



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2017 Assembly Bill 1070</b>	<b>Assembly Amendment 1</b>
<i>Memo published:</i> December 13, 2018	<i>Contact:</i> Katie Bender-Olson, Senior Staff Attorney Scott Grosz, Principal Attorney Anna Henning, Senior Staff Attorney Michael Queensland, Senior Staff Attorney

### OVERVIEW

**2017 Assembly Bill 1070** 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.<sup>1</sup>

As described below, **Assembly Amendment 1** makes changes to the bill relating to elections law, legal representation, administrative rulemaking, WEDC, and firearms in the capitol.

### CHANGES RELATING TO ELECTION LAW

#### 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

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<sup>1</sup> 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](http://docs.legis.wisconsin.gov/misc/lfb/bill_summaries/2017_19/0001_december_extraordinary_session_bills_11_30_18.pdf).

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

**The bill** allows the Joint Committee on Legislative Organization (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 amendment** requires JCLO to consult with DOJ when determining whether to appoint special counsel.

## CHANGES RELATING TO ADMINISTRATIVE RULEMAKING

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 Wis. Const., 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 amendment** removes these provisions.

## CHANGES RELATING TO 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 speaker of the Assembly, including one majority and one minority party representative to the Assembly, appointed as are the members of standing committees in 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, appointed as are members of standing committees in the Senate, 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 amendment** instead provides for a WEDC board composition of 18 voting members, including six members nominated by the governor and appointed by the Senate to serve at the pleasure of the governor; five members appointed by the Assembly speaker; five members appointed by the Senate majority leader; and one member appointed by each legislative body's minority leader. The amendment also prohibits the Assembly speaker and Senate majority leader from appointing more than two members of the Legislature to serve on the board.

### Verification of Information Submitted by Tax Credit Claimants

**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 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 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 amendment extends the WEDC board's duty to annually verify information from a sample of those reports to tax credit programs. However, the amendment removes the requirement under current law relating to WEDC verification of information submitted to DOR. In other words, under the 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.

### **CHANGES RELATING TO 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 the Department of Administration (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 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.

### **BILL HISTORY**

The Assembly Committee on Organization introduced 2017 Assembly Bill 1070 as part of an extraordinary legislative session authorized to begin on December 3, 2018. The Joint Committee on Finance adopted a motion to introduce changes incorporated in Assembly Amendment 1. On December 4, 2018, the Joint Committee on Finance voted to recommend adoption of Assembly Amendment 1 and passage of the bill, as amended, on votes of Ayes, 12; Noes, 4.

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