WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2013 Assembly Bill 228	Assembly Amendments 1, 4, and 5
***Memo published*: June 11, 2013**	***Contact*: Anna Henning, Staff Attorney (266-0292)**

2013 ASSEMBLY BILL 228

2013 Assembly Bill 228 ("the bill") makes various changes relating to the Wisconsin Economic Development Corporation (WEDC) and reporting requirements for economic development programs. Among other changes, the bill requires the Legislative Audit Bureau (LAB) to conduct an annual financial audit of WEDC for each year prior to June 30, 2019; creates a governance committee and lead director position on the WEDC Board; makes WEDC subject to state procurement laws; makes WEDC employees, other than clerical employees, subject to state ethics laws; requires approval by the Joint Committee on Finance of WEDC's creation of a nonprofit organization; and makes various changes to requirements for verifying and reporting information relating to economic development programs.

ASSEMBLY AMENDMENT 1

Current law, unchanged by ***the bill***, does not provide statutory qualifications for the Chief Executive Officer of WEDC and other executive employees of WEDC.

Assembly Amendment 1 requires that WEDC's Chief Executive Officer and any other executive officer of the corporation must have financial management experience, municipal or regional economic development experience, or private sector business experience.

ASSEMBLY AMENDMENT 4

Assembly Amendment 4 makes various changes to the bill. Each of the changes is described below.

Application of State Procurement Laws

Current law sets forth certain requirements governing state contracts and purchases. In general, the state procurement laws apply to any "agency," defined to include various state entities but to exclude authorities. [s. 16.70 (1e), Stats.]

The bill includes WEDC within the definition of "agency" for purposes of state procurement law. Thus, the bill specifies that WEDC is subject to state statutes governing state contracts and purchasing.[1]

Assembly Amendment 4 removes the provision of the bill that specifies that WEDC is subject to state procurement laws. Instead, the amendment requires the WEDC Board to adopt procurement policies and procedures that specify all of the following:

- When WEDC is required to publicly solicit proposals from multiple vendors.
- How WEDC will evaluate proposals from multiple vendors.
- How WEDC will assess potential conflicts of interest a vendor may have if the vendor sells goods or services to WEDC.

Term Limits for WEDC Board Members

Current law provides for 13 voting members of the WEDC Board. The voting members include the following:

- The Governor (who serves as chair of the board).
- Six members nominated by the Governor and confirmed by the Senate, who serve at the pleasure of the Governor.
- Three members appointed by the Senate Majority Leader (one majority party member, one minority party member, and one person employed in the private sector), who serve at the pleasure of the Majority Leader.
- Three members appointed by the Assembly Speaker (one majority party member, one minority party member, and one person employed in the private sector), who serve at the pleasure of the Speaker.

[s. 238.02 (1), Stats.]

The bill provides that the public members of the WEDC Board serve six-year terms. The bill also provides for staggered term lengths for existing public board members. Specifically, the terms of

[1] Unlike other authorities, WEDC is not specifically included in the list of authorities that are expressly exempted from state procurement laws. [s. 16.70 (2), Stats.] For that reason, current law could be interpreted to subject WEDC to state procurement laws.

the public members who were appointed by the Assembly Speaker and the Senate Majority Leader expire on July 1, 2017. The terms of public members appointed by the Governor expire on July 1, 2018, July 1, 2019, or July 1, 2010, based on the order in which the members were appointed.

Assembly Amendment 4 retains the six-year terms and staggered term provisions for public members, and it adds that the members of the Assembly and Senate who are appointed by the Assembly Speaker and the Senate Majority Leader also serve for either six-year terms or their terms in office, whichever is shorter.

Governance Committee and Lead Director

Current law does not provide for a governance committee or a lead director position on the WEDC Board.

The bill requires the WEDC Board to establish a governance committee. The governance committee must consist of the lead director, described below, and two other public members of the board. The governance committee must do all of the following:

- Develop governance principles for the board's oversight of WEDC.
- Oversee the board's operations.
- Recommend membership for committees the board establishes.
- Assist the chair of the board to identify qualified candidates to fill vacancies on the board.
- Facilitate communication between the board members and WEDC's chief executive officer.

In addition, the bill requires the WEDC Board to elect a lead director to serve for a two-year term. The lead director must be a public member of the board who has significant corporate management experience. The lead director must do all of the following:

- Chair meetings of the board in the chair's absence.
- Chair the governance committee, described above.
- Serve as a liaison between the board chair and other members of the board.
- Work with the board chair to ensure adequate committee structure for any committee the board establishes.
- Carry out any other duties assigned to the lead director by the board or the governance committee.

Assembly Amendment 4 generally retains the changes relating to the governance committee and lead director. However, the amendment modifies the governance committee's duty to assist in identifying qualified candidates by removing the direction that such assistance must be given to the chair of the board.

Joint Finance Committee Approval of a Private Foundation

Current law authorizes the WEDC Board to develop and implement economic programs in the state. [s. 238.03 (1), Stats.]

The bill requires WEDC's Chief Executive Officer to submit a plan to the Joint Committee on Finance before WEDC may establish a nonprofit organization, defined to mean a nonprofit corporation as defined under ch. 181, Stats., and any organization that has tax-exempt status under section 501 (c) (3) of the federal Internal Revenue Code. The plan must describe WEDC's proposal in detail. The Joint Committee on Finance must approve the plan under a 14-day passive review process before the plan may be implemented.

Assembly Amendment 4 modifies the provisions relating to the creation of a nonprofit entity in two respects. First, the amendment makes the provisions applicable to WEDC's creation of any private foundation or any other entity, whether operated for profit or not for profit, rather than only to nonprofit organizations. Second, under the amendment, the WEDC Board, rather than WEDC's Chief Executive Officer, is responsible for submitting a plan to create such an entity to the Joint Committee on Finance.

Verification of Economic Development Information

Current law requires WEDC and seven other state agencies to take specified actions to verify information relating to economic development programs.[2] Among other actions, WEDC and the other agencies must do both of the following:

- Require that each recipient of a grant or loan submit a report to the agency.

- Annually and independently verify, from a sample of grants and loans, the accuracy of the information required to be reported in the annual report described below.

[ss. 23.167 (2) (c) and (e), 36.09 (1) (am) 3. and 5., 38.04 (1m) (b) 3. and 5., 41.11 (1g) (b) 3. and 5., 84.01 (6m) (b) 3. and 5., 93.07 (18) (b) 3. and 5., 234.032 (2) (c) and (e), and 238.03 (2) (c) and (e), Stats.]

With respect to WEDC, ***the bill*** makes those requirements applicable to recipients of tax credits, rather than only recipients of grants and loans.

Assembly Amendment 4 applies the change made by the bill to the seven other agencies subject to the annual reporting requirement.

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[2] The seven agencies are the Department of Agriculture, Trade, and Consumer Protection; the Department of Natural Resources; the Department of Tourism; the Department of Transportation; the University of Wisconsin System; the Wisconsin Housing and Economic Development Authority; and the Wisconsin Technical College System.

Changes to Economic Development Reporting Requirements

Current law requires WEDC and seven other state agencies to submit an annual report to the Joint Legislative Audit Committee and the Legislature. The report must include the following information for each economic development program administered by the reporting agency:

- A description of the program.
- A comparison of expected and actual program outcomes.
- The number of grants made under the program.
- The number of loans made under the program.
- The amount of each grant and loan made under the program.
- The recipient of each grant or loan made under the program.
- The sum total of all grants and loans awarded to and received by each recipient under the program.
- Any recommended changes to the program.

[s. 238.07 (2), Stats.]

The bill adds the following information to the report that WEDC and the seven other agencies must submit to the Joint Legislative Audit Committee and the Legislature:

- Quantifiable performance measures directly related to the purpose of the program including, when applicable, an accounting of the location, by municipality, of each job created or retained in the state in the previous fiscal year as a result of the program and an accounting of the industry classification, by municipality, of each job created or retained in the state in the previous fiscal year as a result of the program.
- The amount of tax benefits allocated and verified under the program in the previous fiscal year.
- The recipients of tax benefits allocated and verified under the program in the previous fiscal year.
- With respect to WEDC, the number of businesses receiving grants, loans, and tax credits that satisfied their reporting requirements, and a list identifying each recipient of a grant, loan, or tax benefit that failed to satisfy the reporting requirements.

Assembly Amendment 4 makes the last item listed above applicable to the seven other agencies subject to reporting. The amendment also requires the following additional information to be included in the annual report from WEDC and the seven other agencies:

- The results of the annual and independent verifications of the accuracy of information submitted by recipients of grants, loans, and tax credits.

- The number of recipients of grants or loans who satisfied a requirement under current law to submit a verified financial statement if the amount of the grant or loan is at least $100,000.

ASSEMBLY AMENDMENT 5

Current law, unchanged by ***the bill***, requires the public members of the WEDC Board who are appointed by the Speaker of the Assembly and the Majority Leader of the Senate to be employed in the private sector. Current law and the bill do not otherwise specifically require WEDC Board members to have experience in particular areas. [s. 238.02 (1), Stats.]

Beginning after July 1, 2017, ***Assembly Amendment 5*** requires one of the public members of the WEDC Board to be a certified public accountant.

BILL HISTORY

Assembly Amendment 228 was offered by Representative Kerkman and other representatives on June 4, 2013. On June 5, 2013, Assembly Amendment 1 was offered by Representative Sargent and Assembly Amendments 4 and 5 were offered by Representative Kerkman. On June 6, 2013, the Joint Legislative Audit Committee voted to recommend the adoption of Assembly Amendments 1, 4, and 5 by unanimous votes. On the same day, the Joint Legislative Audit Committee voted to recommend the passage of the bill, as amended, also on a unanimous vote.

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