

PER Fitzgerald office:

Legislative Powers and Duties, State Agency Operations, and Administrative Rule Process

AB ____ (LRB 6071/1) / SB ____ (LRB 6076/1)

Summary of Provisions

Administration

1. Approval Process for Capitol Security Changes. Require the Department of Administration to submit any proposed changes to security at the Capitol, including the posting of a firearm restriction, to the Joint Committee on Legislative Organization for approval under a 14-day passive review process. If the Co-Chairs of the Committee do not notify the Department within 14 working days after the submittal of the proposal that the Committee has scheduled a meeting for the purpose of reviewing the proposal, the Department may implement the proposed changes. If, within 14 working days after the submittal, the Co-Chairs of the Committee notify the Department that the Committee has scheduled a meeting for the purpose of reviewing the proposal, the Department may only implement the plan upon approval by the Committee.

Under current law, the Department may appoint police officers to safeguard all public property placed by law in the Department's charge, including the Capitol. The Governor or the Department may, to the extent it is necessary, authorize police officers employed by the Department to safeguard state officers, state employees, or other persons. Also under current law, an individual carrying a firearm who enters or remains in a building that is owned, occupied, or controlled by the state is subject to a Class B forfeiture if the state has notified the individual not to enter or remain in the building while carrying a firearm or with that type of firearm.

2. Annual Report for Self-Funded Portal. Require DOA to submit to the Joint Committee on Finance and the Legislature an annual report on the administration of the information technology and communication services self-funded portal. Specify that the annual report: (a) be submitted by October 1 of each year for the fiscal year that ended immediately preceding the date of the report; (b) include a financial statement of the state's self-funded portal revenues and expenditures for the fiscal year; (c) list the services available through the portal, identifying the addition of services available since the previous fiscal year; (d) indicate the amounts of any fees charged for each of the services; and (e) summarize the activity levels of the services provided. The Department may include any other information it determines is relevant to the administration of the self-funded portal.

Administrative Rules

1. Deference by Courts to Agency Interpretation of Law, Notice Requirements, and Guidance Documents. Create provisions related to deference by courts to agency interpretations of law, notice and comment requirements for guidance documents issued by agencies, and agency rule-making authority.

a. Deference. Prohibit a court from according deference to agency interpretations of law in certain proceedings and prohibit agencies from seeking deference in any proceeding to agency interpretations of law.

b. Guidance Documents. Establish various requirements with respect to the adoption and use of guidance documents by agencies, including requirements that agencies must comply with in order to adopt guidance documents.

i. Define "guidance document" as any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that: (a) explains the agency's implementation of a statute or rule enforced or administered by the agency, including the current or proposed operating procedure of the agency; or (b) provides guidance or advice with respect to how the agency is likely to apply any statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.

ii. The definition of a guidance document excludes: (a) a promulgated or a proposed rule; (b) a standard adopted, or a statement of policy or interpretation made in the decision of a contested case, in a Department of Revenue private letter ruling, or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts; (c) any document or activity excluded from the definition of a rule, except that "guidance document" includes a pamphlet or other explanatory material described that otherwise satisfies the definition of "guidance document"; (d) any document that any statute specifically provides is not required to be promulgated as a rule; (e) declaratory ruling regarding an administrative action; (f) pleading or brief filed in court by the state, an agency, or an agency official; (g) a letter or written legal advice of the Department of Justice or a formal or informal opinion of the Attorney General; (h) any document or communication for which a procedure for public input is provided by law; and (i) any document or communication that is not subject to the right of inspection and copying under.

iii. Require the Legislative Reference Bureau to perform duties prescribed by statute related to guidance documents, including publishing notices of public comment periods on proposed guidance documents.

iv. Require each agency to submit each proposed guidance document to the Legislative Reference Bureau for publication in the register and to provide a period for persons to submit written comments to the agency on the proposed guidance document. The agency must retain all written comments submitted during the public comment period and consider those comments in determining whether to adopt the guidance document as originally proposed, modify the proposed guidance document, or take any other action.

v. Allow for a comment period of less than 21 days with the approval of the Governor.

vi. Require each adopted guidance document, while valid, to remain available on the agency's Internet site and require the agency to permit continuing public comment on the guidance document. Each guidance document must be signed by the head of the agency below a statement containing certain certifications.

vii. Provide that a guidance document does not have the force of law and does not provide the authority for implementing or enforcing a standard, requirement, or threshold, including as a term or condition of any license. An agency that proposes to rely on a guidance document to the detriment of a person in any proceeding would afford the person an adequate opportunity to contest the legality or wisdom of a position taken in the guidance document, and an agency may not use a guidance document to foreclose consideration of any issue raised in the guidance document.

viii. Require an agency to provide a reasonable explanation for proceeding at variance with a guidance document. Allow certain persons to petition an agency to promulgate a rule in place of a guidance document, and make guidance documents subject to the same judicial review provisions as apply to rules.

ix. Require the Legislative Council staff to provide agencies with assistance in determining whether documents and communications are guidance documents.

x. Provide that, as of six months after the bill's effective date, any guidance document that does not comply with the requirements in the bill is considered to be rescinded.

c. *Settlement Agreements and Rule-Making Authority.* Provide that a settlement agreement, consent decree, or court order does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. Provide that no agency may agree to promulgate a rule as a term in any settlement agreement, consent decree, or stipulated order of a court unless the agency has explicit statutory authority to promulgate the rule at the time the settlement agreement, consent decree, or stipulated order of a court is executed.

2. Presumed Validity of Administrative Rules. Modify the presumptions associated with filing an administrative rule with the Legislative Reference Bureau (LRB) to: (a) eliminate the word "duly" from the phrase "duly promulgated" and; (b) delete the requirement that all of the required rule-making procedures were complied with.

Under current law, as the final step of the administrative rule process, an agency must file a certified copy of a rule with the LRB for publication. Filing a certified copy of a rule with the LRB creates a number of presumptions, including that the rule was duly promulgated by the agency and that all of the required rule-making procedures were complied with.

3. Rule-Making Authority for Federal Compliance Plans. Provide that a plan that is submitted to the federal government for the purpose of complying with a requirement of federal law does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. Further, provide that no agency may agree to promulgate a rule as a component of a compliance plan unless the agency has explicit statutory authority to promulgate the rule at the time the

compliance plan is submitted.

4. Miscellaneous Administrative Rules Procedure Changes.

a. Advisory Committees and Informal Consultations. Whenever an agency appoints an advisory committee with respect to contemplated rule making, require that the agency submit a list of the members of the committee to the Joint Committee for review of Administrative Rules.

b. Statement of Scope

i. Require a statement of scope to include a statement as to whether the agency anticipates that the proposed rule will have minimal or no economic impact, a moderate economic impact, or a significant economic impact, whether locally, statewide, or on a sector of the economy. No definitions of the levels of economic impact are provided.

ii. Require an emergency statement of scope to include: (a) an explanation of why the rule is necessary for the preservation of the public peace, health, safety, or welfare or cite the act or authority that provides exception; and (b) a statement as to whether the agency will promulgate a corresponding permanent rule and the agency's anticipated time line for promulgating the permanent rule.

iii. Require written approval of the Governor to submit the statement to the Legislative Reference Bureau for publication more than 30 days after the date of the Governor's approval of the statement of scope.

iv. Expand the definition of a meaningful or measurable change to a proposed rule that would require approval of a revised statement of scope to include a change to: (a) the objectives; (b) the basis and purpose; (c) the policies to be included; (d) the entities affected; or (e) the overall breadth or scope of the regulation.

v. Allow one statement of scope for an agency that intends to concurrently promulgate an emergency rule and a permanent rule that are identical in substance.

c. Economic Impact Analysis

i. Prior to preparing an economic impact analysis require an agency to review the statement of scope for the proposed rule prepared to determine whether a revised statement of scope is required due to a meaningful or measurable change.

ii. Require an agency to make a determination in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state by doing the following: (a) compiling a list of affected persons and potential economic concerns identified in the comments solicited by the agency; (b) contacting affected persons to discuss economic concerns; (c) considering any raised concerns in drafting the economic impact analysis; and (d) documenting in the economic impact analysis the persons who were consulted and whether the agency's determination is disputed by any of the affected persons.

iii. Require the timeline for comment for the EIA to be the following if the statement of scope for the proposed rule indicates that the proposed rule will have: (a) minimal or no economic impact at least 14 calendar days; (b) moderate economic impact at least 30 calendar days; and (c) significant economic impact or if the agency anticipates that the proposed rule will result in \$10,000,000 or more in implementation and compliance costs being incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period, at least 60 calendar days. If the agency subsequently determines that the anticipated economic impact will be greater than indicated in the statement of scope, the agency shall adjust the comment period accordingly. An agency may not reduce a comment period once determined. The provision would not apply to independent EIAs.

iv. Define a significant change that would trigger a new EIA as including an increase or a decrease of at least 10% or \$50,000, whichever is greater, in the expected implementation and compliance costs reasonably expected to be incurred by or passed along to a majority of the businesses, local governmental units, and individuals as a result of the proposed rule or a significant change in the persons expected to be affected by the proposed rule.

v. Require that if changes are made to a proposed rule after a hearing, the agency must review the statement of scope to determine if a revised statement is required and review the economic impact statement to determine if a revision is required.

5. Administrative Rules Fiscal Impact and Economic Impact Analysis. Require an economic impact analysis for a proposed rule to be prepared and submitted separately from the fiscal estimate for the proposed rule.

Under current law, a state agency must prepare a fiscal estimate for each proposed rule, which must describe the fiscal effect of the proposed rule on local governmental fiscal liabilities and revenues, the fiscal effect of the proposed rule on state government, and, for rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule. Also under current law, the agency must prepare an economic impact analysis for a proposed rule, which must contain certain specified information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole, as well as certain other information regarding the economic impact of the proposed rule.

6. Independent Retrospective Economic Impact Analysis. Allow either Cochairperson of the Joint Committee for Review of Administrative Rules (JCRAR) to request an independent retrospective economic impact analysis (EIA) for a rule within 90 days after an agency submits a retrospective EIA for the rule. Specify that a request for an independent retrospective EIA for a rule would follow the current law procedure and payment method as a request for an independent EIA for a proposed rule.

Under current law for retrospective EIAs, either Cochairperson of JCRAR may request an agency to conduct a retrospective EIA for existing rules, which must contain certain information and analysis about the economic impact of the agency's existing rules.

Under current law for independent EIAs, either Cochairperson of JCRAR may request an

independent EIA for a proposed rule after an agency submits the agency EIA for that proposed rule. Such a request by the Senate Cochairperson of JCRAR requires approval by the Committee on Senate Organization, and a request by the Assembly Cochairperson requires approval by the Committee on Assembly Organization. Current law requires the requester to enter into a contract to perform the independent EIA, and requires the analysis to be completed within 60 days after entering into the contract. Under current law, an independent EIA is paid for by the agency if the independent EIA's cost estimate for the proposed rule varies by 15 percent or more from the agency's EIA, and is paid for by the Legislature if the independent EIA's cost estimate for the proposed rule varies by less than 15 percent from the agency's EIA.

7. Joint Committee on Administrative Rules Suspension of Rules. Provide that the Joint Committee on Administrative Rules (JCRAR) may suspend a rule multiple times.

Under current law, administrative rules that are in effect may be temporarily suspended by JCRAR. If JCRAR suspends a rule, JCRAR must introduce bills in each house of the Legislature to make the suspension permanent. If neither bill to support the suspension is ultimately enacted, the rule may remain in effect and JCRAR may not suspend the rule again.

8. Gubernatorial Approval Requirements for Department of Public Instructions Administrative Rules. Exempt rules and emergency rules promulgated by the Department of Public Instruction from the requirements that: (a) a scope statement be submitted to DOA for a determination of authority and that the scope statement be approved by the Governor; and (b) a proposed rule in final draft form be submitted to the Governor and that the Governor approve the rule in writing.

In *Coyne v. Walker*, 2016 WI 38, the Wisconsin Supreme Court held that provisions requiring gubernatorial approval of scope statements and rules are unconstitutional as applied to the Superintendent of Public Instruction.

Building Commission

1. Commercial Paper Amortization. Require the Building Commission to establish an amortization schedule for the short term commercial paper borrowing program (any short term general obligation debt) and report that schedule to the Joint Committee on Finance (JFC). Provide that changes to this amortization schedule could not be made unless approved by JFC under a 14-day passive review process.

Senate Confirmation

1. Advice and Consent of the Senate for Appointments. Require that any individual nominated by the Governor or another state officer or agency, and with the advice and consent of

the Senate appointed, to any office or position may not hold the office or position, be nominated again for the office or position, or perform any duties of the office or position during the legislative session biennium if the individual's confirmation for the office or position is rejected by the Senate.

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Agency General Provisions

1. Agency Publications. Require a state agency (a board, commission, committee, department or officer in the state government, except the Governor, a District Attorney or a military or judicial officer) to provide a federal or state statutory or administrative rule citation for any statement or interpretation of law that the agency makes in any publication, whether in print or on the agency's website, including guidance documents, forms, pamphlets, or other informational materials 60 days after the effective date. The provision would take effect on the first day of the seventh month beginning after publication.

2. Final Decision of an Agency Contested Case. Prohibit an agency from delegating the authority to issue a final decision in a contested case to a hearing examiner. Require that all final decisions of an agency must be approved, signed, and dated by the secretary of the agency.

Repeal the option for an agency to direct that the hearing examiner's decision be the final decision of the agency in contested cases. Further, repeal the provision allowing the Department of Natural Resources and the Department of Transportation to file a petition for judicial review of a decision in a contested case hearing.

Under current law, an agency may, by rule or by an order in a particular case, specify that the decision of a hearing examiner who conducts a hearing in a contested case proceeding is the final decision of the agency.

3. Required Agency Fee Report with Budget Request. Specify that each executive branch agency include in its agency biennial budget request a report identifying: (a) each fee (any amount of money other than a tax that an agency charges a person other than a governmental entity) the agency is required or otherwise authorized to charge; (b) the amount of each fee or method of calculating the fee; (c) statutory authority to charge the fee; (d) a statement of whether or not the agency currently charges the fee; (e) a description of whether and how each fee has increased or decreased since the agency was first authorized to charge the fee; and (f) any recommendation the agency has concerning each fee.

4. State Agency Reports on State Operations. Require that quarterly, beginning in April, 2019, each state agency submit a report to the Joint Committee on Finance listing all state agency expenditures for state operations in the preceding calendar quarter. Require that the report specifically detail all expenditures for administrative supplies and services that are made at the discretion of or to be used by heads of state agencies, secretaries, deputy secretaries, assistant deputy secretaries, and executive assistants. Define "state agency" to mean any office, department, or independent agency in the executive branch of state government, other than the Board of Regents of the University of Wisconsin System. Define "state operations" to mean all purposes except aids

to individuals and organizations, and local assistance.

Corrections

1. Pardon and Release Report. Require the Department of Corrections, at the request of the Legislature, to post on its website and submit to the Chief Clerk of each house of the Legislature a report regarding individuals who, since the previous report was submitted or during a date range specified in the request, were pardoned or released from prison without completing the imprisonment portion of their sentence. The report must identify the individual's name, the crime for which he or she was convicted, and the name of the person who pardoned the individual or authorized the release of the individual before the individual completed his or her sentence. In addition, if an individual appears on a report required under the provision is convicted of a crime, the report must identify the individual's name and the crime. "Completing his or her sentence" is not defined in the provision or under current law.

Group Insurance Board

1. Group Insurance Board Membership Additions. Increase the number of Board members from 11 to 15, and specify that the following members be added: (a) an individual appointed by the Speaker of the Assembly; (b) an individual appointed by the Minority Leader of the Assembly; (c) an individual appointed by the Majority Leader of the Senate; and (d) an individual appointed by the Minority Leader of the Senate.

2. Group Insurance Board Gubernatorial Appointees. Specify that the six members of the Board who are appointed by the Governor to two-year terms would be subject to Senate confirmation. The provision would first be applicable to each of the members at the end of their current terms.

Justice

1. Attorney General Notification to Legislature, Right to Intervene and Depositing of Settlement Monies. Modify provisions related to notice to the Legislature of claims relating to constitutionality or enforceability of statutes and right of the Legislature to intervene, and state settlement moneys and the settlement authority of the Attorney General.

a. Notice to Legislature of Claims Relating to Constitutionality of Statutes; Legislative Intervention. Require a party that alleges that a statute is unconstitutional, or in violation of or preempted by federal law, to serve the Speaker of the Assembly, the President of the Senate, and the

Senate Majority Leader with a copy of the proceeding. Also require that, in such cases, the Assembly, the Senate, and the Joint Committee on Legislative Organization (JCLO) are entitled to be heard, representing the Legislature ~~and the state.~~

Under current law, if a statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General must be served with a copy of the proceeding and be entitled to be heard. This requirement exists in the statutes for declaratory judgment acts under s. 806.04 (11). According to Legislative Reference Bureau (LRB), the Wisconsin Supreme Court, in Kurtz v. City of Waukesha, 91 Wis. 2d 103, 280 N.W.2d 757 (1979), has also extended the requirement to other types of actions involving claims that a statute is unconstitutional. According to the LRB, this provision would incorporate the Kurtz rule into the statutes and extends both the current statutory and Kurtz requirements of service and an opportunity to be heard to the Legislature when a statute is alleged to be unconstitutional or in violation of or preempted by federal law.

Provide that when a party challenges the constitutionality of a statute, facially or as applied, or challenges a statute as violating or preempted by federal law, as part of a claim or affirmative defense, the Assembly, the Senate, and JCLO have the right to intervene and participate in the action and may also retain legal counsel other than the Department of Justice (DOJ). Allow the following committees to intervene in the action, as well as obtain legal counsel, at any time: (a) Committee on Assembly Organization on behalf of the Assembly; (b) the Committee on Senate Organization on behalf of the Senate; and (c) JCLO on behalf of the state. ~~If JCLO determines that the interests of the state will be best represented by special counsel appointed by the Legislature, JCLO must appoint special counsel to represent the state defendants and act instead of the Attorney General. Specify that under this circumstance the Attorney General may not participate in the action. In these circumstances, special counsel has the powers of the Attorney General with respect to the litigation to which special counsel has been appointed.~~

b. *State Settlement Moneys and Settlement Authority of Attorney General.* Require that DOJ must deposit all settlement funds into the general fund. Further, lapse all unencumbered settlement funds that are currently in the DOJ appropriation into the general fund.

Under current law, DOJ deposits settlement funds that are not committed under the terms of the settlement into a DOJ appropriation and may spend the funds only after submitting a plan for the expenditure to the Joint Committee on Finance for passive review. If the Committee does not schedule a meeting to review the proposed plan within 14 days, DOJ may expend the funds as provided in the plan.

Require the Joint Committee on Finance to approve the compromise or discontinuance of an action instead of the Governor. Further, remove the ability of an officer, department, board, or commission to direct that an action be comprised or discontinued. Further, provide that the Attorney General may not submit a proposed settlement plan to the Committee in which the plan concedes the unconstitutionality or other invalidity of a statute or concedes that a statute violates or is preempted by federal law without the approval of JCLO.

Current law allows the Attorney General to compromise or discontinue an action DOJ is prosecuting if the Governor approves the compromise or discontinuance. Current law allows the Attorney General to settle and compromise actions in which the Attorney General is appearing for

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and defending the state as the Attorney General determines to be in the best interest of the state.

Require that, if an action is for injunctive relief or there is a proposed consent decree, the Attorney General must submit the settlement or compromise plan to the Joint Committee on Finance for passive review. If the Committee does not schedule a meeting to review the plan within 14 days, the Attorney General may proceed, but, if the Committee does schedule a meeting, the Attorney General may proceed only with the approval of the Committee. Further, provide that the Attorney General may not submit a proposed settlement plan to the Committee in which the plan concedes the unconstitutionality or other invalidity of a statute or concedes that a statute violates or is preempted by federal law without the approval of JCLO.

2. Office of the Solicitor General. Eliminate the Office of the Solicitor General in the Department of Justice (DOJ). Eliminate the Solicitor General position (1.0 PR position in DOJ). In addition, eliminate the unclassified Deputy Solicitor Generals under DOJ (3.0 PR positions). Reduce funding for DOJ's PR investigation and prosecution appropriation by \$320,000 PR in 2018-19, associated with six months of salaries and fringe benefits for the 4.0 positions. The position eliminations would be effective January 1, 2019.

3. Gifts and Grants Appropriations. Convert the Department of Justice gifts and grants appropriations under law enforcement and administrative service programs from continuing appropriations to annual, all monies received appropriations.

Legislature

1. Retention of Legal Representation for Legislators, Legislative Staff and the Legislature. Authorize the appointment of legal counsel other than from the Department of Justice (DOJ) for legislators or legislative staff if the acts or allegations underlying the action are arguably within the scope of the legislator's or employee's duties as follows:

a. For the Assembly, the Speaker of the Assembly may authorize a Representative or Assembly employee who requires legal representation to obtain legal counsel with the cost of representation paid from the Assembly's appropriation. Specify that the Speaker approve all financial costs and terms of representation.

b. For the Senate, the Senate Majority Leader may authorize a Senator or Senate employee who requires legal representation to obtain legal counsel with the cost of representation paid from the Senate's appropriation. Specify that the Senate Majority Leader approve all financial costs and terms of representation.

c. For an employee of a legislative service agency, the Cochairpersons of the Joint Committee on Legislative Organization (JCLO) may authorize an employee of a legislative service agency who requires legal representation to obtain legal counsel with the cost of representation paid from the Assembly's or Senate's appropriations, as determined by the Cochairpersons. Specify that the Cochairpersons approve all financial costs and terms of representation.

Further, authorize the Assembly, Senate, or JCLO on behalf of the Legislature, to obtain legal counsel other than from DOJ, in any action in which these bodies are a party or in which the interests of these bodies are affected, as follows:

a. For the Assembly, the Speaker of the Assembly may obtain legal counsel with the cost of representation paid from the Assembly's appropriation in any action in which the Assembly is a party or in which the interests of the Assembly are affected, as determined by the Speaker. Specify that the Speaker approve all financial costs and terms of representation.

b. For the Senate, the Senate Majority Leader may obtain legal counsel with the cost of representation paid from the Senate's appropriation in any action in which the Senate is a party or in which the interests of the Senate are affected, as determined by the Senate Majority Leader. Specify that the Senate Majority Leader approve all financial costs and terms of representation.

c. For the Legislature, the Cochairpersons of JCLO may obtain legal counsel with the cost of representation paid from the Assembly's or Senate's appropriations as determined by the Cochairpersons, in any action in which the Legislature is a party or in which the interests of the Legislature are affected. Specify that the Cochairpersons approve all financial costs and terms of representation.

Under current law, Representatives to the Assembly and Senators, as well as legislative employees, may receive legal representation from DOJ in most legal proceedings. Assembly and Senate policies and practices also allow legislators and legislative employees to retain outside legal counsel in some instances.

2. Authority Regarding Leases for Legislative Space. Specify that the Cochairpersons of the Joint Committee on Legislative Organization (JCLO) lease or acquire office space for legislative offices or legislative service agencies. Delete the current law provision that the Department of Administration leases or acquires office space for legislative offices or legislative service agencies at the direction of JCLO.

Natural Resources

1. Municipal Flood Control Grant Eligibility Extension. Extend through the 2019-21 biennium the authorization for the Department of Natural Resources (DNR) to award a grant that supports a flood control project by the U.S. Army Corps of Engineers. 2017 Act 59, the biennial budget act, authorized DNR to award up to \$14.6 million during the 2017-19 biennium if an applicant were to use the award to match federal funds dedicated to a project funded or executed by the U.S. Army Corps of Engineers under the federal Flood Control Act. The grant award would be supported by unobligated general fund-supported bonding authority under the Knowles-Nelson Stewardship program from one or more of the 2014-15, 2015-16, or 2016-17 fiscal years.

It is anticipated the City of Arcadia in Trempealeau County would be the only eligible grant recipient under this authorization. With regards to the pending project in Arcadia, DNR reports the

Corps is in planning stages of the project, and will not be ready to consider awarding a grant prior to 2020, after the expiration of existing DNR authority during the 2017-19 biennium. This amendment would enable DNR to award the grant in the 2019-21 biennium, consistent with the current Corps timeline. Under this provision, no additional bonding authority is authorized and no eligibility or other requirements related to the grant have been modified.

Veterans Affairs

1. Notification Requirement for Transfers of State Veterans Homes Revenue to the Veterans Trust Fund. Require the Department of Veterans Affairs to notify the Joint Committee on Finance of any transfer of funds from the operation of the state veterans homes to the veterans trust fund. Under current law, the Department of Veterans Affairs may make transfers from unencumbered balance of the PR appropriations for the state veterans homes to the veterans trust fund without legislative approval and without providing notice to the Legislature. Under this authority, DVA has made such transfers to in each fiscal year since 2015-16 (\$12.0 million in 2015-16, \$9.0 million in 2016-17, \$12.5 million in 2017-18, and \$14.5 million in 2018-19).

Wisconsin Economic Development Corporation

1. Passive Review Requirement for Enterprise Zones. Require approval by the Joint Committee on Finance, subject to 14-day passive review, before the Wisconsin Economic Development Corporation (WEDC) could designate a new enterprise zone under the enterprise zone tax credit program. Before WEDC could designate a new enterprise zone, WEDC would first be required to notify the Committee, in writing, of its intent to designate a new enterprise zone. The notice would need to describe the new zone and the purpose for which WEDC proposes to designate the new zone. The bill would also eliminate the current law limit on the number of zones WEDC may designate.

Under current law, WEDC is authorized to designate up to 30 zones without review by any standing committee of the Legislature. Currently, WEDC has entered into contracts designating 26 active enterprise zones in the state. If an existing enterprise zone designation expires or WEDC revokes the designation of a zone, WEDC may designate a new zone without violating the 30 zone limit. Under the bill, current law provisions limiting the number of zones to 30 and permitting WEDC to redesignate zones would be deleted. However, no zone could be designated absent approval by the Joint Committee on Finance.

2. Modifications to WEDC Board. Specify several changes to the appointment procedures, composition, and powers of the WEDC Board of Directors (Board), as described below.

Composition of WEDC Board. Under current law, WEDC has a 14-member Board, of which 12 are voting members. The Board includes six members nominated by the Governor who are

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appointed with the advice and consent of the Senate to serve at the pleasure of the Governor and serve staggered four-year terms. The Board also includes three members appointed by the Assembly Speaker and three members appointed by the Senate Majority Leader, each consisting of one majority member, one minority member, and one person employed in the private sector, each of whom serve at the pleasure of the Assembly Speaker and Senate Majority Leader, respectively. The Secretary of the Department of Administration (DOA) and the Secretary of the Department of Revenue (DOR) serve as nonvoting members of the Board. The Board must elect a chairperson from among its nonlegislative members.

The bill would change the composition of the Board, such that the Assembly Speaker and the Senate Majority Leader would each appoint three individuals to staggered four-year terms. The Assembly Minority Leader and the Senate Minority Leader would each appoint one member to a serve four-year term. The legislative appointees could be legislators or private citizens. The Governor would appoint four members to the Board. As a result, there would continue to be 12 voting members of the Board. A vacancy on the Board would be filled in the same manner as the original appointment to the Board, for the remainder of the unexpired term.

Specify that the initial Board members appointed under the bill would be appointed to terms expiring as follows: (a) two of the members appointed by the Assembly Speaker, two of the members appointed by the Senate Majority Leader, and the members appointed by the Assembly Minority Leader and the Senate Minority Leader would expire on October 1, 2022; and (b) one of the members appointed by the Assembly Speaker and one of the members appointed by the Senate Majority Leader would expire on October 1, 2024.

Specify that current members serving at the pleasure of the Assembly Speaker and the Senate Majority Leader on the day before the effective date of the Bill would continue to serve at pleasure pending the appointment of new Board members, but could not serve after January 6, 2019, unless newly appointed in the manner described above.

Appointment of WEDC CEO. Specify that the chief executive officer (CEO) would be nominated by the Board, instead of by the Governor. The CEO would serve at the pleasure of the Board, instead of at the pleasure of the Governor.

Supervision of Economic Development Liaison Position. Specify that the WEDC Board would have the power to appoint and supervise the economic development liaison position that serves as the state's primary point of contact for any matters regarding Foxconn. Under 2017 Act 58, 1.00 unclassified GPR project position was provided to DOA's supervision and management general program operations appropriation for economic development liaison activities under an agreement with WEDC through December 31, 2022. Under the bill, that position would be appointed and supervised by the WEDC Board, rather than DOA.

Identification for Voting Purposes

- 1. Requirements Related to Identification for Voting Purposes.** Modify the list of

identification that may be used for voting purposes to include an unexpired identification card issued by a technical college in the state that is a member of and governed by the technical college system. Specify that the current law requirements for valid university identification cards for voting purposes would apply. Under current law, such valid identification cards must contain the date of issuance and signature of the individual to whom it is issued and contain an expiration date indicating that the card expires no later than two years after the date of issuance if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

The following provisions would set in statute the Department of Transportation (DOT) administrative rules (with minor modifications to reflect drafting conventions) associated with the issuance of identification cards and receipts for voting purposes and the related petition process when the required documentation is unavailable. The provisions would also appear to expand the definition of proof of citizenship compared to DOT's rule for the existing petition process when an applicant is unable to provide the proof of name and date of birth required to obtain a voter identification card. Under current DOT rule, proof of citizenship for the petition process is limited to those documents that prove one is a citizen. The provision would incorporate legal permanent resident, conditional resident, or legal presence status into statute, which are currently included in rule for non-voting state identification card purposes. As a result, under the proposed modification, proof of citizenship could include documents that demonstrate lawful presence in the United States.

a. Voter Identification Card Petition Process. Specify that when any applicant who requests an identification card to be provided without charge for voting is unable to provide proof of name and date of birth, and the documents are unavailable to that person, the applicant may make a written petition to the Division of Motor Vehicle's (DMV) administrator for an exception to the related, required documentation. Specify that this petition must include proof of identity and all of the following: (a) a certification of the person's name, date of birth, and current residence street address on the Department's form; (b) an explanation of the circumstances by which the person is unable to provide proof of name and date of birth; and (c) whatever documentation is available that states the person's name and date of birth. Specify that this process could occur in lieu of the current law requirements for providing proof of identify, date of birth, social security status, and address. Define unavailable to mean the applicant does not have the document and would be required to pay a government agency to obtain it.

Provide that if a person applies for and requests an identification card without charge for voting purposes and the person's proof of name and date of birth, or of proof of citizenship, legal permanent resident status, conditional resident status, or legal presence is unavailable, the person may make a written petition to the Department for an exception to the requirement for which proof is unavailable. Specify that the Department provide appropriate translation for any person who is unable to read or understand the petition process instructions and related communications associated with the voter identification card application process. Require that this petition include the person's statement under oath or affirmation of all of the following: (a) that the person is unable to provide proof of name and date of birth or proof of citizenship, legal permanent resident status, conditional resident status, or legal presence; (b) the documents providing any such proof are unavailable to the person; (c) the applicant's name, date of birth, place of birth, and such other birth record information requested by the Department, or the person's alien or U.S. citizenship and immigration service number, or U.S. citizenship certificate number.

b. *Verification of Records.* Upon receiving a petition that meets the requirements of the identification card process described above, require the Department to forward the petition to DMV's central office for processing. Require the Department to provide the person's birth record information to: (a) the Department of Health Services (DHS), for the sole purpose of verification by DHS of the person's birth certificate information or the equivalent document from another jurisdiction, other than a province of Canada; or (b) to a federal agency for the sole purpose of verifying the person's certificate of birth abroad issued by the federal Department of State, or for verifying the person's alien or U.S. citizenship and immigration service number, or U.S. citizenship certificate number. In such instances, require DOT to open a file containing the petition and shall create therein a report with a dated record of events, including all communication to or with the applicant.

c. *Investigation and Processing of Petition Applications.* Provide that DOT may not complete the processing of an application under the petition process prior to receiving verification of the applicant's birth certificate information. Specify that if the Department does not receive verification within 30 days or receives notice that the birth information provided in the application does not match that of the birth record custodian, the Department would be required to promptly notify the person in writing of that failure to verify and request the person contact the Department within 10 days. If the person does not respond to such an inquiry within 10 days, require the Department to send the person a second letter with substantially similar contents. Specify that if the person does not respond to the second letter within 10 days and DOT knows the person's telephone number, the Department would be required to: (a) call the person on the telephone; (b) notify the person that the birth information was not verified; and (c) request the person provide additional information within 10 days.

Specify that if 30 days have elapsed since the date of the first letter sent without contact from the person, DOT must suspend the investigation and send written notice containing the following: (a) that the person has not responded; (b) that the Department has no further leads with which to locate or obtain secondary documentation or verification of birth information; (c) that the Department has suspended its investigation or research until such time as the person contacts the Department; and (d) that if within 180 days after the date of the written notice the person fails to contact DOT the petition will be denied and no further identification card receipts will be issued. Specify that if the person fails to contact the Department within 180 days after the Department suspends the investigation, the Department would be required to deny the petition in writing and inform the person that the Department will resume the investigation if the person contacts the Department to discuss the petition.

Require that whenever an applicant contacts the Department to discuss the petition, the investigation would begin anew, notwithstanding any prior denial due to the person's failure to timely respond. Specify that the applicant would be required to act in good faith and use reasonable efforts to provide additional information that could reasonably lead DOT to discover correct birth information or secondary documentation to assist the Department in processing the application. Require DOT to investigate the petition and any additional information provided as part of this investigation with prompt and due diligence and to use reasonable efforts to locate and obtain the secondary documentation by pursuing leads provided by the person. Specify that such investigations may only be completed within the DMV central office by employees whose regular job duties include investigation and fraud detection and prevention. Provide that if the investigation discovers

new or corrected birth information, DOT would be required to resubmit the new or corrected birth information to the DHS for verification. Require DOT to pay any actual, necessary fees required by the record custodian to obtain the secondary documentation.

d. Other Means of Birth Record Verification. Specify that if DHS does not verify the birth record information within 30 days, DOT may issue an identification card to the person only if it receives the necessary verification, if the person provides proof of name and date of birth or proof of citizenship, legal permanent resident status, conditional resident status or legal presence, or if DOT receives other secondary documentation acceptable to the administrator and deemed sufficient. Provide that this secondary documentation may include the following: (a) a baptismal certificate; (b) hospital birth certificate; (c) a delayed birth certificate; (d) a census record; (e) an early school record; (f) a family bible record; (g) a doctor's record of post-natal care; or (h) other documentation deemed acceptable to the administrator, within his or her reasonable discretion.

e. Citizenship or Lawful Presence Documentation. Specify that proof of citizenship, legal permanent resident status, conditional resident status, or legal presence would mean any of the following: (a) a U.S. state or local government issued certificate of birth; (b) a valid U.S. passport; (c) a valid foreign passport with appropriate immigration documents, which shall include or be accompanied by federal form I-94, arrival and departure record; (d) a certificate of U.S. citizenship; (e) a U.S. Certificate of naturalization; (f) a valid Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-551, resident alien registration receipt card issued since 1997; (g) a valid Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-688, temporary resident identification card; (h) a valid Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-688B or I-766, employment authorization document; (i) a valid Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-571, refugee travel document services federal form I-688B or I-766, employment authorization document; (j) Department of Homeland Security/U.S. Citizenship and Immigration Services federal form I-797, notice of action; (k) a Department of Homeland Security/Transportation Security Administration transportation worker identification credential; (l) a U.S. State Department reception and placement program assurance form (refugee version), that includes or is accompanied by federal form I-94, arrival and departure record; and (m) certain documentary proof required under current law related to driver licensure, that is approved by the appropriate federal authority.

f. Proof of Identity. Specify that proof of identity would mean a supporting document identifying the person by name and bearing the person's signature, a reproduction of the person's signature, or a photograph of the person. Provide that acceptable supporting documents would include: (a) a valid operator's license, including a license from another jurisdiction, except a province of Canada, bearing a photograph of the person; (b) military discharge papers; (c) a U.S. government and military dependent identification card; (d) a valid photo identification card issued by Wisconsin or another jurisdiction, except a province of Canada, bearing a photograph of the person; (e) a marriage certificate or certified copy of judgment of divorce; (f) a social security card issued by the Social Security Administration; (g) any document allowed to demonstrate proof of citizenship, legal permanent resident status, conditional resident status or legal presence, if it bears a photograph of the person and was not used as proof of name and date of birth; and (h) Department of Homeland Security/Transportation Security Administration transportation worker identification credential.

g. *Proof of Name and Date of Birth.* Specify that proof of name and date of birth would mean any of the following: (a) for a person born in Wisconsin, a copy of the person's Wisconsin birth certificate issued and certified in accordance with state law; (b) for a person born in another jurisdiction, other than a province of Canada, a certified birth certificate copy or the equivalent document from that other jurisdiction or a certificate of birth abroad issued by the State Department; (c) a U.S. passport; (d) a valid, unexpired passport issued by a foreign country with a federal I-551 resident alien registration receipt card or a federal I-94 arrival and departure record that bears a photograph of the person and identifies the person's first and last names, and the person's day, month, and year of birth; (e) a Wisconsin operator's license bearing a photograph of the person; (f) a Wisconsin-issued identification card, bearing a photograph of the person, other than an identification card receipt issued under the voter identification card petition process; (g) a federal I-551 permanent resident alien registration receipt card; and (h) a U.S. certificate of naturalization; (i) a certificate of U.S. citizenship; (j) a federal temporary resident card or employment authorization card, I-688, I-688A, I-688B, and I-766; (k) a Native American identification card that is issued by a federally recognized tribe or a band of a federally recognized tribe, is issued in Wisconsin, includes a photograph and signature or reproduction of a signature of the person, and has been approved by the secretary for use as identification; (l) a court order under seal related to the adoption or divorce of the individual or to a name or gender change that includes the person's current full legal name, date of birth, and, in the case of a name change or divorce order, the person's prior name; (m) an Armed Forces of the U.S. common access card or DD Form 2 identification card issued to military personnel; and (n) a Department of Homeland Security/Transportation Security Administration transportation worker identification credential.

In addition, specify that proof of name and date of birth could include a federal I-94 parole edition or refugees version arrival-departure record, together with a certification, on the Department's form, of the person's name and date of birth, a copy of a federal Department of state refugee data center reception and placement program assurance form and a letter from the person's sponsoring agency on its letterhead, supporting the person's application for a Wisconsin identification card or operator's license and confirming the person's identification. Specify that applicants who are unable to provide a reception and placement program assurance form may be issued a Wisconsin identification card or operator's license, but only after their identification has been confirmed by the U.S. Citizenship and Immigration services.

h. *Other Provisions Related to Investigation of Petitions.* Provide that the DMV administrator may delegate to the deputy administrator or to a bureau director, whose regular responsibilities include driver licensing and identification card issuance, the authority to accept or reject such extraordinary proof of name, date of birth, or U.S. citizenship. Provide that the denial of a written petition submitted to the Department through the petition process would be subject to administrative judicial review. Specify that if the DMV Administrator, or their delegate, determines that an applicant has knowingly made a false statement or knowingly concealed a material fact or otherwise committed a fraud in an application, petition, or additional information, DOT would be required to immediately suspend the investigation and notify the person in writing of the suspension and the reason for the suspension, and refer any suspected fraud to law enforcement.

i. *Revival of Petition Process.* Provide that a person whose petition is suspended or denied due to a failure to respond in a timely manner may revive the petition at any time by contacting the

Department to discuss the petition application. Require that if a person revives a petition, DOT would have to immediately issue, and continue to reissue, an identification card receipt to the person in accordance with the newly created statutory criteria for identification card receipt issuance. However, require that the Department first require the person to take a photograph if required by statute. Require DOT to grant a petition if the Department concludes, on the basis of secondary documentation or other corroborating information, that it is more likely than not that the name, date of birth, and U.S. citizenship provided in the application is correct.

j. Issuance and Use of Identification Card for Voting Purposes Receipt. Require the Department to issue a receipt at no charge to any applicant applying for an identification card for voting purposes, such that this receipt would constitute a temporary identification card while the application is being processed. Specify that this receipt would be valid for a period not to exceed 60 days and would be required to be marked in accordance with federal law.

Specify that if the Department issues a receipt to an applicant petitioning the Department due to the unavailability of the documentation required for identification card issuance, DOT would have to do all of the following: (a) issue the receipt not later than the sixth working day after the person made the petition and shall deliver the receipt by first class mail, except that if a petition is filed or revived within seven days before or two days after a statewide election the Department shall issue a receipt not later than 24 hours after the petition is filed or revived and shall deliver the receipt by overnight or next-day mail; (b) issue a new receipt to the person not later than 10 days before the expiration date of the prior receipt, and having a date of issuance that is the same as the expiration date of the prior receipt; (c) continue to reissue identification card receipts to a person unless DOT lawfully cancels the identification card receipt, upon the issuance of an operator's license or identification card to the person, or upon the person's request, or upon the denial of the application, or upon return to the Department of a receipt as nondeliverable, or upon the person's failure to contact the Department to discuss the petition for a period of 180 days or more, or whenever DOT receives information that prohibits issuance of an identification card. DOT would be required to have the person take a photograph prior to reissuing an identification card receipt if the photograph of the person on file with the Department is eight or more years old. Require DOT to issue a replacement identification card receipt under this process upon the request of the person to whom it is issued if the receipt is lost or destroyed.

Specify that an identification card receipt would constitute a temporary identification card while the application is being processed under the petition process and shall be valid for a period not to exceed 60 days. Require DOT to clearly mark the receipt "FOR VOTING PURPOSES ONLY," as validated for use for the purposes of voting. Provide that a receipt would have to contain the same information specified driver licenses, including: (a) the date of issuance; (b) the expiration date; (c) the name and signature of the person to whom it was issued; and (d) except for those with a sincerely held religious belief against being photographed, a photograph of the individual to whom it was issued, and may contain such further information as the Department deems necessary.

Require DOT to cancel or refuse to issue a voter identification card receipt, as currently allowed for state non-voter identification cards, as follows: (a) upon identification card cancelation; (b) upon the issuance of an operator's license or identification card to the person; (c) upon the person's request; (d) upon the denial of the application; (e) upon return to DOT of a receipt as nondeliverable;

or (f) whenever the Department receives information that prohibits issuance of the identification card. Specify that DOT would not be able to issue a receipt to a person after the denial of a petition unless the person revives an investigation.

Require that whenever any person, after receiving the identification card receipt, moves from the address named in the application or is notified by the local authorities or by the postal authorities that the address so named has been changed, the person would have to notify DOT of his or her change of address within 30 days. Specify that upon receiving a notice of change of address, DOT would be required to promptly issue a new receipt under the receipt process showing the correct address and having the expiration date of the prior receipt.

k. Voter and Non-Voter Identification Card Content and Design. Specify that DOT may issue an identification card bearing a name other than the name that appears on a supporting document if the person provides evidence acceptable to the Department that the person has used the name in a manner that qualifies the name as being legally changed under the common law of Wisconsin, including evidence of the person's prior name, changed name, the length of time the person has consistently and continuously used the changed name, an affirmation that the person no longer uses the prior name, and an affirmation that the person did not change his or her name for a dishonest or fraudulent purpose or to the injury of any other person. Specify that in such cases, DOT Department shall mark an identification card as is required of REAL ID non-compliant driver licenses.

Specify that DOT would be required to approve a name change requested by a person who cannot provide supporting documentation of a lawful change of name but who does one of the following: (a) provides proof of identity in the new name, and the Department receives from the federal Social Security Administration evidence or confirmation of the name change; or (b) applies for an identification card and provides an affidavit declaring all facts required under for identification card issuance to prove a name change under the common law of Wisconsin.

In addition, for voter identification cards issued through the petition process, the card would be required, in addition to any other required legend or design, to be of the design specified for state driver licenses and include a marking similar or identical to the marking necessary for REAL ID non-compliant driver licenses.

Amendments to AB 1069, AB 1070, and AB 1072

Motion:

Move to amend the bills as follows:

AB 1069

1. *DOR to Certify Income Tax Rate Reductions.* Modify the bill to require the Department of Revenue (DOR), as opposed to the Department of Administration (DOA) in consultation with DOR, to determine how much individual income tax rates may be reduced. Require the Secretary of DOR, as opposed to the Secretary of DOA, to certify and report the amount of state sales and use tax reported to DOR by remote sellers and to report the income tax rate reductions to the Secretary of DOA, the Governor, the Joint Committee on Finance, and the Legislative Audit Bureau.

2. *DOT Oversight of Local Projects.* Modify the provisions of the bill to require that for any local road and bridge projects funded, in whole or in part with state funds, the local government would have to be let through competitive bidding and by contract to the lowest responsible bidder in accordance with current law related to highway construction contracts. In addition, specify that a city, village, town, or county would not be able to use its own workforce or contract with another political subdivision for a local road or local bridge project funded, in whole or in part, with state funds.

AB 1070

1. *Approval Process for Capitol Security Changes.* Modify the bill to specify that the Department of Administration may take any action related to security at the Capitol that is necessary to prevent or mitigate imminent danger. The Co-Chairs of the Committee may review the action later if they determine review is necessary.

2. *Gubernatorial Approval Requirements for Department of Public Instruction Administrative Rules.* Modify the bill to remove the provision which would exempt rules and emergency rules promulgated by the Department of Public Instruction from the requirements that: (a) a scope statement be submitted to DOA for a determination of authority and that the scope statement be approved by the Governor; and (b) a proposed rule in final draft form be submitted to the Governor and that the Governor approve the rule in writing.

3. *Attorney General Notification to Legislature, Right to Intervene and Depositing of Settlement Monies.* Modify the provisions created under the bill regarding the authority of Joint

Committee on Legislative Organization (JCLQ) to appoint special counsel, to provide that such appointment must be done in consultation with the Department of Justice.

4. *Include Provisions from Assembly Bill 1071 Related to Voting Procedures.* Modify the bill to include the provisions from Assembly Bill 1071 related to voting procedures for military and overseas electors and in-person application dates for absentee ballots. Additionally, delete statutory restrictions on the time of day during which a qualified elector may apply for an absentee ballot in-person, and specify that a municipal clerk or a board of election commissioners may offer more than one in-person absentee voting location.

5. *Modify WEDC Board.* Specify that the Assembly Speaker and the Senate Majority Leader could each appoint five individuals to staggered four-year terms, as opposed to three, to the Board of the Wisconsin Economic Development Corporation (WEDC). Specify that the Assembly Speaker and the Senate Majority Leader may each appoint not more than two members of the Legislature to the Board. Specify that the Governor could continue to appoint six members to the Board as under current law, rather than four. As a result, there would be 18 voting members of the Board under the amendment, rather than 12 under the bill. Specify that two of the initial members appointed by the Assembly Speaker and two of the initial members appointed by the Senate Majority Leader expire on October 1, 2020.

6. *Tax Credit Recipient Reporting Requirements.* Require that each recipient of a tax credit administered by WEDC must submit a similar report to those required for grant and loan recipients. Additionally, require each recipient of a grant, tax credit, or loan award to submit a statement to WEDC, signed by the person or the director or principal officer of the recipient, attesting to the accuracy and truthfulness of the information provided. Clarify that the WEDC Board must annually and independently verify, from a sample of tax credits, the accuracy of the information the tax credit recipient submits to it.

AB 1072

1. *Joint Committee On Finance Review And Approval Of Medical Assistance State Plan Amendments And Provider Payment Changes.* Modify the provision of AB 1072 relating to Joint Committee on Finance review and approval of medical assistance state plan amendments and provider payment changes to specify that all such changes (except as otherwise exempted under the bill) would be subject to a 14-day Committee passive review process.

2. *Fast Forward Appropriation.* Provide that any moneys encumbered under the Department of Workforce Development's workforce training grants and services ("Fast Forward") GPR appropriation before the effective date of the bill would not lapse and may be expended pursuant to the terms of the encumbrance.