WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

January 2011 Special Session Assembly Bill 11	Assembly Amendments 1 and 105

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This memorandum describes Assembly Amendments 1 and 105 to January 2011 Special Session Assembly Bill 11 (the bill), relating to state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the State Civil Service System, the Medical Assistance (MA) program, sale of certain facilities, granting bonding authority, and making an appropriation.

TECHNICAL CORRECTION TO JOB CREATION TAX BENEFITS (2011 WISCONSIN ACT 5)

2011 Wisconsin Act 5 created an income and franchise tax deduction for job creation. Generally, under Act 5, businesses with gross receipts of $5,000,000 or less in a taxable year may claim a deduction equal to $4,000 for each new full-time equivalent (FTE) employee employed in the taxable year. Businesses with gross receipts of more than $5,000,000 may claim a deduction equal to $2,000 for each new FTE employee employed in the taxable year. The increase in FTE employees is calculated based on unemployment data reported to the Department of Revenue (DOR). However, Act 5 specifies that no person may claim the tax deduction for job creation if the person may claim a tax credit based on the person relocating the person's business from another state to this state and in an amount equal to the person's tax liability.

Generally, the limitation described above correlates to the relocation tax credit created by 2011 Wisconsin Act 3 (January 2011 Special Session Assembly Bill 3). As originally introduced, Special Session Assembly Bill 3 provided a relocation tax credit for both individual and corporate taxpayers. However, Special Session Assembly Bill 3 was amended during the legislative process by Assembly Substitute Amendment 2 to Special Session Assembly Bill 3. Substitute Amendment 2 and subsequently, 2011 Wisconsin Act 3, provided a relocation tax *deduction* for business income earned by an individual, and a relocation tax *credit* for corporate income taxpayers.

Assembly Amendment 1 to the bill modifies the limitation created under Act 5 to recognize the presence of a relocation tax deduction for individual taxpayers rather than a relocation tax credit, as created under Act 3.

AREAS IDENTIFIED AS WETLANDS IN TAX INCREMENTAL DISTRICTS

In the tax incremental law under s. 66.1105, Stats., the definition of "tax incremental district" excludes any area identified on a wetlands map prepared under s. 23.32, Stats. ***Assembly Amendment 1*** modifies this definition to include "an area identified on such a map that has been converted in compliance with state law so that it is no longer a wetland." The ***amendment*** also provides that for an area that is identified as a wetland on a map under s. 23.32, Stats., and that is within the boundaries of a tax incremental district or is part of a tax incremental district parcel, the area shall be considered part of the tax incremental district for determining the applicability of exemptions from or compliance with water quality standards that are applicable to wetlands.

TERM OF COLLECTIVE BARGAINING AGREEMENT

Under ***current law***, except for the initial collective bargaining agreement between the parties and except as the parties otherwise agree, the term of a collective bargaining agreement covering municipal employees is for a term of two years. However, in no case may an agreement covering municipal employees who are not school district employees exceed three years. The term of an agreement covering school district employees may not exceed four years.

The ***bill*** provides that, except for the initial collective bargaining agreement between the parties and except as the parties otherwise agree, every collective bargaining agreement covering general municipal employees must be for a term of one year and may not be extended. Further, the ***bill*** provides that no agreement covering general municipal employees may be reopened for negotiations unless both parties agree to reopen the agreement.

Assembly Amendment 105 removes the language "and except as the parties otherwise agree."

PUBLIC SECTOR RETIREMENT SYSTEMS

Modifications to the Employee and Employer Retirement Contributions to the WRS

Under ***current law***, the Employee Trust Funds (ETF) Board, in consultation with actuaries, annually determines the total actuarial contribution required to fund the WRS. This total contribution is the sum of three components: the employee rate; the employer rate; and the benefit adjustment contribution (BAC). Employer contributions to the WRS vary depending upon the type of position held by the employee. Employee contributions are currently required as follows:

1. For general employees, 5% of earnings;

2. For elected officials and executive employees, 5.5% of earnings;

3. For protective occupations covered by Social Security, 6% of earnings; and

4. For protective occupations not covered by Social Security, 8% of earnings.

Employer contributions (currently 5.1%) are generally paid by the employer, except that any contribution increase after 1989 is required to be distributed between the employer and the employee, with one-half of the increase paid by the employer and the other half of the increase added to the BAC portion of the total contribution. The BAC was created to fund WRS retirement improvements established under 1983 Wisconsin Act 141. The employee is responsible for paying BAC contributions unless the employer agrees to cover the cost (generally through collective bargaining). Currently, state employers are responsible for 1.3% of the BAC and general employees, .2%. A BAC is not necessary for the protective or elected official and executive categories.

While current law requires an employer to pay the full employer contribution, it also provides that an employer may pay all or part of the employee required contributions. This is generally derived through bargaining or the compensation plan. At this time, most state employers have agreed to pay the employee contribution (up to 5%) and 1.3% of the BAC for general employees. Protective occupations pay the portion of the employee contribution that exceeds 5%.

The ***bill*** eliminates the BAC as a separate contribution, instead incorporating the BAC costs into the total actuarially defined contribution. The bill requires that the contribution rate for general employees and elected officials and executive employees must equal one-half of all actuarially required contributions, as approved by the ETF Board. Protective occupation employees are required to pay a contribution that is equal to the percentage of earnings paid by the general employees.

The ***bill*** prohibits an employer from paying, on behalf of any employee, any of the employee's share of the actuarially required contributions under the WRS or under an employee retirement system of a 1st class city or county having a population of 500,000 or more (Milwaukee County and City Employees Retirement Systems). The bill also prohibits any local governmental unit from establishing a defined benefit pension plan for its employees unless the plan requires the employees to pay half of all actuarially required contributions for funding plan benefits. It also prohibits the local governmental unit from paying, on behalf of an employee, any of the employee's share of the actuarially required contributions.

These provisions are prospective and would take effect on the first pay period following March 13, 2011, for non-represented employees, elected officials, and judges and justices, and on the expiration, termination, extension, modification, or renewal of the collective bargaining agreement, whichever occurs first, for represented employees.

Assembly Amendment 1 modifies this provision for the Milwaukee City and County Employees Retirement Systems. Specifically, the reference to ***actuarially required*** contributions is removed because the City of Milwaukee's pension system does not utilize actuarially required contributions. There are simply employer contributions and employee contributions (member contributions paid by the employer). Thus, the language is altered to require that employees pay all of the employee required contribution.

Benefit Study

The ***bill*** requires that the DOA Secretary, the OSER Director, and the Secretary of the Department of Employee Trust Funds (DETF) study the structure of the WRS and benefits provided under the WRS and report their findings and recommendations to the Governor no later than June 30, 2012. The study must specifically address the following issues:

- Establishing a defined contribution plan as an option for participating employees.
- Establishing a vesting period of one, five, or 10 years for employer contributions and for eligibility for retirement benefits.
- Modifying the supplemental health insurance premium credit program.
- Permitting employees to not make employee required contributions and limiting retirement benefits for employees who do not make employee required contributions to a money purchase annuity.

The ***bill*** provides a sum sufficient general purpose revenue (GPR) appropriation in the DETF budget to fund the cost of the study.

Assembly Amendment 1 modifies this provision by requiring a 14-day passive review by the Joint Committee on Finance prior to DETF making any expenditure from the GPR appropriation for the study.

PUBLIC SECTOR GROUP INSURANCE

Group Insurance Board

Under ***current law***, the membership of the Group Insurance Board includes the Governor, the Attorney General, the DOA Secretary, the OSER Director, and the Commissioner of Insurance, or their designees.

The ***bill*** requires that the designee of the Attorney General be an attorney. ***Assembly Amendment 1*** removes this provision.

Study

The ***bill*** requires that the OSER Director and the DETF Secretary study the feasibility of offering to employees, beginning on January 1, 2013, the options of receiving health care coverage through either a low-cost health care coverage plan or through a high-deductible health plan and the establishment of a health savings account. The OSER Director and the DETF Secretary must also study the feasibility of requiring state employees to receive health care coverage through a health benefits exchange and creating a health care insurance purchasing pool for all state and local government employees and individuals receiving health care coverage under MA. The OSER Director and the DETF Secretary must report their findings and recommendations to the Governor no later than June 30, 2012.

The ***bill*** also provides a sum sufficient GPR appropriation in the DETF budget to fund the cost of the study.

Assembly Amendment 1 modifies this provision by requiring a 14-day passive review by the Joint Committee on Finance prior to DETF making any expenditure from the GPR appropriation for the study.

State Civil Service

Limited-Term Appointments

The ***bill*** provides that an individual with a limited-term appointment is not eligible for group insurance and retirement benefits.

Assembly Amendment 1 removes this provision.

Unclassified Division Administrators

The ***bill*** increases the number of unclassified division administrator positions that are authorized in the statutes by 35 positions. The ***bill*** also creates 37 unclassified division administrator positions and decreases the number of classified positions in executive branch agencies by 36 positions, which are to be identified by the DOA Secretary.

Assembly Amendment 1 increases the number of unclassified division administrators that are authorized in the statutes for the Department of Justice (DOJ) from three to five. The ***amendment*** also creates two unclassified division administrator positions in DOJ and decreases the number of classified positions in DOJ by two positions, which are to be identified by the DOA Secretary.

Local Government Civil Service

Assembly Amendment 1 requires that a local governmental unit (a political subdivision of this state, a special purpose district in this state, an agency or corporation of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing) that does not have a civil service system on the effective date of this provision must establish a grievance system no later than the first day of the fourth month beginning after the effective date of this provision. To comply with this requirement, a local governmental unit may establish either a civil service system or a grievance procedure.

Further, the ***amendment*** provides that a civil service system must contain at least the following provisions: (1) a grievance procedure that addresses employee terminations; (2) employee discipline; and (3) workplace safety. If a local governmental unit creates a grievance procedure, the procedure must contain at least the following elements: (1) a written document specifying the process that a grievant and an employer must follow; (2) a hearing before an impartial hearing officer; and (3) an appeal process in which the highest level of appeal is the governing body of the local governmental unit.

The ***amendment*** provides that if an employee of a local governmental unit is covered by a civil service system on the effective date of this provision, and if that system contains the provisions

described above, the provisions that apply to the employee under his or her civil service system continue to apply to that employee.

The above provisions first apply on the first day of the fourth month beginning after the bill's effective date.

MEDICAL ASSISTANCE

Program Changes

The ***bill*** requires DHS to study potential changes to the MA state plan and to waivers of federal law relating to MA obtained from the federal Department of Health and Human Services (DHHS) for all of the following purposes:

- Increasing the cost effectiveness and efficiency of care and the care delivery system for MA programs.
- Limiting switching from private health insurance to MA programs.
- Ensuring the long-term viability and sustainability of MA programs.
- Advancing the accuracy and reliability of eligibility for MA programs and claims determinations and payments.
- Improving the health status of individuals who receive benefits under a MA program.
- Aligning MA program benefit recipient and service provider incentives with health care outcomes.
- Supporting responsibility and choice of MA recipients.

If DHS determines, as a result of the study that revision of existing statutes or rules would be necessary to advance a purpose described above, DHS may promulgate rules that do any of the following related to MA programs:

- Require cost sharing from program benefit recipients up to the maximum allowed by federal law or a waiver of federal law.
- Authorize providers to deny care or services if a program benefit recipient is unable to share costs, to the extent allowed by federal law or waiver.
- Modify existing benefits or establish various benefit packages and offer different packages to different groups of recipients.
- Revise provider reimbursement models for particular services.
- Mandate that program benefit recipients enroll in managed care.

- Restrict or eliminate presumptive eligibility.

- To the extent permitted by federal law, impose restrictions on providing benefits to individuals who are not citizens of the United States.

- Set standards for establishing and verifying eligibility requirements.

- Develop standards and methodologies to assure accurate eligibility determinations and redetermine continuing eligibility.

- Reduce income levels for purposes of determining eligibility to the extent allowed by federal law or waiver and subject to the ability of the state DHS to obtain a waiver from provisions of the federal health care reform law.

Before promulgating a rule, DHS must submit to the Joint Committee on Finance the proposed rule and any plan that DHS develops as a result of the study. The committee has a 14-day passive review period, and if the committee takes no action within that time, the proposed rule may be promulgated, and the plan may be implemented. The rule may be promulgated as an emergency rule notwithstanding the requirements in s. 227.24 (1) (a) and (3), Stats.

DHS must submit an amendment to the state MA plan or request a waiver of federal laws related to MA, if necessary, to the extent necessary to implement any rule promulgated above.

If the federal DHHS does not allow the amendment or does not grant the waiver, the DHS may not put the rule into effect or implement the action described in the rule.

The DHS must request a waiver from the Secretary of the federal DHHS to permit the department to have in effect eligibility standards, methodologies, and procedures under the state MA plan or waivers of federal laws related to MA that are more restrictive than those in place under the federal Patient Protection and Affordable Care Act (PPACA). If the waiver request does not receive federal approval before December 31, 2011, the department shall reduce income levels on July 1, 2012, for the purposes of determining eligibility to 133% of the federal poverty line for adults who are not pregnant and not disabled, to the extent permitted under federal law.

Assembly Amendment 1 provides that the provisions in the bill relating to the study of potential changes to the MA state plan, waivers of federal MA law obtained from the federal DHHS, and ability to promulgate rules to implement the MA program changes will sunset on January 1, 2015.

To the extent that MA emergency rules, waivers to federal law, and state plan changes put into effect during this time period conflict with state law, those rules and plans would terminate as of January 1, 2015. However, it is unclear whether rules that are consistent with state law that were promulgated under the emergency rule procedure would remain in effect as of that date.

Fiscal Changes

Assembly Amendment 1 increases a DHS appropriation by $42,700,000 for fiscal year 2011-12, to fund capitation payments to care management organizations and other entities that provide services to

MA recipients under a managed care system for services provided in June 2011, to individuals enrolled in organizations and managed care systems.

STATE-OWNED HEATING, COOLING, AND POWER PLANTS

The ***bill*** provides that DOA may sell any state-owned heating, cooling, and power plant or may contract with a private entity for the operation of such plant, with or without solicitation of bids, for any amount that DOA determines to be in the best interest of the state. No approval or certification of the Public Service Commission (PSC) is necessary for a public utility to purchase or contract for the operation of such plant, and any such purchase is considered to be in the public interest and to comply with the criteria for certification of a project under s. 196.49 (3) (b), Stats.

Under the ***bill***, if there is outstanding public debt used to finance the acquisition, construction, or improvement of any plant that is sold, DOA must deposit a sufficient amount of the net proceeds from the sale of the property in the bond security and redemption fund to repay the principal and pay the interest on the debt and any premium due upon refunding of the debt. If the property was acquired, constructed, or improved with federal financial assistance, DOA must repay to the federal government any of the net proceeds required by federal law. In general, if there is no debt outstanding or there are no moneys payable to the federal government, or if the net proceeds exceed the amount required to be deposited or paid, DOA must deposit the net proceeds or remaining net proceeds in the budget stabilization fund.

Assembly Amendment 1 replaces the above paragraph with the provisions in this paragraph. The ***amendment*** provides that if there is any outstanding public debt, a portion of which was used to finance the acquisition, construction, or improvement of any plant that is sold, or is the subject of a contract for operation, DOA must determine any actions that may be necessary or appropriate so as not to adversely affect any exclusion of interest on such public debt from gross income for federal income tax purposes, including payments to advisors or the federal Internal Revenue Service (IRS). DOA must apply the net proceeds from any sale of a plant to do all of the following:

- To make any payments to advisors or the IRS determined by DOA to be necessary or appropriate.

- If the plant was acquired, constructed, or improved with federal financial assistance, to repay the federal government, as required by federal law.

- To deposit a sufficient amount of the net proceeds from any sale of the plant in the bond security and redemption fund to repay the principal and pay the interest on such portion of the public debt, and any premium due upon repayment of such portion of the public debt.

DOA generally must deposit in the budget stabilization fund any net proceeds in excess of the amount required to be deposited or paid under the previous provision.

In addition, the ***amendment*** provides that if DOA proposes to sell, lease, or contract for the operation of a plant, DOA must first notify the Joint Committee on Finance in writing of its proposed action. If the Co-Chairpersons of the committee do not notify DOA that the committee has scheduled a meeting for the purpose of reviewing the proposed sale within 14 working days after the date of DOA's

notification, the plant may be sold by DOA. If, within 14 working days after the date of DOA's notification, the Co-Chairpersons of the committee notify DOA that the committee has scheduled a meeting for the purpose of reviewing the proposed sale, the plant may be sold only upon approval of the committee. Together with any notification, DOA must also provide all of the following:

- The estimated value of the plant as determined by DOA and by at least one qualified privately owned assessor.

- The full cost of retiring any remaining public debt incurred to finance the acquisition, construction, or improvement of the plant.

- A cost-benefit analysis that considers the short-term and long-term costs and benefits to the state from selling, leasing, or contracting for the operation of the plant.

- The length and conditions of any proposed sale, lease, or service agreement between this state and a proposed purchaser, lessee, or contractor.

- The estimated budgetary impact of the proposed sale, lease, or contractual operation upon affected state agencies for at least the current and following fiscal biennium.

- Any other information requested by the committee.

In addition, the ***bill*** provides that if DOA sells or contracts for the operation of any state-owned heating, cooling, and power plant, DOA may attach such conditions to the sale or contract as it finds to be in the best interest of the state. Unless otherwise expressly agreed between the parties, the contract must provide that the purchaser or contractor will continue to operate the plant and keep the plant in good repair and will provide adequate and sufficient heating, cooling, and power to meet the state's current and future needs. The contract must also require the purchaser or contractor to submit to the jurisdiction of the PSC if the PSC will regulate the purchase or contractor as a public utility. If the purchaser or contractor is not a public utility, the PSC must, upon petition by DOA, regulate the purchaser or contractor as a public utility if the PSC determines that such regulation is in the public interest.

The ***bill*** requires that the DOA Secretary require the submission of expenditure estimates for each state agency that proposes to expend moneys from any appropriation for the operation of a state-owned heating, cooling, and power plant during any fiscal biennium in which the plant is sold or in which DOA contracts for the operation of the plant. The DOA must disapprove any estimate for any period during which that plant is owned or operated by a private entity. Then, the DOA Secretary may require the use of the amounts of any disapproved expenditure estimates for the purpose of purchase of contractual services relating to heating, cooling, or power for state facilities or payment of the costs of purchasing heating, cooling, or power for the state agencies or facilities for which the amounts were appropriated. If DOA sells or contracts for the operation of any state-owned heating, cooling, and power plant, the DOA Secretary may identify any FTE positions authorized for the state agency that has operating authority for the plant, the duties of which primarily relate to the management or operation of the plant, and may decrease the authorized FTE positions for that state agency by the number of positions so identified effective on the date that the state agency no longer has operating authority for the plant.

Lastly, the ***bill*** allows the DOA Secretary to lapse or transfer to the general fund from the unencumbered balances of GPR and program revenue appropriations to any state agency, other than sum sufficient appropriations and appropriations of federal revenues, any amount appropriated to a state agency that is determined by the DOA Secretary to be allocated for the purpose of management or operation of a plant that is sold or the operation of which is contracted effective on the date that the state agency to which the moneys are appropriated no longer has operating authority for the plant. The DOA Secretary must notify the Co-Chairpersons of the Joint Committee on Finance of any action taken under this paragraph and the previous paragraph.

Assembly Amendment 1 authorizes the Building Commission to determine and make payments to the federal government so as to avoid an adverse effect on any exclusion of interest from gross income for federal income tax purposes on public debt, revenue obligations, operating notes, master lease obligations, and appropriation obligations and to make any payments to advisors that assist in making that determination.

OTHER

Assembly Amendment 105 also corrects a drafting error in the bill.

LEGISLATIVE HISTORY

Assembly Amendment 1 was offered by the Joint Committee on Finance. On February 16, 2011, the Joint Committee on Finance recommended adoption of Assembly Amendment 1 and passage of January 2011 Special Session Assembly Bill 11, as amended, on votes of Ayes, 12; Noes, 4.

Assembly Amendment 105 was offered by Representatives J. Fitzgerald, Suder, and E. Coggs. On February 17, 2011, the Assembly adopted Assembly Amendment 1 on a voice vote. On February 22, 2011, the Assembly adopted Assembly Amendment 105 on a vote of Ayes, 59; Noes, 37. The Assembly passed January 2011 Special Session Assembly Bill 11, as amended, on a vote of Ayes, 51; Noes, 17.

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