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Joint Committee on Finance

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Information Sharing Between WEDC and DOR (Wisconsin Economic Development Corporation)

[LFB 2019-21 Budget Summary: Page 453, #12]

CURRENT LAW

The Wisconsin Economic Development Corporation (WEDC) is a public-private entity created under state law as the state's lead agency in promoting economic development. WEDC offers a number of tax credits, loans, grants, and technical assistance programs to eligible Wisconsin companies.

WEDC must, for each economic development program it develops and implements, require that recipients of a grant, loan award, or tax credit submit a report, including a signed statement attesting to the accuracy and truthfulness of the information submitted. WEDC must annually and independently verify, from a sample of grants, loan awards, and tax credits, the accuracy of the information required to be reported.

WEDC has other statutory responsibilities related to state tax credits, such as eligibility certifications, allocations, and verifications. These responsibilities apply to the following credits: (a) angel investment and early stage seed investment; (b) business development; (c) enterprise zones; (d) electronics and information technology manufacturing zone; (e) development opportunity zones; and (f) supplement to the federal historic rehabilitation tax credit.

All of the records of WEDC are subject to the state open records law, except those relating to pending grants, loans, or economic development projects that, in WEDC's opinion, must remain confidential to protect the competitive nature of the grant, loan, or project. However, application documents are subject to the state open records law once a contract is executed.

By contrast, information derived from tax returns and tax credit claims are generally confidential under state law. Inspection of tax returns and credit claims is prohibited unless

expressly permitted in state statute. For example, WEDC is statutorily authorized to examine tax records to the extent necessary to administer the development zone tax credit program. However, WEDC is not permitted to obtain copies of tax returns and is not permitted to examine records to administer its other economic development programs.

GOVERNOR

Provide WEDC authority, to the extent necessary to administer its economic development programs, to: (a) examine otherwise confidential tax records; and (b) obtain copies of tax returns, tax credit claims, and the related schedules, exhibits, writings, and audit reports under an agreement with the Department of Revenue (DOR). WEDC would be able to examine and/or obtain such records for all of its economic development programs, rather than solely the development zone tax credit.

Further, any records received from DOR pursuant to such an agreement would be exempt from the current law requirement that all WEDC records be open to the public.

DISCUSSION POINTS

1. WEDC is required by law to annually and independently verify, from a sample of grants, loan awards, and tax credits, the accuracy of the information required to be reported to it.

2. However, the Legislative Audit Bureau (LAB) has previously indicated in its May, 2017, Report 17-9 that WEDC could not be certain about the number of jobs created or retained as a result of its awards because it did not collect sufficiently detailed information from tax credit recipients regarding their employees. In prior audits, LAB found that WEDC had not done enough to verify jobs-related information submitted by tax credit recipients.

3. Subsequent to Report 17-9, as recommended by LAB, WEDC reported to the Joint Legislative Audit Committee via letter dated January 31, 2018, that it had finalized a data sharing agreement with the Department of Workforce Development (DWD) to review aggregated company employment data through DWD's unemployment insurance records. This data allows WEDC to check the reasonableness of the payroll information submitted by tax credit recipients.

4. In its May, 2019, Report 19-6, LAB found that WEDC did not comply with verification requirements because it completed only one annual verification effort over the two-year period from January, 2017, through December, 2018. In November, 2018, WEDC completed a verification effort for 2016-17, and paid a consultant \$51,400 to help conduct this effort. To complete the verification effort, the consultant requested that award recipients provide it with additional information, such as payroll documents, that it used to verify information in the performance reports. In some instances, the consultant attempted to verify information associated with a sample of jobs that a recipient claimed it had created or retained. The consultant reported to WEDC that it was unable to verify all of the information related to jobs that 14 of the 125 award recipients claimed to have created or retained.

5. Tax return information could assist WEDC to verify information received from

awardees for accuracy. For example, withholding tax return data could be used to verify the number of people an applicant employs and the amounts paid to them. Tax data could also be used more generally to evaluate WEDC's economic development programs.

6. Current law only allows WEDC to examine tax records with respect to the development zone tax credit program. WEDC does not have authority to examine tax records for purposes of administering its other economic development programs.

7. WEDC indicates that as part of any data sharing agreement, DOR and WEDC will implement strict security measures to protect personally identifiable information. Under the bill, tax records would not be subject to open record requests.

8. DOR reports that requests to examine tax information are submitted by several agencies for a variety of purposes. For example, tax information is requested by the Department of Natural Resources when attempting to verify residency for persons who have applied for hunting and fishing licenses, and by the Department of Justice to assist in the course of criminal investigations.

9. An agency wishing to examine otherwise confidential tax information must be granted such authority in statute and must make a request for examination to DOR. Employees of the agency must review confidentiality materials and sign an agreement detailing their understanding of the appropriate use of the information. If the examination request is granted, the employees are only authorized to examine the information at the DOR building and can only take general notes. The employees are not allowed to recreate the tax records. WEDC is provided these examination rights under current law to the extent necessary to administer the development zone tax credit program.

10. Additional security measures exist for those entities that are statutorily authorized to receive copies of tax returns, tax credit claims, and related schedules, exhibits, writings, and audit reports. DOR enters into two-year agreements with each such entity that stipulate the safeguards in place to protect confidential taxpayer information. Namely, the receiving entity is only furnished the data in person at the DOR building. The entity is required to destroy the information after use and provide an account to DOR detailing the proper disposal of the information. WEDC would be subject to these same requirements if granted authority to receive copies of the aforementioned taxpayer information under the bill.

11. The Joint Committee on Finance could find that providing authority for WEDC to review tax records, and to enter into an agreement with DOR to obtain tax records, would improve administration of economic development programs and approve the Governor's recommendation (Alternative 1). WEDC would have authority to examine such records so long as it is generally needed to administer its economic development programs.

12. On the other hand, the bill does not provide for any express restriction as to whose tax records could be examined or for what purpose related to economic development programs the records could be examined. For instance, it is unclear under the bill whether WEDC would be able to review records of an applicant's competitors, or to more generally browse state tax returns for data related to economic development.

13. To restrict such browsing from occurring, the Committee could consider restricting any future data sharing agreement from providing WEDC any authority to obtain or examine tax records of persons who have not applied for WEDC's economic development programs.

14. According to DOR, the authority granted to WEDC to examine tax information under the bill could be modified to apply specifically to a person's application and eligibility for WEDC's economic development programs. Similarly, the authority for WEDC to obtain copies of tax information would be limited to information from those persons that have applied for, or that have been certified to receive, an economic development award.

15. The Committee could find that the Governor's recommendation is overly broad and modify the proposal to limit the authority provided to WEDC to examine and obtain copies of tax records to only the records of those persons which have applied to WEDC under one of its economic development programs and to persons certified to receive an economic development award from WEDC (Alternative 2).

16. Finally, the Committee could find that it is unnecessary for WEDC to have access to tax return data and eliminate the proposed data sharing provision (Alternative 3). Current law already requires WEDC to establish clear and measurable goals for its economic development programs and compels WEDC to require applicants to submit annual reports and information to it. As part of the application and contracting process, WEDC could require applicants and award recipients to submit tax return data.

17. However, it should be noted that requesting tax returns from an applicant or an award recipient may not be an appropriate avenue for requesting and receiving detailed tax information because such documents may be subject to open records requests. Further, official tax return information obtained from DOR may serve as a more reliable source of information for purposes of verifying information than such information supplied by an applicant.

ALTERNATIVES

1. Approve the Governor's recommendation to provide WEDC authority to examine and obtain copies of otherwise confidential tax records to the extent necessary to administer its economic development programs.

2. Approve the Governor's recommendation with a modification to limit WEDC's authority to examine and obtain copies of tax records to only those persons that have applied for an economic development program with WEDC or to persons eligible to receive an economic award from WEDC.

3. Take no action.

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