



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Senate Bill 884

**Senate Substitute
Amendment 1**

Memo published: December 11, 2018

Contact: Katie Bender-Olson, Senior Staff Attorney
Scott Grosz, Principal Attorney
Anna Henning, Senior Staff Attorney
Michael Queensland, Senior Staff Attorney

OVERVIEW

2017 Senate Bill 884, as introduced (“the bill”), modifies several areas of state law. Key provisions relate to the Department of Justice (DOJ), gubernatorial appointments, legislative authority and functions, administrative rulemaking, agency operations and reporting, Capitol security, guidance documents and other agency publications, the Wisconsin Economic Development Corporation (WEDC), and judicial deference to agency interpretations of law. For comprehensive summaries of the bill, see the analysis of the bill prepared by the Legislative Reference Bureau and a memorandum issued by the Legislative Fiscal Bureau on November 30, 2018.¹

Senate Substitute Amendment 1 makes various changes to the bill, including a modified set of revisions recommended by the Joint Committee on Finance (JFC), and various additional changes. As summarized below, among other changes, the substitute amendment: adds provisions to the bill relating to elections law; modifies certain provisions of the bill relating to legal representation and intervention; retains some and removes other provisions of the bill relating to administrative rulemaking; and modifies some and adds other provisions of the bill relating to WEDC.

¹ The Legislative Fiscal Bureau memorandum is available at:

http://docs.legis.wisconsin.gov/misc/lfb/bill_summaries/2017_19/0001_december_extraordinary_session_bills_11_30_18.pdf.

CHANGES RELATING TO ELECTION LAW

Student ID Card as Voter ID

Current law generally requires a voter to present identification that contains a photograph and a name that conforms to the name on the voter's registration form when voting, a requirement commonly referred to as "Voter ID." The statutes define "identification" as certain enumerated documents, including an unexpired identification card issued by a university or college in Wisconsin that is accredited, that contains the date of issuance and signature of the individual, and that contains an expiration date indicating that the card expires no later than two years after the date of issuance if the individual establishes that he or she is enrolled as a student on the date the card is presented. Under current administrative rule promulgated by the Elections Commission, an identification card issued by a Wisconsin technical college meeting the same requirements is "identification" and may be used for voting purposes.

The bill amends the statutory definition of "identification" to include an identification card issued by a technical college in Wisconsin that meets the same requirements that apply to a card issued by a university or college.

The substitute amendment retains this provision from the bill.

State ID Card Petition Process

Current law allows an individual to obtain a free Wisconsin identification card ("State ID card") from the Department of Transportation (DOT) if the individual is a U.S. citizen who will be at least 18 years old on the date of the next election, and the individual requests that the ID card be provided without charge for the purposes of voting. To obtain a State ID card, an individual must submit certain information, including proof of name, date of birth, identity, residency, and citizenship, legal permanent resident status, conditional resident status, or legal presence ("proof of citizenship"). [ss. 343.14, 343.165, and 343.50 (5) (a) 3., Stats.]

DOT administrative rules currently provide for a petition process under which an individual whose proof of name, date of birth, or citizenship is unavailable may obtain a State ID card for voting. This petition process is not presently contained in the state statutes.

The bill substantially codifies the DOT petition process contained in DOT administrative rules permitting an individual who does not possess otherwise required documentation to obtain a State ID card for voting by providing secondary documentation or through other verification, as well as the required issuance of an identification card receipt ("ID card receipt") to an individual whose petition is pending.

The bill provides that an individual requesting a free State ID card for purposes of voting, who is unable to provide proof of name and date of birth or proof of citizenship, and to whom the documents are unavailable, may make a written petition to DOT for an exception to certain requirements. "Unavailable" means that the applicant does not have the document and would be required to pay a government agency to obtain it. Upon receiving a petition, DOT must

provide the petitioner's birth information to the Department of Health Services (DHS) or a federal agency to verify birth or the person's citizenship.

If DOT does not receive verification from a governmental agency within a specified period, DOT must contact the person and request additional information or secondary documentation. Secondary documentation may include a baptismal certificate; hospital birth certificate; delayed birth certificate; census record; early school record; family bible record; doctor's record of post-natal care; or other documentation deemed acceptable to DOT within its reasonable discretion. DOT must grant a petition if it concludes that it is more likely than not that the name, date of birth, and U.S. citizenship in the application are correct, on the basis of secondary documentation or other corroborating information.

DOT must issue an ID card receipt to an individual who applies for a free State ID card for voting purposes and makes a petition. The ID card receipt constitutes a temporary State ID card, is valid for a period of 60 days or less, and must be marked "FOR VOTING PURPOSES ONLY." DOT must issue the ID card receipt within a specified timeline, which varies depending upon whether a petition is made shortly before or after a statewide election. DOT must continue to issue new ID card receipts to a person prior to expiration of the prior receipt, until DOT denies the person's application, a receipt is returned as nondeliverable, or other specified circumstances arise.

The bill also provides DOT with discretion to issue a State ID card in a different name than the name appearing on the individual's documents based on a common law name change. The provisions apply to issuance of a State ID card, regardless of whether the card is used for voting purposes.

The substitute amendment retains these provisions from the bill.

In-Person Absentee Voting

Current law provides that in-person absentee voting may only occur from the third Monday preceding the election until the Friday before the election. In addition, in-person absentee voting may only occur Monday to Friday from 8 a.m. to 7 p.m., and is prohibited on a legal holiday. Current law allows the governing body of a municipality to designate one alternate in-person absentee voting site other than the office of the municipal clerk or board of election commissioners. [ss. 6.855 (1) and 6.86 (1) (b), Stats.]

Though the described provisions currently appear in statute, the time and date limitations and single alternate location for in-person absentee voting are not presently enforceable based on the decision of the federal court in *One Wisconsin Institute v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016).

The bill makes no changes to current law relating to in-person absentee voting.

The substitute amendment changes the period of time during which in-person absentee voting is permitted. Under the amendment, in-person absentee voting may occur from 14 days preceding the election to the Sunday preceding the election, but cannot occur on a legal holiday.

The substitute amendment also eliminates the limits on hours of the day during which in-person absentee voting may occur, and allows the governing body of a municipality to designate more than one alternate site for in-person absentee voting.

Military and Overseas Voters

Current federal and state law include provisions that apply specifically to voting by military and overseas voters. All absentee voters, including military and overseas voters, must currently complete an absentee ballot certification before a witness who is an adult U.S. citizen. Under current law, a military voter and certain overseas voters may receive an absentee ballot by email or fax. [ss. 6.22 (2) (e), 6.24 (4) (e), and 6.87 (4) (b) 1., Stats.]

The bill makes no change to current law regarding military and overseas voters, who may witness an absentee ballot, or how an absentee voter may receive a ballot.

The substitute amendment provides that an individual witnessing an absentee ballot for a military or overseas voter does not have to be a U.S. citizen, but must be 18 or older. The substitute amendment also allows any overseas voter to request and receive an absentee ballot by email or fax. Further, the amendment creates a new definition for “overseas elector.”

CHANGES RELATING TO THE ATTORNEY GENERAL, THE DEPARTMENT OF JUSTICE, LEGAL REPRESENTATION, AND INTERVENTION

Legal Representation for the Legislature, Legislators, and Legislative Employees

Currently, DOJ provides legislators and legislative employees legal representation in most cases. The Assembly and Senate policy manuals and past practice also allow legislators and legislative employees to obtain legal counsel other than DOJ (“outside legal counsel”) to provide representation.

The bill allows: (1) the Assembly Speaker to authorize a Representative or Assembly employee to obtain outside legal counsel; (2) the Senate Majority Leader to authorize a Senator or Senate employee to obtain outside legal counsel; and (3) the co-chairs of the Joint Committee on Legislative Organization (JCLC) to authorize a legislative service agency employee to obtain outside legal counsel. The Assembly Speaker, the Senate Majority Leader, and the JCLC co-chairs, respectively, must approve all financial costs and terms of representation. Under the bill, outside legal counsel may be obtained if the acts or allegations underlying the action are arguably within the scope of the legislator’s or legislative employee’s duties.

The bill also allows: (1) the Assembly Speaker to obtain outside legal counsel in any action in which the Assembly is a party or in which the interests of the Assembly are affected, as determined by the Speaker; (2) the Senate Majority Leader to obtain outside legal counsel in any action in which the Senate is a party or in which the interests of the Senate are affected, as determined by the Majority Leader, and (3) the JCLC co-chairs to obtain outside legal counsel in any action in which the Legislature is a party or in which the interests of the Legislature are

affected, as determined by the co-chairs. The Assembly Speaker, Senate Majority Leader, and the JCLO co-chairs, respectively, must approve all financial costs and terms of representation.

The substitute amendment retains those provisions.

Statutory Challenges - the Attorney General

Under **current law**, statutes and case law, if a statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general generally must be served with a copy of the proceeding and be entitled to be heard. [s. 806.04 (11), Stats., *Kurtz v. City of Waukesha*, 91 Wis. 2d 103 (1979).]

The bill adds that if a statute, ordinance, or franchise is alleged to be in violation of or preempted by federal law, the attorney general must also be served with a copy of the proceeding and be entitled to be heard. The bill also allows JCLO to appoint special counsel to act instead of the attorney general in an action involving the constitutionality of a statute, or challenging a statute as violating or preempted by federal law, if the committee determines at any time that the interests of the state would be best represented by special counsel. Under the bill, if JCLO appoints special counsel, the attorney general may not participate in the action and must notify the court of the substitution of counsel. The bill provides that the special counsel, specific to the litigation appointed for, has the powers of the attorney general.

The **substitute amendment** adds more types of statutory challenges in which the attorney general is required to be served and be entitled to be heard. Specifically, the substitute amendment provides that “[i]f a statute, ordinance or franchise is alleged to be unconstitutional, or to be in violation of or preempted by federal law, **or if the construction or validity of a statute is otherwise challenged,**” the attorney general must be served with a copy of the proceeding and be entitled to be heard.

The substitute amendment also eliminates the provisions in the bill that allow JCLO to appoint special counsel to act instead of the attorney general.

Statutory Challenges - the Legislature

Under **current law**, in any proceeding under the state’s declaratory judgement act² in which the constitutionality, construction, or application of any provision of chs. 13, 20, 111, 227, or 230 or subchs. I, III, or IV of ch. 16 or s. 753.075, Stats., or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of a rule is placed in issue, JCLO must be served with a copy of the petition and JCLO, the Senate Committee on Organization, or the Assembly Committee on Organization may intervene as a party to the proceedings and be heard.³

² Very generally, the state’s declaratory judgement act grants courts the “power to declare rights, status, and other legal relations.”

³ Current law also requires that in instances where the constitutionality, construction, or application of certain statutes relating to administrative rules are placed in issue, a party must serve the Joint Committee for

Instead, **the bill** requires that the Assembly Speaker, Senate President, and Senate Majority Leader be served with a copy of the proceeding in an action in which a statute is alleged to be unconstitutional, or to be in violation of or preempted by federal law. In these actions, the Assembly, the Senate, and the Legislature are entitled to be heard.

The bill also allows the Assembly, the Senate, and the Legislature to intervene⁴ at any time in certain actions as a matter of right. Under the bill, the right to intervene arises when a party to an action in state or federal court challenges the constitutionality of a statute, facially or as applied, or challenges a statute as violating or preempted by federal law, as part of a claim or affirmative defense. The Assembly Committee on Organization may intervene on behalf of the Assembly, the Senate Committee on Organization may intervene on behalf of the Senate, and JCLO may intervene on behalf of the state. Each committee may obtain outside legal counsel. The power to intervene, as provided in the bill, applies to any litigation pending in state or federal court on the bill's effective date.

As noted above, the bill also allows JCLO to appoint special counsel to act instead of the attorney general in certain cases.

The **substitute amendment** adds categories to the list of statutory challenges in which the Legislature is required to be served and be entitled to be heard. Specifically, the substitute amendment provides that “[i]f a statute is alleged to be unconstitutional, or to be in violation of or preempted by federal law, **or if the construction or validity of a statute is otherwise challenged,**” the Assembly Speaker, the Senate President, and the Senate Majority Leader must be served with a copy of the proceeding and the Assembly, the Senate, and JCLO are entitled to be heard.

Similar to the bill, the substitute amendment allows the Assembly, the Senate, and the Legislature to intervene at any time in certain actions as a matter of right. However, in contrast to the bill, the substitute amendment:

- Provides that JCLO represents the Legislature, rather than the state, if it intervenes in an action where a statutory challenge described above is being made.
- Allows the Assembly, the Senate, and the Legislature to intervene in cases when a party to an action challenges the construction or validity of a statute, as part of a claim or defense.
- Eliminates the provisions in the bill that allow JCLO to appoint special counsel to act instead of the attorney general.

Review of Administrative Rules (JCRAR). With approval from JCLO, JCRAR may become a party and be entitled to be heard.

⁴ Intervention is a process used by a person seeking to participate in a case as a party, even though the person was not named as a party by those parties in the case.

Settlement Authority – Civil Actions Prosecuted by DOJ

Under **current law**, DOJ may compromise or discontinue any civil action it prosecutes at the direction of the officer, department, board, or commission that directed the prosecution. Any civil action prosecuted by DOJ on the initiative of the attorney general, or at the request of any individual, may be compromised or discontinued with the approval of the governor. [s. 165.08, Stats.]

Under **the bill**, DOJ may not compromise or discontinue any civil action it prosecutes at the direction of any officer, department, board, commission, on the attorney general's own initiative, or at the request of any individual without the approval of JFC. DOJ may not submit a proposed plan to JFC if the plan concedes the unconstitutionality or other invalidity of a statute, facially or as applied, or concedes that a statute violates or is preempted by federal law, unless the plan is approved by JCLO.

The substitute amendment modifies the changes in the bill by creating an alternative to JFC approval of a proposed plan to compromise or discontinue a civil action prosecuted by DOJ. The substitute amendment allows DOJ to compromise or discontinue a civil action it is prosecuting if it is approved by the Assembly, the Senate, or the Legislature, acting as an intervenor under the authority described above to intervene in certain actions where a statutory challenge is being made. If there is no intervenor, DOJ must submit a proposed plan to compromise or discontinue the prosecution to JFC, and in certain cases JCLO, as provided in the bill.

Settlement Authority – Civil Actions Defended by DOJ

Under **current law**, at the request of the head of any department, the attorney general may generally appear for and defend any department, officer, employee, or agent of the department in any matter brought before a court or an administrative agency for or on account of any act growing out of or committed in the lawful course of an officer's, employee's, or agent's duties. The attorney general may compromise and settle these actions as he or she determines to be in the best interest of the state. [s. 165.25 (6) (a), Stats.]

The bill creates an exception to the attorney general's power to compromise and settle actions he or she is appearing for and defending, as described above. Under the bill, if the action is for injunctive relief or there is a proposed consent decree, the attorney general may not compromise or settle the action without first submitting a proposed plan to JFC for passive review. If the JFC co-chairs notify the attorney general within 14 working days after the plan is submitted to the committee that a meeting has been scheduled for the purpose of reviewing the proposed plan, the attorney general may compromise and settle the action only with JFC approval. The attorney general may not submit a proposed plan to JFC if the plan concedes the unconstitutionality or other invalidity of a statute, facially or as applied, or concedes that a statute violates or is preempted by federal law, without JCLO approval.

The substitute amendment modifies the changes in the bill by creating an alternative to JFC approval of a proposed plan to compromise or settle an action for injunctive relief or if there

is a proposed consent decree. The substitute amendment allows the attorney general to compromise or settle these actions if the compromise or settlement is approved by the Assembly, the Senate, or the Legislature, acting as an intervenor under the authority described above to intervene in certain actions where a statutory challenge is being made. If there is no intervenor, the attorney general must submit a proposed plan to compromise or settle the action to JFC, and in certain cases JCLO, as provided in the bill.

Use of Settlement Funds

Under **current law**, the attorney general must submit to JFC for 14-day passive review a proposed plan for the expenditure of settlement funds that are not committed under the terms of the settlement. [s. 165.10, Stats.]

The bill requires the attorney general to deposit all settlement funds into the general fund. The bill also lapses all unencumbered settlement funds that are currently in the DOJ appropriation into the general fund.

The substitute amendment retains this provision.

Office of the Solicitor General

The bill eliminates the Office of the Solicitor General in DOJ. Effective January 1, 2019, the bill eliminates four unclassified positions – the Solicitor General and three Deputy Solicitor General positions – and decreases DOJ funding by \$320,000 for fiscal year 2018-19.

The substitute amendment retains those changes.

Gifts and Grants Appropriations

The bill changes DOJ's gifts and grants appropriations for law enforcement and administrative service programs from continuing appropriations to annual, all monies received appropriations.

The substitute amendment retains this provision.

CHANGES RELATING TO ADMINISTRATIVE RULEMAKING, GUIDANCE DOCUMENTS, AGENCY PUBLICATIONS, AND CONTESTED CASES

Guidance Documents

Prior to adoption, of guidance documents, **the bill** directs agencies to post the documents, as defined by the bill, for public comment, and to certify the contents of such documents.⁵ The

⁵ The bill defines "guidance document" to mean "any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin" that either explains the agency's implementation of a statute or rule or provides guidance or advice that is likely to apply to a class of persons

bill also requires an agency to post each guidance document on its internet site and permit continued public comment on the document; specifies that guidance documents do not have the force of law; and directs the manner in which guidance documents may be used with respect to administrative and judicial proceedings.

The substitute amendment retains the provisions of the bill relating to guidance documents, but provides exceptions for guidance documents of the University of Wisconsin (UW) Board of Regents, the Technical College System, and the Department of Employee Trust Funds (ETF).

Agency Publications

The bill specifies that every agency publication, including guidance documents, must include citations to the provisions of the statutes or administrative code, or both, that support any statement or interpretation of law contained in the publication. This provision of the bill applies to agency publications in print as well as on an agency's internet site.

The substitute amendment retains the treatment of agency publications, but provides exceptions for publications of the UW Board of Regents, the Technical College System, and ETF.

JCRAR Authority to Suspend Administrative Rules

Under **current law**, JCRAR may temporarily suspend all or part of an administrative rule previously promulgated by a state agency. Such temporary suspension may be made permanent via enactment of a bill in support of the suspension. If bills in support of suspension fail to be enacted, the suspension is lifted and JCRAR may not suspend the rule again. [s. 227.26 (2), Stats.]

The bill permits JCRAR to suspend an administrative rule multiple times.

The substitute amendment retains this provision.

Limitations on Rulemaking Authority

The bill specifies that a plan submitted to the federal government to comply with a federal law does not confer rulemaking authority and specifies that an agency may not agree to promulgate a rule as a component of a plan unless the agency has authority to promulgate the rule at the time the compliance plan is submitted. Similarly, the bill specifies that a settlement agreement, consent decree, or court order does not confer rulemaking authority and specifies that an agency may not agree to promulgate a rule as a part of a settlement, consent decree, or court order unless the agency has authority to promulgate the rule at the time the agreement, consent decree, or court order is executed.

The substitute amendment retains this provision.

similarly affected. Certain types of documents are expressly excluded from the definition, including, for example, most of the types of documents also excluded from the statutory definition of "rule."

Advisory Committees

Under **current law**, an agency may appoint a committee of experts, interested persons, or representatives of the public to advise the agency with respect to contemplated rulemaking. [s. 227.13, Stats.]

The bill specifies that an agency must notify JCRAR of the membership of any committee appointed by the agency.

The substitute amendment retains this provision.

Deference

On June 26, 2018, the Wisconsin Supreme Court issued its decision in *Tetra Tech EC, Inc., and Lower Fox River Remediation LLC v. Wisconsin Department of Revenue*, 2018 WI 75. As part of its opinion, the court ended its practice of deferring to an agency's conclusions of law.

The bill codifies a similar standard with respect to judicial review under ch. 227, Stats., and also specifies that an agency may not seek deference in any proceeding based on the agency's interpretation of any law.

The substitute amendment retains these provisions.

Rulemaking by the Department of Public Instruction

On May 18, 2016, the Wisconsin Supreme Court issued its decision in *Coyne v. Walker*, 2016 WI 38. In its opinion, the court held that the duties conferred on the Superintendent of Public Instruction by the Wisconsin Constitution, art. X, s. 1, include supervisory power over public instruction that cannot be superseded by other authorities. Accordingly, the requirements under ch. 227, Stats., that the Governor approve a scope statement and final draft of a proposed rule do not apply to rules promulgated by the Department of Public Instruction (DPI).

The bill codifies the holding of *Coyne v. Walker* with respect to rules promulgated by DPI.

The substitute amendment removes these provisions.

Independent Retrospective Economic Analysis

Under **current law**, JCRAR or its co-chairs may seek an independent economic analysis of a proposed administrative rule, and JCRAR may direct an agency to prepare a retrospective economic impact analysis of administrative rules previously promulgated by an agency. [ss. 227.19 (5) (b) 3. and 227.137 (4m), Stats.]

The bill permits a co-chair of JCRAR to seek an independent, retrospective economic impact analysis of administrative rules previously promulgated by an agency.

The substitute amendment removes this provision.

Presumption of Promulgation

Under **current law**, filing a rule for promulgation with the Legislative Reference Bureau creates a presumption that a rule was duly promulgated by an agency under the procedures for promulgation specified by ch. 227, Stats.

The bill repeals the presumption that a rule was duly promulgated.

The substitute amendment removes this provision.

Fiscal Estimate and Economic Impact Analysis

Under current practice of the executive branch, statutory requirements under ch. 227, Stats., relating to the preparation of a fiscal estimate and economic impact analysis on a proposed administrative rule are completed on a joint form prescribed by the Department of Administration (DOA).

The bill specifies that a fiscal estimate and economic impact analysis must be prepared separately.

The substitute amendment removes this provision.

Executive Order No. 50

Following enactment of 2011 Wisconsin Act 21, Governor Walker issued Executive Order No. 50, which prescribes additional requirements and instructions to agencies relating to the administrative rule promulgation process.

The bill generally codifies the contents of Executive Order No. 50 that are not already contained in ch. 227, Stats.

The substitute amendment removes these provisions.

Contested Cases

Under **current law**, an agency may specify that the decision of a hearing examiner who conducts a contested case hearing is the final decision of the agency. Additionally, current law specifies that a hearing examiner may be assigned to preside over a contested case hearing in numerous circumstances, including when a hearing is required to be conducted by the Department of Natural Resources (DNR) or DOT and that hearing is not conducted by the department secretary. In these instances, current law authorizes the departments to petition for judicial review. [s. 227.46 (3) (a) and (8), Stats.]

The bill requires an agency secretary to sign and approve all final decisions of an agency in contested cases and removes the option for an agency to specify that the decision of a hearing examiner is the final decision of the agency. The bill also repeals the provisions relating to assignment of hearing examiners in cases relating to the DNR or DOT, as well as the judicial review of decisions issued in those circumstances.

The substitute amendment removes these provisions.

CHANGES RELATING TO WEDC

WEDC Board Composition

Under **current law**, WEDC is governed by a board of 12 voting members. Six members are nominated by the governor and appointed by the Senate to serve at the pleasure of the governor. Three members are appointed by the Assembly Speaker, including one majority and one minority party representative to the Assembly, and one person employed in the private sector, to serve at the speaker's pleasure. Three members are appointed by the Senate Majority Leader, including one majority and one minority party senator, and one person employed in the private sector, to serve at the majority leader's pleasure. [s. 238.02 (1), Stats.]

The bill retains a WEDC board composition of 12 voting members, but authorizes the governor to appoint four of the 12 members, rather than six of the 12 members under current law. The bill retains the authority for the Assembly Speaker and Senate Majority Leader to each appoint three board members, but the bill removes the requirement under current law that those appointments include legislators of certain parties and persons in the private sector. In addition, the bill authorizes the Assembly and Senate Minority Leaders to each appoint one person to serve on the board.

The substitute amendment provides for two compositions of the WEDC board – one to be in effect from the date the substitute amendment takes effect through September 1, 2019, and the second to take effect after September 1, 2019. Specifically, after September 1, 2019, the substitute amendment provides for a 16 voting member board, consisting of six members nominated by the governor, four members appointed by the Assembly Speaker, four members appointed by the Senate Majority Leader, one member appointed by the Assembly Minority Leader, and one member appointed by the Senate Minority Leader. Before September 1, 2019, the substitute amendment authorizes the Assembly Speaker and the Senate Majority Leader to each appoint one additional board member, resulting in a board with 18 voting members. The substitute amendment also retains provisions of the bill relating to existing board members and staggered terms.

Quorum Requirement for WEDC Board

Current law specifies that a majority of the 12 **voting** members of the WEDC board constitutes a quorum for the purpose of conducting the board's business and exercising its powers, notwithstanding the existence of any vacancies on the board. [s. 238.02 (2), Stats.]

The bill and **the substitute amendment** modify the quorum requirement to specify that a majority of the **appointed members currently serving** on the board constitutes a quorum for purposes of conducting the WEDC board's business and exercising its powers. In other words, under the bill and the substitute amendment, a quorum could be established with less than the majority of the voting members of the board, depending on which members have been appointed.

Appointment of WEDC Chief Executive Officer

Under **current law**, WEDC's chief executive officer (CEO) is nominated by the governor and appointed by the Senate to serve at the pleasure of the governor. [s. 238.02 (3), Stats.]

Under **the bill**, the WEDC CEO is instead appointed by the WEDC board and serves at the pleasure of the board.

The substitute amendment retains that change but sunsets it after September 1, 2019.

Appointment and Supervision of Foxconn Liaison

2017 Wisconsin Act 58, which implemented an agreement between WEDC and SIO Intl. Wisconsin, Inc., and AFE, Inc. ("the Wisconsin Foxconn companies"), created a liaison position for the Foxconn project. The position authority expires on December 31, 2022.

The bill and **the substitute amendment** specify that the WEDC board is responsible for appointing and supervising that position.

Designation of Enterprise Zones

The enterprise zone tax credit program provides refundable tax credits for certain activities, including the creation or retention of jobs, employee training, and significant capital expenditures, to eligible businesses located in enterprise zones. [s. 238.399, Stats.] Although they are named "zones," each enterprise zone designation typically consists of an individual, large-scale business venture.

Under **current law**, enterprise zones are designated by WEDC without legislative approval, and up to 30 enterprise zones may be in effect at any given time.

The bill removes the limit on the number of enterprise zones that may be in effect at any given time. In addition, the bill makes the designation of new enterprise zones subject to 14-day passive review by JFC.

The substitute amendment retains the changes in the bill relating to enterprise zone designations.

Verification of Information Submitted by Enterprise Zone Tax Credit Recipients

Current law requires recipients of WEDC grants and loans, but not tax credit recipients, to submit a report to WEDC at intervals specified in the recipient's contract with WEDC. Current law requires the WEDC board to annually and independently verify the accuracy of the reported information by reviewing a sample of grants and loans. Separately, current law requires WEDC to annually verify information submitted to the Department of Revenue (DOR) by persons claiming economic development tax credits. [ss. 238.03 (2) (e) and 238.399 (6) (f), Stats.]

The bill made no changes relating to those verification requirements.

The substitute amendment requires recipients of economic development tax credit programs, as well as grant and loan programs under current law, to submit reports to WEDC

according to timeframes specified in contracts between the recipients and WEDC. The substitute amendment also requires each recipient of a tax credit, grant, or loan to submit a statement attesting to the accuracy and truthfulness of the information submitted. Likewise, the substitute amendment extends the WEDC board's duty to annually verify information from a sample of those reports to tax credit programs. However, the substitute amendment removes the requirement under current law relating to WEDC verification of information submitted to DOR. In other words, under the substitute amendment, WEDC is not required to annually verify information submitted to DOR by persons claiming economic development tax credits except as part of the verification from a sample of information submitted pursuant to contract requirements.

MISCELLANEOUS ADDITIONAL CHANGES

Senate Confirmation of Executive Appointments

The bill specifies the impact of the Senate voting to reject an individual nominated by the governor or another state officer or agency to any office or position that requires the advice and consent of the Senate. Under the bill, such a nominee who has been rejected by the Senate may not hold the office or position, be nominated again for the office or position, or perform any duties of the office or position during the same legislative biennium.

The substitute amendment retains this provision.

Department of Veterans Affairs Fund Transfers From State Veterans Homes Revenue

Under **current law**, the Department of Veterans Affairs (DVA) may transfer all or part of the unencumbered balance of certain appropriations for the operation of state veterans homes to the veterans trust fund or the veterans mortgage loan repayment fund. [s. 45.57, Stats.]

The bill requires DVA to notify JFC in writing of any fund transfers from the appropriations for the operation of state veterans homes to the veterans trust fund or the veterans mortgage loan repayment fund.

The substitute amendment retains this provision.

Department of Corrections Report on Pardons and Releases From Imprisonment

At the request of the Legislature, **the bill** requires the Department of Corrections (DOC) to submit a report to the Legislature and post the report to its website that provides information about individuals who have been pardoned or, in certain cases, have been released from imprisonment. Specifically, the report must include information about any individual who was pardoned for a crime or was released from a term of imprisonment without completing his or her sentence during the time range specified in the request or for the period since the previous report was submitted to the Legislature. This information includes the name of the individual, the pertinent crime, and the name of the person who authorized the action. The report must also include information about whether an individual who appears on the report has been convicted of a crime, the name of that individual, and the crime for which he or she was convicted.

The **substitute amendment** retains this provision.

Firearms in the Capitol

Under **current law**, Capitol security policies, including the ability to carry concealed firearms in public spaces in the Capitol, are established by DOA.

The **bill** requires passive review by JCLO of any proposed change by DOA to security at the Capitol, including any proposed restriction on carrying a firearm into the Capitol.

The **substitute amendment** creates an exception to that passive review requirement in the case of a proposed change to security at the Capitol that is necessary to prevent or mitigate a risk of imminent danger. If such a change is made by DOA pursuant to the exception, the JCLO co-chairs may review that action later.

Legislative Office Space

Under **current law**, JCLO must assign office space for legislative offices and the offices of the legislative service agencies (Legislative Audit Bureau, Legislative Council, Legislative Fiscal Bureau, Legislative Reference Bureau, and Legislative Technology Services Bureau). DOA must lease or acquire office space for legislative offices or legislative service agencies at the direction of JCLO.

The **bill** requires the JCLO co-chairs, rather than DOA, to lease or acquire office space for legislative offices or legislative service agencies.

The **substitute amendment** retains that provision.

Building Commission Reports

The **bill** requires the State of Wisconsin Building Commission to establish, for any short-term general obligation debt that it authorizes, an amortization schedule in which a portion of the principal is retired over the life of the project to which the debt relates. The bill requires the commission to provide each amortization schedule to JFC and it subjects any proposed modification of a schedule to passive review.

The **substitute amendment** removes this provision.

Quarterly Agency Reports

The **bill** directs each state agency, except the UW Board of Regents, to submit quarterly reports to JFC listing all expenditures for state operations in the preceding quarter.

The **substitute amendment** removes this provision.

Group Insurance Board

The Group Insurance Board manages group insurance plans for state employees, retirees, and dependents. Under **current law**, the board consists of the following state officials or their

designees, and six persons appointed by the governor: the governor; the attorney general; the DOA secretary; and the commissioner of insurance.

The bill makes the six members of the Group Insurance Board who are nominated by the governor subject to Senate confirmation. In addition, the bill adds four additional members to the Group Insurance Board, to be appointed by majority and minority legislative leaders.

The substitute amendment removes those changes.

Municipal Flood Control and Riparian Restoration Program

The municipal flood control and riparian restoration program provides financial assistance for certain local storm water and groundwater projects. Generally, **current law** directs the DNR to promulgate rules specifying eligibility criteria for the program. However, a provision in the 2017 Biennial Budget Act required the DNR, during the 2017-19 fiscal biennium, to consider an applicant eligible for a grant under the program if the applicant's project is funded or executed in whole or part by the U.S. Army Corps of Engineers. [s. 281.665 (5) (a) and (d), Stats.]

The bill extends the eligibility requirement for U.S. Army Corps-funded or -executed projects to the 2019-21 fiscal biennium.

The substitute amendment retains that provision.

DOA WEB PORTAL

Current law authorizes DOA to contract with a public or private entity to provide computer services to agencies.

The bill requires DOA to submit an annual report to the Legislature and the Joint Committee on Finance regarding the administration of an information technology and communication services self-funded web portal. The annual reports must include financial statements, a list of available services, certain fees and activity data, and any other information DOA determines is appropriate to include.

The substitute amendment retains that requirement.

BILL HISTORY

The JFC introduced the bill as part of an extraordinary legislative session authorized to begin on December 3, 2018. Senator Fitzgerald offered Senate Substitute Amendment 1 to the bill on December 4, 2018. The Senate then adopted the substitute amendment on a vote of Ayes, 18; Noes, 14, and the bill, as amended, on a vote of Ayes, 17; Noes, 15. The Assembly concurred in the Senate action on December 5, 2018, on a vote of Ayes, 56; Noes, 27.

KBO:SG:AH:MQ:ty