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## WISCONSIN LEGISLATIVE COUNCIL

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### TRANSFER OF STRUCTURED SETTLEMENT PAYMENTS

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Room 225 Northwest  
State Capitol  
Madison, WI

November 6, 2014  
9:00 a.m. – 11:15 a.m.

[The following is a summary of the November 6, 2014 meeting of the Study Committee on the Transfer of Structured Settlement Payments. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

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#### Call to Order and Roll Call

Chair Ott called the committee to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Jim Ott, Chair; Rep. Dana Wachs, Vice Chair; Rep. Michael Schraa; Sen. Lena Taylor (participated via phone); and Public Members Bruce Bachhuber, Michael Fitzpatrick, Catherine La Fleur, Benjamin Malsch, and Elizabeth Nevitt, and Gerald Ptacek.

COUNCIL STAFF PRESENT: Anna Henning and Brian Larson, Staff Attorneys.

<p><b>ATTENTION:</b> This was the final meeting of the Study Committee on the Transfer of Structured Settlement Payments. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.</p>
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#### Approval of the Minutes of the October 9, 2014 Meeting

*Vice Chair Wachs moved, seconded by Ms. Nevitt, to approve the minutes of the October 9, 2014 meeting. The motion carried by unanimous voice vote.*

## **Discussion of Committee Assignment**

Chair Ott explained that committee members will be asked to vote on several issues raised during the previous meeting that were held over for discussion at today's meeting. He noted that, based on the votes and the remainder of the discussion, committee staff will prepare a final bill draft. Committee members will then have an opportunity to vote by mail ballot on the question of approval of the final bill draft.

After the conclusion of opening remarks, the committee proceeded to a discussion of Memo No. 3, *Options Regarding WLC: 0011/2, Relating to the Transfer of Structured Settlement Payments* (October 29, 2014).

### **Disclosure Provision**

The committee reviewed the requirement in SECTION 3 of the bill draft related to disclosure of a "discount rate," and weighed options identified in Memo No. 3. Members suggested a discount rate provision was unnecessary, because the bill draft already includes disclosures of the advance amount, the discounted present value of the payments to be transferred, and the effective annualized interest rate, as well as other disclosures.

*Mr. Ptacek moved, seconded by Ms. Nevitt, to remove the requirement related to disclosure of the "discount rate" at page 5, line 14, of WLC: 0011/2. The motion carried by unanimous voice vote.*

### **Medicare Set-Aside Provision**

The committee reviewed the provision prohibiting the transfer of payments in a Medicare set-aside arrangement, and weighed options identified in Memo No. 3. Mr. Dennis Schuh, Deputy Chief Legal Counsel, Department of Health Services (DHS), who was present in the audience, was asked to provide testimony. He explained aspects of federal Medicare law related to the provision. Chair Ott suggested the provision should be left in its current form, and that it could be changed in the future, if necessary, when there is more certainty in the federal law. Other members expressed their agreement.

*Mr. Bachhuber moved, seconded by Vice Chair Wachs, that the provision prohibiting approval of a transfer of payments that are part of a Medicare set-aside arrangement be left in the bill draft in its current form, at page 7, lines 10-11, of WLC: 0011/2. The motion carried by unanimous voice vote.*

### **Miscellaneous Issues**

During testimony, Mr. Schuh requested that the committee consider reinserting a provision previously removed from the bill draft, which would prohibit the transfer of payments in a Medicaid special-needs trust. He said the department has an interest in preserving the assets in such trusts because the state is named as a remainder beneficiary. In response, Mr. Bachhuber expressed his opposition to reinserting the provision. During

discussion, it was clarified that the payee in such cases would be the trustee, and not the individual. Mr. Bachhuber argued that there would be few instances in which a transfer of payments in a special needs trust would occur, and that the court approval process together with the trustee's fiduciary duties would ensure that transfers were appropriate. Other members expressed their agreement with this statement.

The committee also reviewed the definition of "interested parties" in the bill draft. Members expressed an interest in modifying the definition to ensure the state would receive notice in the event of a transfer of payments in a Medicaid special needs trust.

*Chair Ott moved, seconded by Ms. La Fleur, that language be added to the definition of "interested parties" on page 2, lines 17-20, of WLC: 0011/2, clarifying that if the payee is a trust naming the state as a remainder beneficiary, the Secretary of DHS shall be an interested party who will receive notice of the court proceeding. The motion carried by unanimous voice vote.*

The committee then reviewed several changes to the bill draft, of a technical nature, that were recommended by staff. These related to language in SECTION 2 in the definition of a "structured settlement payment rights," language in SECTION 7 that had been unintentionally retained during the editing process; and language related to the initial applicability provision in SECTION 8. Staff indicated that they would make or retain the technical changes to the bill draft along with the other changes agreed to above.

### **Adjournment**

Chair Ott thanked the committee members for their participation in the committee. He said they were a delight to work with, and it had been a great process. He advised members that they will receive a paper ballot in the mail, which they should return by the date specified on the ballot. He said that members would receive notice after the bill draft is introduced in the upcoming legislative session, and they were welcome to provide testimony on the bill at any hearings that occur. The meeting was adjourned at 11:15 a.m.

BL:jal