



State Senator
Rick Gudex

District 18

August 14, 2013

To: The Senate Committee on Government Operations, Public Works, and Telecommunications
From: Sen. Rick Gudex
Re: **Senate Bill 177**

Mr. Chairman, members of the committee, thank you for hearing this bill today. Whether we agree or disagree on how our government spends taxpayer dollars, we can all agree that those dollars should never, ever be wasted through mismanagement or fraud, and today I'd like to talk about ways we here in Wisconsin can reduce or prevent waste and fraud.

Senate Bill 177 creates a financial incentive for ordinary citizens to point out waste, fraud, and mismanagement in state government. Under this bill, a citizen can earn a reward of 5% of any money recovered, or any money saved over a 12-month period as a result of their whistleblowing.

We can do this using hotlines that are already in place. Since 2008, the Legislative Audit Bureau has operated a fraud, waste, and mismanagement hotline that has had success identifying areas where money was being wasted, or state guidelines were not being followed.

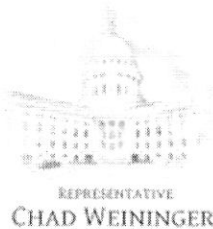
Wisconsin also has its own version of the federal False Claims Act, under which a citizen can file suit if he or she uncovers fraud in the Medicaid program. If a suit is successful, the citizen can claim up to 30% of the recovered monies.

So if we already have these working programs, why create this new incentive? Because it will be much simpler, compared to the False Claims Act. Instead of filing suit, a whistleblower can simply make a phone call. Also, for every person who has already placed a call, there may be several others with good information who didn't. There may be people out there who think about it, but then shrug their shoulders and assume that this is just the way government works. So this creates a small incentive to act, instead of simply accept the way things are.

I understand that there are concerns about how this process will work. Many of the details will have to be worked out through the rule making process. My office stands ready to help work through these questions and concerns, and to follow our agencies' work through to the finish.

Please remember this: we owe it to our constituents to make every effort to spend tax dollars wisely and reduce spending and waste whenever possible. This bill creates an incentive that will help accomplish that goal.

Thank you again for taking the time to hear this bill today. I'll be happy to answer any questions you may have.



August 14, 2013

Testimony of Representative Chad Weinger on Senate Bill (SB) 177

To: Chairman Farrow and Members of the Senate Committee on Government Operations, Public Works, and Telecommunications

Mr. Chairman, thank you for holding a public hearing on SB 177, legislation that engages ordinary citizens to help fight waste, fraud and abuse. I would also like to thank the members of the Committee on Government Operations, Public Works, and Telecommunications for being here today, and for their thoughtful consideration of this bill.

Simply put, SB 177 incentivizes individuals who report fraud to the state by allowing a reward of up to 5 percent of the amount the state recovers or saves. The proposal will also allow for agency mismanagement to be reported, with a reward of up to 5 percent of the state funds saved over a 12-month period. Under the legislation, the Department of Administration will establish the incentive program by rule.

This proposal will engage the public in helping the state root out waste, fraud, and abuse by offering an incentive where there was none before. Oftentimes, if an individual knows about waste, fraud, or abuse, they won't report it to the state because there isn't an incentive for them. This legislation would allow them to receive a portion of the funds recovered or saved.

This legislation is modeled after the Federal False Claims Act, which has helped to return over \$30 billion to taxpayers. 29 other states and the District of Columbia have a similar program and I'm hopeful that if implemented, there will be an increase in the number of viable tips our state receives for fraud, waste, or mismanagement. This proposal will serve as a deterrent for individuals wanting to abuse taxpayer dollars, as well as make agencies more accountable to the taxpayers.

Again, I would like to thank the Chairman and the Committee for their time and consideration of SB 177.



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TESTIMONY ON SENATE BILL 177
Sara Buschman, Assistant Deputy Secretary
Department of Children and Families
August 14, 2013

Good morning, Chair Farrow, and members of the Committee. My name is Sara Buschman and I am the Assistant Deputy Secretary for the Department of Children and Families. Thank you for the opportunity to testify today on Senate Bill 177. I am testifying for informational purposes.

The Department of Children and Families currently has a "fraud hotline" that has been established to allow reports of suspected fraud in the child care and W-2 programs. However, calls unrelated to fraud are also received through this hotline.

So far, in 2013, there have been a total of 107 calls to that hotline, of which 34 left no message. Of the calls where a voice mail was left, 28 were related to the Wisconsin Shares program, 3 were related to potential W-2 fraud, 13 were related to child care licensing, 18 were related to child support, 4 related to child abuse/neglect and foster care/adoption, 5 to public assistance (FoodShare, Medicaid), and 2 were other/unrelated.

For calls related to the Department's programs, all calls are referred to the appropriate program division and followed up on by appropriate staff

The Department has significantly increased the resources devoted to detecting and preventing fraud, going from a couple of positions working a portion of their time on fraud issues to over 35 FTE devoted specifically to fraud, primarily in the Wisconsin Shares program. Prior to 2009, we were spending less than \$100,000 annually on anti-fraud efforts and now invest approximately \$2 million annually in total anti-fraud efforts. We are serious about detecting and preventing fraud.

Senate Bill 177 requires the Department of Administration to establish an incentive program, by rule, that rewards an individual who reports suspected fraudulent activity or mismanagement in any program that is administered by an agency, with the cost of the rewards program borne by the agencies' appropriation that funds the administration of the program, or a general program operations appropriation of the agency.

Under this bill, the first way of earning a reward for an individual could be earned if the report of fraudulent activity leads to a recovery of state funds. The reward amount would be 5% of state funds recovered. While this amount is able to be calculated, most of the programs in DCF for which a recovery is made are treated as federal funds, so there may be few state funds recovered

on which to base a reward. For example, we treat all recovered child care and W-2 funds as federal TANF funds, so technically there would not be state funds recovered on which to base a reward. Other programs, such as the Community Services Block Grant and Refugee Assistance programs do not have state funds associated with them. However, any funds that must be distributed under this bill is funding that is diverted from the programs the Department has that assist Wisconsin's children, youth and families.

While the Department may establish an overpayment of funds for a program, the recovery of those payments can take years, especially from low-income people. For example, the AFDC program ended over 15 years ago, and the Department is still making some collections on overpayments of AFDC benefits. The administrative cost of tracking the level of recoveries and then paying a 5% reward for each collection made on the overpayment could be burdensome.

The second way of earning a reward under this bill is through the reporting of "mismanagement" by an agency that leads to the saving of state funds. While DOA is supposed to write rules for the administration of these provisions, it is unclear how this term will be clarified.

Mismanagement in someone's opinion may be very different than mismanagement in someone else's opinion. Secondly, the 5% reward would be based on state funds saved over a 12-month period. Projecting savings that will occur in the future as a result of a changed practice can be very subjective and difficult to calculate. In some other cases, such as child support, it would be unclear how much of a programmatic savings are state funds versus federal funds or program revenue (which may have federal strings attached), because the use of GPR/FED versus 100% FED or PR is somewhat arbitrary for any particular expenditure at a point in time.

The bill requires that an agency required to pay an assessment for the reward program from the appropriation for administration of the program from which the fraudulent activity occurred, or from an agency general program operations appropriation if the administrative appropriation prohibits this type of payment. While none of the of these administrative appropriations definitions explicitly "prohibit" such uses (as seems to be the implication of the provision), our issue is that we rely mainly on federal funds, and our understanding and experience has been that the federal government (at least HHS) does not recognize arbitrary percentages as being federally reimbursable costs. However, if the reporter to the hotline had actually incurred some cost otherwise reimbursable or eligible under the relevant federal program, federal funds may be used for this purpose up to the costs incurred. In all likelihood, any reward payments would be made from one of our general operations appropriations, which would reduce the funding available to meet our maintenance of effort requirements if the program affected is associated with W-2 or child care.

Finally, there may be some overlap with other incentive programs for identifying fraud, such as incentives to be paid to counties for identifying fraud and error in childcare and IM programs. If a person reports mismanagement in a program, it is conceivable that it may have more to do with county action or inaction or that there may be overlap with DCF and county investigations and some issue as to how to apportion who gets credit.

Again, thank you for the opportunity to appear before the Committee.



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August 14, 2013

DOR Testimony on Senate Bill 177 **Senate Committee on Government Operations, Public Works, and Telecommunications**

Background.

The Department of Revenue reviews all reported cases of suspected fraud, whether reported formally on Form P-626 or via other means to DOR. Additionally, the DOR homepage contains a link for taxpayers to report suspected fraud to the agency via phone, fax, or mail.

DOR reviews reported cases and then determines whether the suspected fraud warrants the agency's use of additional resources to conduct further investigation via audit, criminal investigation, or other means.

Senate Bill 177.

Senate Bill 177 would require the Department of Administration to create a new hotline for individuals to report suspected fraudulent activity or mismanagement in a program administered by a state agency. If the reported fraud or mismanagement results in a recovery of or a savings in state funds, the tipster will receive a reward payment of five percent of the related state funds.

DOR and our existing fraud reporting methods would be covered under this legislation. DOR's administration of state income, sales, excise, corporate, franchise, and fiduciary taxes would be included as "programs" covered by this bill, including related credits such as Homestead and the Earned Income Tax Credit (EITC). Additionally, DOR's administration of the Real Estate Transfer Fee, assessor certification, the unclaimed property program, and the Wisconsin Lottery would be programs covered under the reward provisions of Senate Bill 177.

Analysis.

The effectiveness of DOR's tools to prevent, detect, and remediate fraud across all tax types has increased exponentially due to advances in technology and innovation within the Department. Additionally, the Legislature has bolstered these efforts by providing additional auditors, statutory authority, and resources, including the tools provided in the recent biennial budget, 2013 Wisconsin Act 20.

More specifically, the resources provided in Act 20 will allow DOR to achieve a net return of \$34 million over the biennium by reducing fraud in the Homestead and EITC programs alone. The resources include 13 new positions dedicated to anti-fraud efforts in our audit and criminal investigation units in addition to two positions in the Wisconsin Lottery dedicated to security and program integrity.

Additionally, the budget allows for greater information sharing among state agencies, which will allow DOR to further detect irregularities and areas for investigation.

DOR strategically utilizes our resources to maximize efficiency and efficacy of our anti-fraud efforts.

A component of DOR's anti-fraud initiatives includes investigation of suspected fraud that the agency receives from external parties. While reports of suspected fraud are a tool in these efforts, they do not serve as the most effective or impactful of all of DOR's anti-fraud initiatives. In fact, our experience is that many of the reported cases of suspected fraud have a basis in personal

relationships gone awry. Thus, DOR does not believe that increased reporting in suspected tax fraud via DOA's newly-created hotline or reward program would have a meaningful impact on the Department's successful and growing anti-fraud programs. Furthermore, DOR would have to rededicate existing anti-fraud resources to respond to increased fraud reporting. The result is that we would have to shift staff and technology from some of our most successful anti-fraud initiatives to cope with an increase in what has shown to be a much less effective route of fraud investigation.

Areas of Concern.

Senate Bill 177 creates an incentive for individuals and professional firms to more vigorously report suspected fraud. Since DOR reviews all reports of suspected fraud, DOR will necessarily have to reallocate staff and technology to handle the increase in suspected fraud reporting, regardless if the suspected fraud is meritorious or not.

Additionally, since taxpayers often know when their activities are under investigation by DOR via audit or other investigation, the taxpayer may intentionally or unintentionally tell others about the investigation. As a result, these other individuals could report suspected fraud that DOR would otherwise already uncover as a result of ongoing audit or investigation. The enterprising tipster would receive 5% of the recovered funds, when the state would have otherwise received 100% of the recovered funds that DOR would have discovered in the absence of the reported fraud received mid-investigation.

Anti-fraud resources are finite. If DOR is spending its time investigating a neighbor's suspicion that the person next door is not paying use tax on his/her online purchases, those resources are not available to investigate a false tax credit claim or other greater dollar value concerns.

Senate Bill 177 does not provide recourse for use of suspected tax fraud reporting for harassment or intimidation of individuals or businesses. Additionally, fishing expeditions are in no way limited, so an enterprising individual or firm could report suspected fraud on unsubstantiated hunches for thousands of taxpayers with the possibility of several 5% rewards resulting from audits or investigation that would likely have taken place without the blanket, unsubstantiated fraud reporting.

Finally, since all information from a taxpayer's return is generally confidential, DOR has concerns that taxpayer confidentiality may be compromised under Senate Bill 177's reward component. Since the 5% reward amount can easily be extrapolated to determine the full amount, information related to confidential taxpayer liability and payments would be easily discernible by third parties. Only a small amount of DOR's audit or investigation activity is public record via criminal charges or other court actions or posting on the delinquent taxpayer website.

Conclusion.

While DOR does not have a formal position on Senate Bill 177, we believe that the Legislature should consider the consequences of this legislation as it related to the Department of Revenue.

DOR will continue to utilize reports of suspected tax fraud as part of our robust anti-fraud efforts. However, DOR does not believe any significant benefit to tax administration or the Wisconsin Lottery will result from increased suspected fraud reporting that would occur if Senate Bill 177 became law.

Prepared by: Michael Wagner, Legislative Advisor
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