



2011 ASSEMBLY BILL 647

March 1, 2012 - Introduced by Representatives LOUDENBECK, MOLEPSKE JR, BERCEAU, T. LARSON, PETRYK, RINGHAND and VRUWINK. Referred to Committee on Jobs, Economy and Small Business.

1 **AN ACT** *to create* 238.09 of the statutes; **relating to:** the office of the business
2 ombudsman established and operated by the Wisconsin Economic
3 Development Corporation.

Analysis by the Legislative Reference Bureau

This bill requires the Wisconsin Economic Development Corporation (WEDC) to establish and operate the office of the business ombudsman (office). Under the bill, WEDC is required to staff the office with at least one full-time employee. The office is required to serve as a liaison between businesses and Wisconsin agencies, authorities created by statute, such as the Wisconsin Housing and Economic Development Authority, counties, municipalities, and federal regulatory agencies (collectively, government entities) and local economic development and community development organizations. The bill requires that the primary goal of the office is improve the conditions for conducting business in this state.

Assistance concerning permits.

The bill requires the office to assist businesses to obtain and maintain any applicable approval of a government entity required as a condition of operating a business in Wisconsin or conducting any business activity in Wisconsin (permit). Under the bill, the office's assistance concerning permits must include all of the following:

1. Explaining the requirements for obtaining a particular permit.
2. Explaining the criteria the appropriate government entity applies in making a determination on a permit application and the time period within which that determination will typically be made.

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3. Arranging a meeting between the representatives of a business and the staff of the appropriate government entity concerning a permit or the permit application process.

4. Tracking the progress of a particular permit application.

5. Helping a business comply with applicable regulatory laws and rules, including by providing plain-language explanations of those laws and rules.

The bill further requires that the office advocate for permit applicants, including by monitoring the permit process to ensure that a permit is granted in the shortest amount of time possible consistent with applicable substantive requirements established by rule or law and advocating legislative changes to improve and expedite any permit process.

Under the bill, the office must also provide mediation or other dispute resolution services to facilitate the resolution of a dispute between a government entity and a permit applicant. The bill specifies that the office is not liable for any consequences resulting from the failure of a government entity to issue a permit or the failure of a person to seek or obtain a permit.

Assistance concerning agency enforcement actions.

With respect to state agencies, the bill gives the office the following additional specific responsibilities:

1. Upon the written request of a business, the office must investigate the circumstances of an enforcement action taken by the agency against the business and prepare recommendations concerning alternative penalties against the business, if any, that the office believes will achieve regulatory compliance without causing unnecessary hardship to the business.

2. The office is required to submit to an agency taking such an enforcement action a copy of the written request submitted by the business to the office; a copy of any recommendations prepared by the office with respect to the enforcement action; and a statement requesting that the agency submit to the office within 45 days a written response describing the enforcement action ultimately taken by the agency, or that the agency intends ultimately to take, against the business and what, if any, accommodations were made for the business as a result of the office's recommendations.

3. Annually, the office is required to compile the requests received and submissions made by the office concerning agency enforcement actions and any responses to those submissions the office received from agencies; analyze and evaluate that information and any other relevant information to determine regulatory enforcement trends and the efficacy of the office in facilitating regulatory relief to and promoting regulatory compliance by businesses; and include all of that information and those findings in an annual report to the legislature concerning the work of the office.

State agency responsibilities.

Likewise, the bill requires that state agencies work with the office and businesses concerning permits and the permit application process, including by doing all of the following:

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1. Designate at least one agency employee to coordinate the agency's cooperation with the office and provide information to the office concerning the agency's permits and permit applications.

2. Respond promptly to the office concerning a request from the office for information about a permit or permit application or to expedite a permit.

3. Include information provided by the office about the office's services in any informational material on permits that the agency provides to the public.

4. Promptly notify the office and the permit applicant if the agency determines that an application for a permit is incomplete or otherwise defective and provide the permit applicant a reasonable opportunity to correct the defect.

5. Periodically review and, if appropriate, revise the agency's administrative rules and permit application forms to simplify and expedite the agency's permit process.

6. Provide an opportunity for an informal preapplication meeting with the agency's staff to any business interested in applying for a permit.

7. In any such preapplication meeting, identify all permits required by the agency for a particular business activity, describe the steps and identify the time period for each step in the permit process, and identify any potential problems the business may encounter in that process.

8. Notify any business that contacts the agency about a permit of the availability of a preapplication meeting and invite participation by office staff in any preapplication meeting.

Brownfields redevelopment.

The bill also requires the office to act as an ombudsman for brownfields redevelopment in Wisconsin. Under current law, brownfields redevelopment is any work or undertaking by a person to acquire a brownfields facility or site and to raze, demolish, remove, reconstruct, renovate, or rehabilitate the facility or existing buildings, structures, or other improvements at the site for the purpose of promoting the use of the facility or site for commercial, industrial, or other purposes. A brownfield is an abandoned, idle, or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

Under the bill, in its capacity as ombudsman for brownfields redevelopment, the office must promote brownfields redevelopment and education of the public concerning brownfields redevelopment; coordinate with government entities and local economic development and community development organizations concerning activities and responsibilities related to brownfields redevelopment; and, with the Department of Workforce Development, coordinate job training related to brownfields redevelopment for persons who are unemployed and reside in the vicinity of a brownfields redevelopment project.

Publicizing the office's services.

Finally, under the bill, the office must maintain and publicize the availability of a toll-free telephone number available to in-state and out-of-state callers, and

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the office is required to seek to explain, promote, and publicize its services to the public.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 238.09 of the statutes is created to read:

2 **238.09 Office of the business ombudsman. (1) DEFINITIONS.** In this section:

3 (a) “Agency” has the meaning given in s. 227.01 (1).

4 (am) “Authority” has the meaning given in s. 16.70 (2).

5 (b) “Brownfields” has the meaning given in s. 238.13 (1) (a).

6 (c) “Brownfields redevelopment” has the meaning given in s. 238.13 (1) (b).

7 (d) “Business” means a sole proprietorship, partnership, limited liability
8 company, joint venture, or corporation.

9 (e) “Office” means the office of the business ombudsman.

10 (f) “Permit” means any approval of an agency, authority, county, municipality,
11 or federal regulatory authority required as a condition of operating a business in this
12 state or conducting any business activity in this state.

13 **(2) ESTABLISHMENT OF THE OFFICE.** (a) The corporation shall establish and
14 operate the office. The office shall serve as a liaison between businesses and
15 agencies, authorities, counties, municipalities, local economic development and
16 community development organizations, and federal regulatory authorities and shall
17 have the goal of improving the conditions for conducting business in this state.

18 (b) The office shall be staffed by at least one full-time employee of the
19 corporation.

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1 **(3) AGENCY ENFORCEMENT ACTIONS.** With respect to any action taken against a
2 business by an agency to enforce a law or rule administered by the agency, the office
3 shall do all of the following:

4 (a) Upon written request of the business, investigate the circumstances of the
5 enforcement action and prepare recommendations concerning alternative penalties
6 against the business, if any, that the office believes will achieve regulatory
7 compliance without causing unnecessary hardship to the business.

8 (b) Submit to the agency all of the following:

9 1. A copy of the written request submitted by the business to the office under
10 par. (a).

11 2. Any recommendations prepared by the office under par. (a).

12 3. A statement requesting that the agency submit to the office within 45 days
13 after receipt of the statement a written response describing the enforcement action
14 ultimately taken by the agency, or that the agency intends ultimately to take, against
15 the business and what, if any, accommodations were made for the business as a result
16 of the office's recommendations prepared under par. (a).

17 (c) Annually do all of the following:

18 1. Compile the requests received by the office under par. (a), the submissions
19 made by the office under par. (b), and any responses to those submissions the office
20 received from agencies.

21 2. Analyze and evaluate the information under subd. 1. and any other relevant
22 information to determine regulatory enforcement trends and the efficacy of the office
23 in facilitating regulatory relief to and promoting regulatory compliance by
24 businesses.

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1 3. Include the information and findings under subds. 1. and 2. in the office's
2 annual report under sub. (6).

3 **(4) ASSISTANCE CONCERNING PERMITS.** (a) The office shall assist businesses to
4 obtain and maintain applicable permits, including by doing all of the following:

5 1. Explaining the requirements for obtaining a particular permit.

6 2. Explaining the criteria the appropriate agency, authority, county,
7 municipality, or federal regulatory authority applies in making a determination on
8 a permit application and the time period within which that determination will
9 typically be made.

10 3. Arranging a meeting between the representatives of a business and the staff
11 of the appropriate agency, authority, county, municipality, or federal regulatory
12 authority concerning a permit or the permit application process.

13 4. Tracking the progress of a permit application.

14 5. Helping a business comply with applicable regulatory laws and rules,
15 including by providing plain-language explanations of those laws and rules.

16 (b) The office shall advocate for permit applicants, including by doing all of the
17 following:

18 1. Monitoring the permit process for a permit applicant to ensure that the
19 permit is granted in the shortest amount of time possible consistent with applicable
20 substantive requirements established by rule or law.

21 2. Advocating legislative changes to improve and expedite any permit process.

22 (c) The office shall provide mediation or other dispute resolution services to
23 facilitate the resolution of a dispute between an agency, authority, county,
24 municipality, or federal regulatory authority and a permit applicant. The provision
25 of mediation or other dispute resolution services with respect to an agency under this

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1 paragraph does not affect any right that a person may have to a contested case
2 hearing under ch. 227.

3 (d) Except for services performed under par. (b) 2., the office may charge a
4 business for its services provided under this subsection. Any amount the office
5 charges for a service may not exceed the office's actual cost to provide that service.

6 (e) Nothing in this section relieves any person from the obligation to secure a
7 required permit or satisfy any other legal requirement.

8 (f) The office shall not be liable for any consequences resulting from the failure
9 of an agency, authority, county, municipality, or federal regulatory authority to issue
10 a permit or the failure of a person to seek or obtain a permit.

11 **(5) PROMOTION OF THE OFFICE'S SERVICES.** (a) The office shall maintain and
12 publicize the availability of a toll-free telephone number available to in-state and
13 out-of-state callers.

14 (b) The office shall seek to explain, promote, and publicize its services to the
15 public and shall provide information about its services to agencies for inclusion in
16 informational material that agencies provide to the public.

17 (c) In its publicity efforts under pars. (a) and (b), the office shall clearly
18 represent that its services are advisory, informational, and facilitative only.

19 **(6) ANNUAL REPORT.** The office shall annually submit to the chief clerk of each
20 house of the legislature for distribution to the appropriate standing committees
21 under s. 13.172 (3) a report concerning the work of the office.

22 **(7) RESPONSIBILITIES OF AGENCIES.** (a) Each agency shall:

23 1. Cooperate with the office consistent with this section.

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1 2. Designate at least one employee of the agency to coordinate the agency's
2 cooperation with the office consistent with this section and provide information to
3 the office concerning permits and permit applications.

4 3. Respond promptly to the office concerning a request from the office for
5 information about a permit or permit application or to expedite a permit.

6 4. Include information provided by the office under sub. (5) in any
7 informational material on permits that the agency provides to the public.

8 5. Promptly notify the office and the permit applicant if the agency determines
9 that an application for a permit is incomplete or otherwise defective and provide the
10 permit applicant a reasonable opportunity to correct the defect.

11 6. Periodically review and, if appropriate, revise the agency's administrative
12 rules and permit application forms to simplify and expedite the permit process.

13 (b) Each agency shall provide an opportunity for a preapplication meeting with
14 the agency's staff to any business interested in applying for a permit upon request
15 by the business or the office, and shall comply with the following requirements:

16 1. Preapplication meetings conducted by the agency shall be informal.

17 2. In any preapplication meeting, the agency shall identify all permits required
18 by the agency for a particular business activity, describe the steps and identify the
19 time period for each step in the permit process, and identify any potential problems
20 the business may encounter in that process.

21 3. The agency shall notify the office of and invite participation by office staff
22 in any preapplication meeting.

23 4. The agency shall notify any business that contact s the agency about a permit
24 of the availability of a preapplication meeting.

