



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**January 2011 Special Session
Assembly Bill 6**

**Assembly Substitute
Amendment 2**

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January 2011 Special Session Assembly Bill 6 (and its companion bill, Special Session Senate Bill 6) (“the bill”), creates a new authority called the Wisconsin Economic Development Corporation (WEDC), which is a public body corporate and politic.

Assembly Substitute Amendment 2 (“the substitute amendment”) is the version of the bill adopted and recommended for passage by the Joint Committee on Finance on January 31, 2011. [The Senate companion amendment is Senate Substitute Amendment 1.]

Board Membership

Under the substitute amendment, the WEDC is governed by a board that consists of the following 13 voting members:

- The Governor (who serves as chair of the board).
- Six members nominated by the Governor and confirmed by the Senate, who serve at the pleasure of the Governor.
- Three members appointed by the Senate Majority Leader who serve at his or her pleasure: one member of the majority party, one member of the minority party, and one person employed in the private sector.
- Three members appointed by Assembly Speaker who serve at his or her pleasure: one member of the majority party, one member of the minority party, and one person employed in the private sector.

In addition, the Secretaries of Administration and Revenue would serve on the board as nonvoting members.

Board Powers and Duties

Under the substitute amendment, the Governor nominates a chief executive officer (CEO) of the WEDC, who is appointed with the advice and consent of the Senate and serves at the pleasure of the Governor. The board is authorized to set the CEO's compensation and to delegate to the CEO any powers and duties that the board considers proper.

Among other specified powers, the board is authorized to: employ any officers, agents, and employees and determine their qualifications, duties, and compensation; issue notes, bonds, and other obligations; make loans and grants; incur debt; and elect to participate in the Wisconsin Retirement System (WRS).

The board is required to develop and implement economic programs to provide business support and expertise and financial assistance to companies that are investing and creating jobs in Wisconsin and to support new business start-ups and business expansion and growth in the state. The board may also develop and implement any other programs related to economic development in the state.

Under the substitute amendment, the board is required to do the following for each program developed and implemented by the board:

- Establish clear and measurable goals for the program that are tied to statutory or programmatic policy objectives.
- Establish at least one quantifiable benchmark for each program goal.
- Require that each recipient of a grant or loan under the program submit a report to WEDC. Each contract with a recipient of a grant or loan must specify the frequency and format of the report and the performance measures to be included.
- Establish a method for evaluating the projected results of the program with actual outcomes as determined by evaluating the goals and benchmarks established for the program.
- Annually and independently verify, from a sample of grants and loans, the accuracy of the information required to be reported by grant and loan recipients.

The substitute amendment also requires WEDC to do the following with regard to recipients of grants and loans administered by WEDC:

- Require that recipients of grants and loans of at least \$100,000 submit a verified statement, signed by an independent certified public accountant and the director or principal officer of the recipient, describing the recipient's expenditure of the grant or loan funds and make documents supporting the statement available for inspection.
- Recoup and withhold payments made to a recipient who submits false or misleading information or fails to comply with the terms of a contract entered into with the WEDC

without providing satisfactory explanation for the noncompliance, and impose financial penalties on such recipients.

Status of WEDC Employees

Under the substitute amendment, employees of WEDC would not be state employees. However, if the board elects to participate in the WRS, WEDC employees would be eligible to participate in group insurance and other benefit programs offered by the state to its employees, including state employee health insurance coverage and the state's deferred compensation program.

Appropriations Schedule

The substitute amendment creates a statutory appropriations schedule for fiscal years 2009-10 and 2010-11 to fund WEDC economic development activities, including a GPR, a PR, and a FED appropriation.

Authority of the Department of Administration (DOA) Secretary to Transfer Funds and Abolish Positions

The substitute amendment does not transfer any Department of Commerce (Commerce) programs to the WEDC, nor does it create any WEDC programs. However, the substitute amendment authorizes the DOA Secretary to transfer Commerce funds to the WEDC and abolish positions at Commerce. Specifically, the DOA Secretary is authorized, before July 1, 2011, or the effective date of the 2011-13 Biennial Budget Act, whichever is later, to transfer moneys used to fund economic development programs from Commerce appropriations (including a GPR, a PR, and a FED appropriation) to WEDC appropriations created in the substitute amendment. Before July 1, 2011, the Secretary is also authorized to abolish any full-time equivalent Commerce position that has assigned duties relating to economic development programs.

Effect on Commerce Programs and Employees

The substitute amendment does not directly modify or eliminate any current Commerce programs or eliminate any Commerce positions. However, as discussed above, it authorizes the DOA Secretary to transfer Commerce funding to the WEDC and to abolish positions at Commerce, provided that the funding and positions are related to economic development. The substitute amendment does not require the WEDC to implement or administer any programs currently administered by Commerce.

Applicability or Inapplicability of Laws to WEDC

Under the substitute amendment, the WEDC board members and the CEO are subject to the State Ethics Code and must submit an annual Statement of Economic Interests. Among other provisions, WEDC is also subject to:

- The Lobbying Law.
- The Open Records Law and Open Meetings Law.

- DOA and the Legislative Fiscal Bureau access to WEDC records.
- Nondiscrimination clauses in contracts.

Effective January 1, 2012, the WEDC would also be subject to a general prohibition on dual employment. Under current law, individuals employed or retained in a full-time position with an agency or authority are generally prohibited from holding any other position with a state agency or authority if they receive more than \$12,000 per year in compensation from the second agency or authority. [s. 16.417 (2) (a), Stats.] Under the bill, WEDC is exempted from that statutory prohibition. The substitute amendment would make WEDC subject to the prohibition beginning on January 1, 2012.

The substitute amendment excludes the WEDC from a number of statutory requirements, including, for example, those relating to state energy conservation, the state building program, DOA rules on employee surveillance, and required use of alternative fuels. Projects that receive funding from the WEDC would be required to comply with all building codes, zoning ordinances, and other local ordinances to the same extent that they otherwise would be.

Audit Requirements

The substitute amendment clarifies that the WEDC is subject to auditing by the Legislative Audit Bureau (LAB). It also establishes two specific audit requirements with regard to the WEDC:

- WEDC would be included in an audit that LAB is required to conduct, under current law, by July 1, 2012, of economic development programs administered by Commerce and seven other state agencies.
- LAB would be required to conduct a biennial financial audit of WEDC and program evaluation audit of economic development programs administered by WEDC, beginning in 2013. WEDC would be required to reimburse LAB for the cost of conducting the audits.

Assistance from Department of Commerce

Under the substitute amendment, if requested by the WEDC board, Commerce must provide staff or other resources to assist the board in carrying out its functions. Further, to the greatest extent practicable, Commerce and the board must seek to coordinate their economic development programs.

Reports to the Legislature

The substitute amendment requires WEDC to make two annual reports to the Legislature. First, WEDC is required to submit an annual report to the Legislature, by January 1 of each year, identifying the economic development projects that the WEDC board intends to develop and implement during the current calendar year. Second, WEDC is required to submit an annual report by the Joint Legislative Audit Committee and the Legislature, by October 1 of each year, containing the following information regarding each economic development program administered by WEDC during the previous fiscal year:

- A description of each program.

- A comparison of expected and actual program outcomes.
- The number of grants made under the program.
- The number of loans made under the program.
- The amount of each grant and loan made under the program.
- The recipient of each grant or loan made under the program.
- The sum total of all grants and loans awarded to and received by each recipient under the program.
- Any recommended changes to the program.

Legislative History

On January 27, 2011, the Assembly Committee on Jobs, Economy and Small Business recommended adoption of Assembly Amendments 3, 5, and 6 on votes of Ayes, 13; Noes, 0; and Assembly Amendment 4 on a vote of Ayes, 12; Noes, 1. The committee then recommended passage of the bill, as amended, by a vote of Ayes, 8; Noes, 5.

On January 31, 2011, the Joint Committee on Finance adopted Assembly Amendment 1 to Assembly Amendment 3 and Assembly Amendment 1 to Assembly Amendment 6, then Assembly Amendments 3, 4, 5, and 6. The committee then introduced Assembly Substitute Amendment 2, which incorporated all of the committee's amendments to the bill, adopted the substitute amendment on a vote of Ayes, 14; Noes, 0; and recommended passage of the bill, as amended, on a vote of Ayes, 12; Noes, 2.

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