



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

August 1, 2017

TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Foxconn/Fiserv Legislation

On July 27, 2017, Governor Walker and Mark Hogan, Secretary and CEO of the Wisconsin Economic Development Corporation (WEDC), entered into a memorandum of understanding (MOU) with Terry T. M. Gou., Chairman and CEO of Hon Hai Precision Industry Co., Ltd. (Foxconn) and Louis K. Woo, Special Assistant to Mr. Gou. Under the MOU, Foxconn agrees to invest \$10 billion to construct, over six years, a facility in Wisconsin and create up to 13,000 jobs, with an reported average salary of \$53,875 over a period of up to six years. The state's agreement, under the MOU, is to provide up to \$3 billion in an economic package which would include refundable tax credits and a construction sales tax exemption for Foxconn.

On July 28, 2017, the Governor issued Executive Order #250, calling for a special session of the Legislature to address legislation relating to the promotion of economic development and job retention. That legislation has been drafted as LRB 4050/1. The bill would address the state's agreement under the MOU and would also add a new component to the enterprise zone credit program, which would provide up to \$10 million in tax benefits to Fiserv, Inc.

In response to numerous legislative inquiries, this memorandum has been prepared to summarize the provisions of LRB 4050/1 (the bill). The memorandum does not provide fiscal analyses of the legislation. That information will be completed once we have an opportunity to review documents from the administration.

ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONES

Designation of Zones and Certification of Businesses for Tax Benefits

Under the bill, WEDC would be permitted to designate not more than one electronics and information technology manufacturing (EITM) zone. In determining whether to designate an

area as a zone, WEDC would have to consider: (a) indicators of the area's economic need, which may include data regarding household income, average wages, the condition of property, housing values, population decline, job losses, infrastructure and energy support, the rate of business development, and the existing resources available to the area; and (b) the effect of designation on other initiatives and programs to promote economic and community development in the area, including job retention, job creation, job training, and creating high-paying jobs.

WEDC would have to specify whether an EITM zone is located in a tier I county or municipality or a tier II county or municipality. WEDC would have to, to the extent possible, give preference to the greatest economic need. A zone designation could remain in effect for no more than 15 years.

WEDC could certify a business that begins operations in an EITM zone for the new EITM zone tax credits described below. WEDC would have to revoke a certification if the business does any of the following: (a) supplies false or misleading information to obtain tax benefits; (b) leaves the EITM zone to conduct substantially the same business outside the zone; or (c) ceases operations in the zone and does not renew operation of the business or a similar business in the zone within 12 months.

WEDC could require a business to repay any tax benefits the business claims for a year in which it failed to maintain employment levels or a significant capital investment in property required by an agreement between the business and WEDC.

WEDC would have to determine the maximum amount of the tax benefits that a certified business may claim and notify the Department of Revenue (DOR) of this amount. WEDC would also have to annually verify the information submitted to it regarding the EITM zone tax credit.

WEDC would have to adopt policies and procedures defining a tier I county or municipality and a tier II county or municipality, and could consider all of the following information when establishing those definitions: (a) unemployment rate; (b) percentage of families with incomes below the federal poverty line; (c) median family income; (d) median per capita income; and (e) other significant or irregular indicators of economic distress, such as a natural disaster or mass layoff.

EITM Zone Payroll Tax Credit

"State payroll" would mean the amount of payroll apportioned to this state, as determined under the old corporate apportionment statutes. "Zone payroll" would mean the amount of state payroll that is attributable to wages paid to full-time employees for services that are performed in the zone or that are performed outside the zone, but within the state, and for the benefit of the operations within the zone, as determined by WEDC. "Zone payroll" would not include the amount of wages paid to any full-time employees that exceeds \$100,000.

As under the enterprise zone program, "full-time employee" would mean an individual who is employed in a regular, nonseasonal job and who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays. However,

WEDC could grant exceptions to the requirement that a full-time employee means an individual who, as a condition of employment, is required to work at least 2,080 hours per year if: (a) the individual is employed in a job for which the annual pay is more than the amount determined by multiplying 2,080 by 150% of the federal minimum wage (\$22,620); and (b) the individual is offered retirement, health, and other benefits that are equivalent to the retirement, health, and other benefits offered to an individual who is required to work at least 2,080 hours per year.

A claimant could claim as a refundable income or franchise tax credit an amount calculated as follows:

- a. Determine the zone payroll for the taxable year for full-time employees whose annual wages are greater than the amount determined by multiplying 2,080 by 150% of the federal minimum wage (\$22,620) in a tier I county or municipality or greater than \$30,000 in a tier II county or municipality.
- b. Multiply the amount determined under "a" by 17%.

WEDC could not issue certifications to claim payroll tax credits under these provisions that total more than \$1.50 billion.

Supplemental Credit for Capital Expenditures

In addition to the payroll tax credit, if WEDC determines that a certified business makes a significant capital expenditure in the EITM zone, it could certify the business to receive additional tax benefits in an amount to be determined by WEDC, but not exceeding 15% of the business's capital expenditures in the EITM zone in the taxable year. WEDC would have to, in a manner it determines, allocate the tax benefits a business is certified to receive under this provision over a period of seven years. WEDC would have to adopt policies and procedures defining "significant capital expenditure."

WEDC could not issue certifications to claim capital expenditure tax credits under these provisions that total more than \$1.35 billion.

Other Provisions

Partnerships, limited liability companies (LLCs), and tax-option corporations could not claim the credits, but the eligibility for, and the amount of, the credit would be based on their payment of amounts described above. A partnership, LLC, or tax-option corporation would have to compute the amount of credit that each of its partners, members, or shareholders may claim and provide that information to each of them. Partners, members of LLC, and shareholders of tax-option corporations could claim the credit in proportion to their ownership interests.

No credit would be allowed unless the claimant's return includes a copy of the certification for tax benefits. DOR would have full power to administer the credits and could take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection,

interest and penalties would apply to the new credits. Current-law provisions regarding timely claims of research credits would also apply to the new credits.

As noted, the new credits would be refundable. If the allowable amount of a credit claim exceeds the income or franchise taxes otherwise due on the claimant's income, the amount of the claim that is not used to offset those taxes would be certified by DOR to the Department of Administration for payment by check, share draft, or other draft drawn from a new GPR sum sufficient appropriation for the credit. No interest would be paid on amounts certified for refund.

[Bill Sections: 6, 22, 24 thru 28, 30 thru 32, and 49]

SALES TAX EXEMPTION

The bill would create a sales and use tax exemption for building materials, supplies, and equipment and taxable landscaping and lawn maintenance services sold to (and the storage, use, or other consumption of the same property and services by) owners, lessees, contractors, subcontractors, or builders if that property or service is acquired solely for or used solely in, the construction or development of facilities located in an EITM zone and if the capital expenditures for the construction or development of such facilities may be claimed as an EITM credit, as certified by WEDC. The exemption would first apply to purchases made after WEDC enters into a contract with a business to locate in an EITM zone. The administration estimates the value of the exemption to be \$150 million.

[Bill Sections: 34 and 62]

ENTERPRISE ZONE PROGRAM

The enterprise zone program provides refundable tax credits that can be claimed against the individual income tax and the corporate income/franchise tax for eligible expenses for increased employment, retaining employees, employee training, capital investment, and purchases from Wisconsin vendors. WEDC is responsible for designating enterprise zones, certifying taxpayers, allocating and verifying tax credits, and performing other general administrative functions related to the enterprise zone program. WEDC is authorized to designate up to 30 areas in this state as enterprise zones and is required to designate as zones at least three areas comprised of political subdivisions with populations of fewer than 5,000, and two areas comprised of political subdivisions with populations between 5,000 and 30,000.

The bill would allow WEDC to designate up to 35 zones, instead of 30 under current law.

The bill would also specify that if WEDC revokes all certifications for tax benefits within a designated enterprise zone, it may cancel the designation of that enterprise zone and then designate a new enterprise zone subject to the statutory limits. It would also allow WEDC to designate an additional zone if an existing enterprise zone designation expires. [These provisions were included in the Governor's budget bill.]

The bill would create a new refundable enterprise zone credit for no more than one financial services technology business that: (a) after completing a competitive corporate relocation process, retains its corporate headquarters in this state and retains at least 93% of its full-time employees in this state who were identified as being full-time employees of the business in the base year, as determined by WEDC; and (b) maintained average zone payroll for the taxable year equal to or greater than the base year.

The credit would be equal to the percentage, as determined by WEDC, of the claimant's zone payroll paid in the 12 months prior to the certification date to the claimant's full-time employees in the enterprise zone whose annual wages are greater than the amount determined by multiplying 2,080 by 150% of the federal minimum wage (\$22,620) in a tier I county or municipality or greater than \$30,000 in a tier II county or municipality. The amount that the claimant could claim for a taxable year could not exceed \$2 million. A claimant could claim the credit for no more than five consecutive taxable years.

The administration indicates that this new credit is intended to allow WEDC to provide assistance to Fiserv, Inc., which is headquartered in Brookfield. This component of the bill is not related to the Foxconn project.

[Bill Sections: 23, 29, and 50 thru 55]

DISREGARDED ENTITIES

Under the bill, with regard to a single-owner entity that is disregarded as a separate entity under the Internal Revenue Code, any notice that DOR sends to the owner or to the entity would be considered a notice sent to both and both are liable for any amounts due as specified in the notice. This would apply to all laws administered by DOR. The new provision is also referenced in Chapters 180 (business corporations) and 183 (LLCs). [The Governor's budget bill included similar provisions but did not include the cross references in Chapter 180 or 183.]

[Bill Sections 33, 37, and 38]

PUBLIC SERVICE COMMISSION

Certificates of Authority and Certificates of Public Convenience and Necessity

The bill would exclude public utility projects within an EITM zone from the requirements to obtain a certificate of authority from the Public Service Commission (PSC), and would exclude public utility projects consisting of high-voltage transmission line relocations within an EITM zone from the requirements to obtain a certificate of public convenience and necessity from the PSC.

[Bill Sections: 46 and 47]

Market-Based Public Utility Rates

The bill would modify current law provisions regarding public utility market-based rates to

require an electric public utility providing service to an EITM zone to file with the PSC, no later than January 1, 2020, tariffs that include market-based pricing and options that allow a new retail customer within the EITM zone to receive market benefits and take market risks for some or all of the customer's purchases of capacity and energy. Subject to maximum capacity or energy purchase limits established by the PSC, the bill specifies that the tariffs include the following requirements: (a) the electric public utility shall verify that the customer is eligible for an EITM zone credit; (b) the customer shall annually nominate the amount of capacity and energy subject to the market-based tariff; (c) the customer shall provide not less than 12 months' notice to terminate service under the market-based tariff; and (d) the term of the market-based tariff may not be less than 10 years. In addition, the bill specifies that the tariff require the customer to pay the difference, if any, between the otherwise applicable retail rate and the market-based tariff if the customer supplies false or misleading information regarding its applicability for the market-based tariff, leaves the EITM zone to conduct substantially the same business outside the zone, or ceases operations in the EITM zone and does not renew operation of the business or a similar business within the zone within 12 months. The PSC would be required to approve market-based rates under the preceding provisions and establish maximum capacity or energy purchase limits for purposes of the tariffs, as noted above.

[Bill Sections: 39 thru 45]

NATURAL RESOURCES

Environmental Impact Statements

The bill would specify that any permit or approval issued for a new manufacturing facility within an EITM zone would not be considered a major action for the purpose of the environmental impact statement requirement under s. 1.11(2)(c) of the statutes.

Under current law, all state agencies are required to prepare environmental impact statements for every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the human environment.

[Bill Section: 49]

Water Diversion from Great Lakes Basin

The bill would specify that, when a person in a straddling community applies to the Department of Natural Resources (DNR) to divert (transfer) water from the Great Lakes basin into a watershed outside the Great Lakes basin, the proposed diversion would be exempt from the requirement to be consistent with an approved water supply service area plan that covers the public water supply system if the proposal is to provide water to a straddling community that includes an EITM zone.

Currently, a straddling community is any city, village, or town that, based on its boundary existing as of the Great Lakes Compact's effective date, is partly within the Great Lakes basin or partly within the watersheds of two of the Great Lakes and that is wholly within any county that lies

partly or completely within the Great Lakes basin. The Compact was entered into by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the Commonwealth of Pennsylvania, and the Canadian Provinces of Ontario and Quebec to regulate the withdrawal of water from the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec. A public water supply is water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers. The operator of a public water supply that serves a population of 10,000 or more that withdraws water from the waters of the state is required to have a water supply service area plan approved by DNR by December 31, 2025. The plan is required to include information about: (a) the area served, current sources of water, future demand, and population projections; (b) options for supplying water, including a cost-effectiveness analysis of regional and individual water supply and water conservation alternatives; (c) an assessment of the environmental and economic impacts of carrying out the plan; (d) a planning period of not to exceed 20 years; and (e) an opportunity for public review and comment on the proposed plan.

[Bill Section: 56]

Wetlands Permitting Exemption

The bill would provide an exemption from DNR permitting requirements related to discharging dredged or fill material into a wetland for the construction, access, or operation of a new manufacturing facility in an EITM zone. In addition, the bill would require as a condition of the exemption that the exempted party compensate for adverse impacts to functional values of wetlands, at a ratio of two acres per each acre impacted, in one of the following manners, subject to DNR administrative rules: (a) purchase credits from a wetland mitigation bank located in Wisconsin; (b) participate in the Wisconsin Wetland Conservation Trust (WWCT) in-lieu fee (ILF) program; (c) complete wetland mitigation in Wisconsin; or (d) participate in the escrow program, to deposit funds for future wetland mitigation in Wisconsin. (The WWCT ILF program sells WWCT credits to permittees, which are then used to fund wetland restoration projects in Wisconsin. Since federal approval of the WWCT ILF program, the escrow program has been discontinued.)

The bill would also specify that DNR would waive its water quality certification related to discharges into wetlands described in the previous paragraph. Under federal law, discharges into "navigable waters" must receive a permit from the U.S. Army Corps of Engineers, subject to Environmental Protection Agency rules, after a state agency provides water quality certification of a discharge. Under this provision, the state would waive its water quality certification, but the discharges would still be subject to federal approval, as long as they were into federal "navigable waters." Federal law defines "navigable waters" as "waters of the United States," which is generally interpreted by the courts to exclude non-navigable, isolated, intrastate waters (nonfederal wetlands).

[Bill Sections: 57 thru 59]

Navigable Streams

The bill would provide an exemption from DNR permitting requirements related to the

deposit of material or placement of a structure upon the bed of any navigable stream beyond where a bulkhead line has been established, or where no bulkhead line has been established, for a deposit or structure relating to the construction, access, or operation of a new manufacturing facility in an EITM zone. The exemption would be subject to the requirements that such activities do not interfere with the riparian rights of other riparian owners, and are not located in an area of special natural resource interest (ASNRI). ASNRI's are established by s. 30.01(1am) of the statutes and include, among others: (a) state natural areas; (b) trout streams and outstanding or exceptional resource waters; and (c) unique or significant wetlands, including any body of water in a wetland along Lake Michigan or Lake Superior that DNR has determined as an ecologically significant costal wetland. ASNRI's are required to be displayed on a map on DNR's website, and can be viewed with the Department's Surface Water Data Viewer.

[Bill Section: 9]

Bridges and Culverts

The bill would provide an exemption from DNR permitting requirements related to construction, placement, or maintenance of bridges or culverts in, on, or over navigable waters if such structures are required for the construction, access, or operation of a new manufacturing facility in the portion of a navigable stream in an EITM zone. However, the bill would maintain current law provisions authorizing DNR to require a person exempt from these permitting requirements to apply for a permit if DNR has conducted an investigation and determined that conditions specific to the site require restrictions in order to prevent: (a) significant adverse impacts to the public rights and interest; (b) environmental pollution; or (c) material injury to the riparian rights of any riparian owner.

[Bill Sections: 10 and 11]

Enlargement of Waterways and Bank Protection

The bill would provide an exemption from DNR permitting requirements related to the following activities that may affect a portion of a navigable stream and that are required for the construction, access, or operation of a new manufacturing facility in an EITM zone: (a) construction, dredging or enlargement of an artificial water body that connects with an existing navigable waterway, or is within 500 feet of the ordinary high-water mark of an existing navigable waterway; and (b) grading or removal of topsoil from the bank of a navigable waterway where the area exposed would exceed 10,000 square feet.

[Bill Section: 12]

Changing of Stream Courses

The bill would provide an exemption from DNR permitting requirements related to straightening or changing the course of navigable streams for activities related to the construction, access, or operation of a new manufacturing facility in an EITM zone.

[Bill Sections: 13 and 14]

TIF DISTRICT IN AN ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE

The bill would require that a tax incremental financing (TIF) district that is created in an area that includes an EITM zone be an industrial site or mixed-use development. Further, it would exempt TIF districts within an EITM zone from the current law requirement that the equalized value of taxable property of that TIF district plus the value increment of all existing TIF districts may not exceed 12% of the total equalized value of taxable property within the city or village. In addition, it would specify that the equalized value of taxable property of a TIF district within an EITM zone does not count in the calculation of the 12% limit. For TIF districts within an EITM zone, the bill would increase the allowable life of a district and the period during which DOR may allocate positive tax increments from 20 years to 30 years.

The bill would amend the current law definition of "project costs" to include expenditures or monetary obligations associated with public works or improvements within TIF districts located within an EITM zone. Further, the bill would specify that the city or village creating a TIF district within an EITM zone may incur project costs for any territory that is located in the same county as the district if the expenditure benefits the district.

Further, if the resolution creating a TIF district within an EITM zone is adopted between January 1 and December 1, the creation date would be either of the following dates, as specified in the resolution: (a) January 1 of the year in which the resolution is adopted; or (b) January 1 of the following year. The bill would specify that if a resolution is adopted between December 2 and December 31, the creation date will be January 1 of the following year.

The bill would specify that the city or village clerk's submission of the reporting forms required by the Department of Revenue (DOR) must be complete and submitted either: (a) on or before December 31 of the year the creating resolution is adopted if the resolution is adopted between January 1 and December 1 and the district's creation date is January 1 of the year in which the resolution is adopted; or (b) on or after the following April 1 and before the following December 1 of the year in which the resolution is adopted if the resolution is adopted between January 1 and December 1 and the district's creation date is January 1 of the following year, or the resolution is adopted between December 2 and December 31.

[Bill Sections: 19 thru 21]

ACQUISITION OF WATER AND SEWER SYSTEMS AND WASTEWATER TREATMENT FACILITIES BIDS

The bill would specify that a city or village may contract for the acquisition of any element of water and sewer systems, or wastewater treatment facilities without submitting the contract for bid to the lowest responsible bidder under the current law competitive bidding requirements for most public works projects if the city or village invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design, and the developers' experience in other similar projects. Under current law, a city or village has a similar exemption from the competitive bidding requirements for public works projects for the acquisition of any

element of a recycling or resource recovery facility.

[Bill Sections: 15 thru 18]

DEPARTMENT OF ADMINISTRATION

Grants to Local Governments

The bill would authorize the Department of Administration (DOA) to make one or more grants to local governmental units for costs associated with development in an EITM zone, including costs related to infrastructure and public safety. Under the bill, DOA may require a local governmental unit to match a grant in whole or in part. The bill would create a continuing GPR appropriation under DOA with funding of \$10,000,000 GPR in 2017-18 for making such grants to local governmental units, effective on the day after publication of the bill or on the second day after publication of the 2017-19 biennial budget act, whichever is later. Under a continuing appropriation, the unencumbered balance of the appropriation that remains at the end of a fiscal year is retained and available to be expended from the appropriation in the following fiscal year. As such, if grants from the appropriation created under the bill totaled less than \$10.0 million GPR in 2017-18, remaining expenditure authority would be available for grants in 2018-19 and later years.

[Bill Sections: 2, 3, 5, and 63]

Moral Obligation Pledge for Local Governmental Obligations

The bill specifies that, recognizing its moral obligation to do so, the Legislature expresses its expectation and aspiration that, if ever called upon to do so, it would make an appropriation to pay up to 40% of the principal and interest of a local governmental unit's obligations, if all of the following apply: (a) the local governmental unit's obligation is issued to finance costs related to development occurring in or for the benefit of an EITM zone; and (b) the DOA Secretary approves the local governmental unit's obligation before it is issued.

[Bill Section: 2]

Economic Development Liaison

The bill would provide \$183,500 GPR in 2017-18 and \$177,500 GPR in 2018-19 and 1.0 unclassified GPR position annually to DOA's supervision and management general program operations appropriation for economic development liaison activities under an agreement with the Wisconsin Economic Development Corporation. The administration indicates that the position would serve as the state's primary point of contact for any matters regarding Foxconn. The bill would specify that the economic development liaison position would be assigned to executive salary group 3, for which an annual salary ranges between \$70,429 and \$116,210 (as specified in the current state compensation plan). The position would be appointed by the Secretary of DOA.

[Bill Sections: 1, 8, 48, and 61]

I-94 NORTH-SOUTH CORRIDOR PROJECT

The bill would authorize \$252,400,000 in general fund-supported, general obligation bonds, which may be used for the I-94 North-South corridor project in the southeast Wisconsin freeway megaprojects program. The bill would create a general fund-supported, sum sufficient appropriation that would be used to pay any debt service associated with the issuance of these bonds and specify that the Department of Transportation (DOT) would not be able to expend the proceeds from the bonds authorized under this provision unless the state receives an award of federal moneys for the I-94 North-South corridor project. It is expected that, if partially issued in May, 2018, estimated debt service would increase by \$2,942,000 GPR in 2018-19 (estimated, annualized debt service on these bonds would be equal to \$20,258,300 GPR, once fully issued).

Although the administration indicates that these bonds would be used as the state match for a potential federal "FASTLANE" grant that would fund remaining work on the I-94 North-South corridor project, as drafted, any award of federal moneys for this project, in the 2017-19 biennium or beyond, could provide DOT with the authority to use these bond proceeds. For instance, if the state did not receive a "FASTLANE" grant, but instead received some amount of federal redistribution aid for this project, it is possible that the receipt of the additional aid could be interpreted as satisfying the criteria required to expend the bond proceeds.

[Bill Sections: 4, 7, 35, 36, and 60]

BL/sas