8 (1) Adopt, amend, and repeal bylaws and policies and procedures for the regulation of
9 its affairs and the conduct of its business.

10 (2) Have a seal and alter the seal at pleasure.

11 (3) Maintain an office.

12 (4) Sue and be sued.

13 (5) Accept gifts, grants, loans, or other contributions from private or public sources.

14 (6) Establish the authority's annual budget and monitor the fiscal management of the
15 authority.

1 (7) Impose assessments on health care facilities, providers, services, and insurance
2 products.

3 (8) Execute contracts and other instruments, including contracts for any professional
4 services required for the authority, as limited by s. 260.12.

5 (9) Employ any officers, agents, and employees that it may require and determine their
6 qualifications and compensation.

7 (10) Procure liability insurance.

8 (11) Contract for studies on issues, as identified by the board that relate to the exchange.

9 (12) Incur debt.

10 (13) Compel witnesses to attend meetings and to testify upon any necessary matter
11 concerning the plan.

12 (14) [Allow all qualified health plans to participate in the health exchange.] **OR** [Allow
13 only select qualified health plans to participate in the health exchange through a competitive
14 bidding process for plans.]

15 (15) Require that a qualified health plan offered in the exchange offers benefits in
16 addition to the essential health benefits.

17 (16) Extend some [or all] exchange-specific regulations to the outside insurance
18 market.

19 **SECTION 42.** 260.06 of the statutes is created to read:

20 260.06 **Contracting for professional services.** (1) Whenever contracting for
21 professional services, the authority shall solicit competitive sealed bids or competitive sealed
22 proposals, whichever is appropriate. Each request for competitive sealed proposals shall state
23 the relative importance of price and other evaluation factors.

1 **(2)** (a) When the estimated cost exceeds [\$], the authority may invite competitive
2 sealed bids or proposals by publishing a class 2 notice under ch. 985 or by posting notice on
3 the internet at a site determined or approved by the authority. The notice shall describe the
4 contractual services to be purchased, the intent to make the procurement by solicitation of bids
5 or proposals, any requirement for surety, and the date the bids or proposals will be opened,
6 which shall be at least 7 days after the date of the last insertion of the notice or at least 7 days
7 after the date of posting on the internet.

8 (b) When the estimated cost is [\$] or less, the authority may award the contract
9 in accordance with simplified procedures established by the authority for such transactions.

10 (c) For purposes of clarification, the authority may discuss the requirements of the
11 proposed contract with any person who submits a bid or proposal and shall permit any offerer
12 to revise his or her bid or proposal to ensure its responsiveness to those requirements.

13 **(3)** (a) The authority shall determine which bids or proposals are reasonably likely to
14 be awarded the contract and shall provide each offerer of such a bid or proposal a fair and equal
15 opportunity to discuss the bid or proposal. The authority may negotiate with each offerer in
16 order to obtain terms that are advantageous to the authority. Prior to the award of the contract,
17 any offerer may revise his or her bid or proposal. The authority shall keep a written record
18 of all meetings, conferences, oral presentations, discussions, negotiations, and evaluations of
19 bids or proposals under this section.

20 (b) In opening, discussing, and negotiating bids or proposals, the authority may not
21 disclose any information that would reveal the terms of a competing bid or proposal.

22 **(4)** (a) After receiving each offerer's best and final offer, the authority shall determine
23 which proposal is most advantageous and shall award the contract to the person who offered
24 it. The authority's determination shall be based only on price and the other evaluation factors

1 specified in the request for bids or proposals. The authority shall state in writing the reason
2 for the award and shall place the statement in the contract file.

3 (b) Following the award of the contract, the authority shall prepare a register of all bids
4 or proposals.

NOTE: HIRSP's current statute on contracting requires competitive bidding for contracts exceeding \$25,000. The committee may wish to increase that amount.

5 **SECTION 43.** 260.07 of the statutes is created to read:

6 260.07 **Political activities.** (1) No employee of the authority may directly or indirectly
7 solicit or receive subscriptions or contributions for any partisan political party or any political
8 purpose while engaged in his or her official duties as an employee. No employee of the
9 authority may engage in any form of political activity calculated to favor or improve the
10 chances of any political party or any person seeking or attempting to hold partisan political
11 office while engaged in his or her official duties as an employee or engage in any political
12 activity while not engaged in his or her official duties as an employee to such an extent that
13 the person's efficiency during working hours will be impaired or that he or she will be tardy
14 or absent from work. Any violation of this section is adequate grounds for dismissal.

15 (2) If an employee of the authority declares an intention to run for partisan political
16 office, the employee shall be placed on a leave of absence for the duration of the election
17 campaign and if elected shall no longer be employed by the authority on assuming the duties
18 and responsibilities of such office.

19 (3) An employee of the authority may be granted, by the executive director, a leave of
20 absence to participate in partisan political campaigning.

1 (4) Persons on leave of absence under sub. (2) or (3) shall not be subject to the
2 restrictions of sub. (1), except as they apply to the solicitation of assistance, subscription, or
3 support from any other employee in the authority.

4 **SECTION 44.** 260.08 of the statutes is created to read:

5 260.08 **Liability limited.** (1) Neither the state nor any political subdivision of the state
6 nor any officer, employee, or agent of the state or a political subdivision who is acting within
7 the scope of employment or agency is liable for any debt, obligation, act, or omission of the
8 authority.

9 (2) All of the expenses incurred by the authority in exercising its duties and powers
10 under this chapter shall be payable only from funds of the authority.

11 **SECTION 45. Nonstatutory provisions.**

12 (1) WISCONSIN HEALTH EXCHANGE AUTHORITY.

13 (a) *Legislative findings.* In establishing the Wisconsin Health Exchange Authority
14 under chapter 260 of the statutes, as created by this act, the legislature finds that the exchange
15 should be governed by the following principles:

16 1. The exchange should commit to strengthening Wisconsin's pluralistic
17 private-sector-based coverage options. The exchange should have as its primary focus an
18 insurance marketplace that maximizes choice for all participants, is accessible and attractive
19 to private insurers and insureds, ensures fair competition among insurers, prevents dominance
20 by a single or small number of payers, and preserves and strengthens Wisconsin's tradition of
21 employer-provided health insurance. The exchange should coordinate with Medicaid and
22 BadgerCare in a manner that preserves both programs as a safety net, not as a low-cost
23 competitor.

1 2. The exchange should identify and require the use of tools with broad acceptance
2 among providers and plans to gather quality data and report that data to a third party; require
3 that quality, relevant information be made available to consumers; create incentives for
4 providers and plans to achieve quality benchmarks; provide incentives for consumers to
5 improve health status and engage in healthy behaviors; and require integrated, patient centered
6 coordinated care.

7 3. The exchange should require plans to pursue strategies to improve wellness through
8 incentives to both providers and patients.

9 4. The exchange should pursue strategies that have been shown, through research and
10 evidence to reduce health care costs and increase health care quality, and create incentives for
11 consumers and providers to adopt these strategies.

12 5. The exchange should ensure that patients have access to a primary care provider in
13 order to ensure that care is patient–centered and coordinated.

NOTE: These legislative findings are based on the consensus reached by
the committee at its November 8, 2010 meeting, regarding the guiding
principles for the WHEA.

14 (b) *Initial terms of Wisconsin Health Exchange Authority Board.* Notwithstanding the
15 lengths of terms of the members of the board of the Wisconsin Health Exchange Authority
16 specified in section 260.05 (1) of the statutes, as created by this act, the initial members shall
17 be appointed for the following terms:

NOTE: Once the committee decides on term lengths and number of
members of the board, options for staggering terms will be provided.

18 (c) *Provisional appointments.* Notwithstanding the requirement for senate
19 confirmation of the appointment of the members of the board of the Wisconsin Health
20 Exchange Authority under section 260.05 (1) of the statutes, as created by this act, the initial
21 members may be provisionally appointed by the governor, subject to confirmation by the

1 senate. Any such appointment shall be in full force until acted upon by the senate, and when
2 confirmed by the senate shall continue for the remainder of the term, or until a successor is
3 chosen and qualifies. A provisional appointee may exercise all of the powers and duties of
4 the office to which such person is appointed during the time in which the appointee qualifies.
5 Any appointment made under this subsection that is withdrawn or rejected by the senate shall
6 lapse. When a provisional appointment lapses, a vacancy occurs. Whenever a new legislature
7 is organized, any appointments then pending before the senate shall be referred by the
8 president to the appropriate standing committee of the newly organized senate.

9 (END)