DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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September 4, 2001

Representative Miller:

This next version of the bill accomplishes much of what you requested in your redraft instructions, but I have a number of questions related to those instructions and did not attempt to draft various provisions. Perhaps it would be useful to meet again and go through the bill in detail after you have had a chance to review this version and the following questions and comments:

1. Your instructions referred to "business subsidies that are subject to the reporting requirement." Unlike the Minnesota law, this draft defines "business subsidy" in such a way that all business subsidies, as defined, are subject to the reporting requirement. Do you want any changes?

2. There is a conflict in the bill related to loans and loan guarantees that are "business subsidies." Section 16.27 (3) (a) 2. c. defines any loan of at least $25,000 as a business subsidy and s. 16.27 (3) (a) 2. e. defines any guarantee of at least $25,000 (including of a loan) as a business subsidy. Section 16.27 (3) (b) 11. provides that any loan or loan guarantee of $75,000 or less is *not* a business subsidy. How do you want to resolve this conflict?

3. "Grantor" was defined in the previous version of the draft as the agency that provides, rather than awards, the subsidy. That way, the executive agency, rather than a board attached to the agency, does everything that a "grantor" must do. You indicated that you want the awarding agency to be the "grantor" but you want the executive agency to be able to elect to "administer" the subsidy reporting program. I think it would be better to leave the definition of "grantor" as the agency that provides the subsidy. Administering a program might be rather cumbersome for a board made up of a variety of people, often including laypersons, who have expertise in the subject area of the grants that they award but no expertise in administration, and the executive agencies perform the administrative services for the boards that are attached to them, anyway. However, if you still want the awarding entity, rather than the providing entity, to be the "grantor," you will have to specify which functions you want the providing entity to be able to elect to do. As the bill is currently drafted, the functions of "grantors" include entering into subsidy agreements with recipients, monitoring the progress of each recipient, and receiving and maintaining in a centrally located file the reports of the recipients.

4. Note the broad definition of "state agency" and the requirement that every state agency, even if it has never provided a business subsidy, must submit the report under s. 16.28 (4) to DOA. Do you want any modifications?

5. In this bill, I did not provide the exception for the second public hearing. I'm not sure what you mean by the terms you use in the instructions. Is the development of a development plan intended to refer to something that already occurs, or do you mean to establish a process? I don't know who an appropriate authority would be for certifying that the subsidy meets the criteria of the development plan. Would these criteria overrule the criteria for awarding subsidies developed by the agency under s. 16.28 (1)?

6. I'm not sure what the purpose is for requiring a subsidy applicant to disclose information about failure to comply with state or federal environmental or labor laws (and I'm not sure that those references are specific enough). Such failure and its disclosure does not seem to play any role in whether the subsidy is awarded or not. I don't know what "consent agreements" are.

7. Since most of the business subsidies that I'm familiar with involve grants and loans, I'm not sure that it makes sense to divide the subsidies into the time categories of "one–year programs and multi–year programs." Perhaps multi–year programs are more common with subsidies awarded by other agencies. For purposes of how often reports must be submitted, I divided the subsidies into those provided in a lump sum or over a period of up to one year and those provided over a period exceeding one year. For DOA's compilation and summary report, I did not use the five time categories you suggested. I thought it would make more sense for DOA to determine the appropriate categories on the basis of the subsidies actually awarded. Okay?

8. Regarding the prohibition on using public funds to subsidize a move to another state: I'm not familiar with compacts against "job piracy and poaching." Has Wisconsin entered into such a compact?

9. I didn't completely understand the reporting requirements for the projects for which job creation or retention was the public purpose. You specified a baseline ("the monthly average number of jobs over the prior 12 months"), but not what the baseline was to be used for. Does it go on the application? Is it to be included in each report? I wasn't sure of the significance of a baseline number of jobs for either job–creating or job–retaining projects. It seems to me that the relevant information is how many new jobs are created each year or how many jobs are retained each year, whether the new jobs fulfill the wage and benefit requirements, if the business is reaching its goals with respect to job creation or retention, etc. Do you simply want a business to report the average number of employees it had in the previous year and compare that to the number of employees it currently has?

10. The bill currently does not have any requirement for recovering the subsidy, although the bill does provide that the agreement will include a description of any financial obligation of the recipient if the goals are not met or if the recipient ceases operations at the location before five years. Is it your intention to require recovery of the subsidy if the recipient is six months or more late in submitting a report? If so, what

exactly do you mean by "recover the public investment"? Is the recipient liable for returning the entire amount or value already received? Do you want the attorney general or appropriate district attorney to pursue the recovery upon the request of DOA?

11. This version of the bill does not include the compliance language of new s. 560.055 for any agencies other than the department of commerce. That will be addressed in a later version.

12. This version of the bill does not divide administration of the program between DOA and DOR because you've stated that you prefer "to put overall responsibility for administering the program in the department of administration in order to assure uniformity and compatibility of information gathered among all the agencies engaged in granting business subsidies." We agree that this approach makes the most sense, instead of creating a duplicative, and possibly cumbersome, system under which two state agencies are required to keep track of the same information. You should also be aware of s. 66.1105 (13) of the statutes, which deals with record keeping requirements under the tax incremental financing program. You may want to consider amending that statute to require DOC to send a copy of its report to DOA. That statute states:

"66.1105 **(13)** The department of commerce, in cooperation with other state agencies and local governments, shall make a comprehensive report to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), at the beginning of each biennium, beginning with the 1977 biennium, as to the effects and impact of tax incremental financing projects socially, economically and financially."

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266–2682
E–mail: pam.kahler@legis.state.wi.us

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266–0129
E–mail: marc.shovers@legis.state.wi.us