



WISCONSIN LEGISLATIVE COUNCIL  
REPORT TO THE LEGISLATURE

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SPECIAL COMMITTEE ON  
APPLICABILITY OF OPEN  
MEETINGS LAW TO QUASI-  
GOVERNMENTAL BODIES

March 19, 2007

RL 2007-01



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# Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies

Prepared by:  
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March 19, 2007

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## **PART I**

### **NO RECOMMENDATION**

**The Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies has permanently adjourned. The Special Committee makes no recommendation.**

**The Special Committee held three meetings during which it focused on the applicability of the Open Meetings Law to economic development corporations. At its third meeting, the Special Committee considered draft legislation that would have applied the Open Meetings Law to an economic development corporation that exhibits a specified level of public involvement as measured by public funding and participation by public officers or employees. Because the members of the Special Committee could not reach a consensus regarding the draft legislation, the chairperson permanently adjourned the Special Committee.**



## PART II

### COMMITTEE ACTIVITY

#### Assignment

The Joint Legislative Council established the Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies and appointed the chairperson by a June 9, 2006 mail ballot. The committee was directed to: (a) review recent Attorney General opinions regarding the applicability of the Open Meetings Law to “quasi-governmental” bodies, such as economic development corporations, to determine whether the public policy set forth in those opinions is desirable; and (b) develop legislation to clarify the applicability of the Open Meetings Law to quasi-governmental bodies either by codifying those policies or by delineating the specific condition under which quasi-governmental bodies are subject to the Open Meetings Law.

Membership of the Special Committee, appointed by an August 1, 2006 mail ballot, consisted of one Senator, three Representatives, and nine public members. A list of committee members is included as *Appendix 2* to this report.

#### Summary of Meetings

The Special Committee held three meetings at the State Capitol in Madison on the following dates:

October 18, 2006  
December 13, 2006  
January 31, 2007

At the October 18, 2006 meeting, the Special Committee reviewed a staff memo that provided an overview of the Open Meetings Law, a discussion of the Attorney General’s opinions regarding the applicability of the Open Meetings Law to quasi-governmental corporations, and provided the Special Committee with options for addressing the committee’s study charge. No public testimony was presented. Instead, the committee members discussed the meaning of the term “quasi-governmental corporation,” the nature of economic development corporations, confidentiality needs, and whether the provisions of the Open Meetings Law are adequate to protect the functions of an economic development corporation.

At the December 13, 2006 meeting, the Special Committee considered preliminary bill drafts that entirely exempted quasi-governmental corporations from the Open Meetings Law, entirely exempted economic development corporations from the Open Meetings Law, and provided that certain economic development corporations could move into a closed session to review matters relating to development or redevelopment of a community or area whenever a competitive or bargaining reason requires a closed session. The committee also received testimony from Monica Burkert-Brist, an assistant attorney general heading the Department of Justice’s Integrity Unit. Ms. Brist recommended the implementation of a bright-line test, such as requiring compliance with the Open Meetings Law for an economic development corporation that uses public funds for a specific percentage of its budget or that has a specific number of public officials on its board. Following a discussion of the committee assignment, the committee decided to narrow its focus to the applicability of the Open Meetings Law to economic development corporations and the staff stated it would draft legislation exempting an economic development corporation from the Open Meetings Law if less than 50% of its budget consisted of public funds and less than ½ of its board membership consisted of public officials.

At the January 31, 2007 meeting, the Special Committee considered draft legislation applying the Open Meetings Law to an economic development corporation when the economic development corporation is a nonprofit entity and either receives at least 50% of its funds from governmental bodies or at least ½ of its board or officers consists of public officials or public employees. The legislation also provided that an economic development corporation meeting these conditions could convene in a closed session to consider matters relating to development or redevelopment of a community or area whenever competitive or bargaining reasons require a closed session. The draft legislation made corresponding amendments to the Open Records Law. Noting a lack of consensus among the committee members, the chairperson stated that he would request an opinion from the Attorney General as to whether the current Open Meetings Law could be used to close a meeting of a governmental body when that body considers the records of a private sector business.



## Appendix 1

### Joint Legislative Council

*[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]*

**Co-Chair**

**ALAN LASEE**  
*Senate President*  
2259 Lasee Road  
De Pere, WI 54115

**Co-Chair**

**STEVE WIECKERT**  
*Representative*  
1 Weatherstone Drive  
Appleton, WI 54914

**SENATORS**

**RONALD W. BROWN**  
1112 Violet Avenue  
Eau Claire, WI 54701

**DAN KAPANKE**  
1610 Lakeshore Drive  
La Crosse, WI 54603

**DALE SCHULTZ**  
*Majority Leader*  
515 N. Central Avenue  
Richland Center, WI 53581

**RUSSELL DECKER**  
6803 Lora Lee Lane  
Schofield, WI 54476

**MARK MILLER**  
4903 Roigan Terrace  
Monona, WI 53716

**DAVID ZIEN**  
*President Pro Tempore*  
1716 63<sup>rd</sup> Street  
Eau Claire, WI 54703

**SCOTT FITZGERALD**  
N4692 Maple Road  
Juneau, WI 53039

**FRED A. RISSER**  
5008 Risser Road  
Madison, WI 53705

**GLENN GROTHMAN**  
111 South 6<sup>th</sup> Avenue  
West Bend, WI 53095

**JUDY ROBSON**  
*Minority Leader*  
2411 E. Ridge Road  
Beloit, WI 53511

**REPRESENTATIVES**

**JOHN AINSWORTH**  
W6382 Waukechon Road  
Shawano, WI 54166

**MICHAEL HUEBSCH**  
*Majority Leader*  
419 West Franklin  
West Salem, WI 54669

**MARLIN D. SCHNEIDER**  
3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

**PEDRO COLON**  
338 West Walker Street  
Milwaukee, WI 53204

**DEAN KAUFERT**  
1360 Alpine Lane  
Neenah, WI 54956

**DAVID TRAVIS**  
5440 Willow Road  
Waukegan, WI 53597

**STEPHEN J. FREESE**  
*Speaker Pro Tempore*  
310 East North Street  
Dodgeville, WI 53533

**JIM KREUSER**  
*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

**JOHN GARD**  
*Speaker*  
481 Aubin Street, P.O. Box 119  
Peshtigo, WI 54157

**ANN NISCHKE**  
202 W. College Avenue  
Waukesha, WI 53186

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

# Joint Legislative Council

[Current Joint Legislative Council Members Who Received Committee Report]

## Co-Chair

### **FRED RISSER**

*Senate President*  
5008 Risser Road  
Madison, WI 53705

## Co-Chair

### **STEVE WIECKERT**

*Representative*  
1 Weatherstone Drive  
Appleton, WI 54914

## SENATORS

### **ROGER BRESKE**

8800 Hwy. 29  
Eland, WI 54427

### **TIM CARPENTER**

*President Pro Tempore*  
2957 South 38<sup>th</sup> Street  
Milwaukee, WI 53215

### **G. SPENCER COGGS**

3732 North 40<sup>th</sup> Street  
Milwaukee, WI 53216

### **ALBERTA DARLING**

1325 West Dean Road  
River Hills, WI 53217

### **RUSSELL DECKER**

6803 Lora Lee Lane  
Weston, WI 54476

### **SCOTT FITZGERALD**

*Minority Leader*  
N4692 Maple Road  
Juneau, WI 53039

### **SHEILA HARSDORF**

N6627 County Road E  
River Falls, WI 54022

### **ALAN LASEE**

2259 Lasee Road  
De Pere, WI 54115

### **MARK MILLER**

4903 Roigan Terrace  
Monona, WI 53716

### **JUDY ROBSON**

*Majority Leader*  
2411 E. Ridge Road  
Beloit, WI 53511

## REPRESENTATIVES

### **JOAN BALLWEG**

170 W. Summit Street  
Markesan, WI 53946

### **TERESE BERCEAU**

4326 Somerset Lane  
Madison, WI 53711

### **JEFF FITZGERALD**

*Majority Leader*  
910 Sunset  
Horicon, WI 53032

### **MARK GOTTLIEB**

*Speaker Pro Tempore*  
1205 Noridge Trail  
Port Washington, WI 53074

### **MICHAEL HUEBSCH**

*Speaker*  
419 West Franklin  
West Salem, WI 54669

### **DEAN KAUFERT**

1360 Alpine Lane  
Neenah, WI 54956

### **JIM KREUSER**

*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

### **MARK POCAN**

309 N. Baldwin Street  
Madison, WI 53703

### **KITTY RHOADES**

708 4th Street  
Hudson, WI 54016

### **MARLIN SCHNEIDER**

3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

## Appendix 2

### APPLICABILITY OF OPEN MEETINGS LAW TO QUASI-GOVERNMENTAL BODIES

Senator Scott Fitzgerald, Chair  
N4692 Maple Road  
Juneau, WI 53039

Representative Thomas A. Lothian  
539 Park Ridge Road  
Williams Bay, WI 53191

Duane Foulkes, President  
Apache Stainless Equipment Corporation  
200 Industrial Drive  
Beaver Dam, WI 53916

Joseph Hasler  
LaRowe, Gerlach & Roy, S.C.  
110 Main Street, P.O. Box 231  
Reedsburg, WI 53959

John Laabs, President  
Wisconsin Broadcasters Association  
44 East Mifflin Street, Suite 900  
Madison, WI 53703

Melanie Swank  
Assistant City Attorney  
City Hall, 200 East Wells Street  
Milwaukee, WI 53202

Ellen Totzke  
1316 East Shade Tree Lane  
Appleton, WI 54915

Representative Jeff Fitzgerald  
910 Sunset  
Horicon, WI 53032

Representative Mark Pocan  
309 North Baldwin  
Madison, WI 53703

Peter Fox, Executive Director  
Wisconsin Newspaper Association  
3822 Mineral Point Road  
P.O. Box 5580  
Madison, WI 53705

Jeff Kitchen, Broker/Owner  
Century 21 Affiliated  
215 North Spring Street  
Beaver Dam, WI 53916

Andy Lewis  
Center for Community Economic  
Development, UW-Extension  
328 Lowell Center  
610 Langdon Street  
Madison, WI 53703

James Otterstein  
Economic Development Manager  
51 South Main Street  
Janesville, WI 53545

**STUDY ASSIGNMENT:** The committee is directed to: (a) review recent Attorney General opinions regarding the applicability of the Open Meetings Law to “quasi-governmental” bodies, such as economic development corporations, to determine whether the public policy set forth in those opinions is desirable; and (b) develop legislation to clarify the applicability of the Open Meetings Law to quasi-governmental bodies either by codifying those policies or by delineating the specific condition under which quasi-governmental bodies are subject to the Open Meetings Law.

**13 MEMBERS:** 1 Senator, 3 Representatives, and 9 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Ronald Sklansky, Senior Staff Attorney; Dan Schmidt, Senior Analyst; Jessica Karls, Staff Attorney; and Julie Learned, Support Staff.



## Appendix 3

### Committee Materials List (Copies of documents are available at [www.legis.state.wi.us/lc](http://www.legis.state.wi.us/lc))

Proposed Report to the Joint Legislative Council (March 14, 2007)				
<ul style="list-style-type: none"> <li>• Proposed <a href="#">Report</a> to the Legislature (no legislation)</li> </ul>				
January 31, 2007 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">WLC: 0047/1</a>, relating to the applicability of the open records law and the open meetings law to an economic development corporation</li> <li>• <a href="#">WLC: 0048/1</a>, relating to the applicability of the open records law and the open meetings law to an economic development corporation</li> <li>• <a href="#">Letter</a>, to Senator Scott Fitzgerald, Chair, Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies, from Peter D. Fox, Executive Director, Wisconsin Newspaper Association (January 3, 2007)</li> </ul>				
December 13, 2006 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Memo No. 2, Draft Options</a> (December 1, 2006)               <ul style="list-style-type: none"> <li>○ <a href="#">WLC: 0019/1</a>, relating to the applicability of the open meetings law to a quasi-governmental corporation</li> <li>○ <a href="#">WLC: 0020/1</a>, relating to the applicability of the open meetings law to an economic development corporation</li> <li>○ <a href="#">WLC: 0021/1</a>, relating to the applicability of the open meetings law to an economic development corporation</li> </ul> </li> <li>• <a href="#">Letter</a>, to Senator Scott Fitzgerald, Chair, from Attorney General Peggy Lautenschlager (December 12, 2006)</li> <li>• <a href="#">Respondent's Brief</a>, in State v. Beaver Dam Area Development Corporation</li> </ul>				
October 18, 2006 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Memo No. 1, Overview of Wisconsin's Open Meetings Law and its Application to Quasi-Governmental Bodies</a> (October 9, 2006)</li> <li>• <a href="#">Memo, Insights and Suggestions for the Committee's Consideration</a>, from Attorney General Peggy Lautenschlager (October 18, 2006)</li> <li>• <a href="#">Court of Appeals Brief</a>, prepared by Attorney General Peggy Lautenschlager</li> <li>• <a href="#">Letter</a>, to Thomas Geyer from Attorney General Donald J. Hanaway, submitted by Special Committee member Andrew Lewis at the request of Legislative Council staff (February 26, 1987)</li> <li>• <a href="#">Survey of Local Economic Development Organizations</a>, University of Wisconsin-Extension, submitted by Special Committee member Andrew Lewis at the request of Legislative Council staff</li> <li>• <a href="#">Steps to Creating an Economic Development Corporation</a>, University of Wisconsin-Extension, submitted by Special Committee member Andrew Lewis at the request of Legislative Council staff</li> </ul>				

