



## Legislative Fiscal Bureau

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October 26, 2018

TO: Representative Robin Vos  
Room 217 West, State Capitol

FROM: Bob Lang, Director

SUBJECT: Provisions to Strengthen the Oversight Role of the Legislature

At your request, this memorandum identifies a number of statutory modifications that could be made to strengthen the oversight responsibilities of the Legislature.

The items are listed by agency or subject and identify current law and a potential change to enhance the Legislature's role and responsibility.

### **Veterans Affairs**

1. Require that any transfer of funds from the operation of the Veterans homes to the Veterans Trust Fund be approved by the Joint Committee on Finance. Currently, the Department may transfer these funds without legislative review or approval.

### **Joint Committee on Finance**

1. Amend the statutes to indicate that only matters under s. 13.101 be subject to partial veto by the Governor under s. 13.10. Currently, unless otherwise specified, all matters that come before the Joint Committee on Finance (except those related to legislation) are subject to gubernatorial veto.

### **Budget Management**

1. Modify current law governing general fund revenue shortfalls to require that the Governor submit a bill containing his or her recommendations for correcting the imbalance between projected revenues and authorized expenditures within 30 days. This 30-day period would start if either the Secretary of Administration or the Director of the Legislative Fiscal Bureau determines that previously authorized expenditures will exceed revenues in the current or forthcoming fiscal year by more than 0.5% of the estimated GPR appropriations for that fiscal year.

Under current law, the Secretary of Administration makes the revenue shortfall determination, and there is no timeline specified for action by the Governor.

2. 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 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 over time; and (f) any recommendation the agency has concerning each fee.

### **Transportation**

1. Prohibit the Department of Transportation from transferring federal and state funds between state highway program components without the approval of the Joint Committee on Finance. Currently, DOT may transfer funds without legislative oversight.

2. Require that all major highway development projects be enumerated by the Legislature prior to the commencement of construction. Currently, the Transportation Projects Commission may approve (without enumeration) any major highway development project for construction that has an estimated total cost of \$91.1 million or more.

3. Specify that in each state fiscal year, the Department of Transportation can appropriate no less than 95% and no more than 105% of the federal aid amounts enacted by the Legislature (or approved by the Joint Committee on Finance, as allowed under current law) for each state highway program appropriation, unless approved by the Joint Committee on Finance under s. 13.10 of the statutes. Currently, DOT may transfer federal moneys among state highway appropriations with Department of Administration approval.

### **Investment Board**

1. Restore provisions to give position and budgetary control of the State of Wisconsin Investment Board (SWIB) to the Legislature. Currently, SWIB operates unilaterally, under a PR continuing appropriation, and is not subject to any external position or budget authority approval.

### **Group Insurance Board**

1. Provide that the members of the Group Insurance Board who are appointed by the Governor to two-year terms under current law would be appointed to the Board only with the advice and consent of the Senate. Currently, six members of the Board are appointed by the Governor.

2. Expand the membership of GIB from 11 to 15 members and provide that the following be added as members of the Board: (a) one member appointed by the Speaker of the Assembly; (b) one member appointed by the Minority Leader of the Assembly; (c) one member appointed by the Majority Leader of the Senate; and (d) one member appointed by the Minority Leader of the Senate.

3. Require the Legislative Audit Bureau to conduct an audit once every three years regarding the state's group health insurance programs, including a review of the Group Insurance Board's compliance with its group health program reserve policy, a review of the appropriateness of its policy regarding fully-insured program reserves, and the circumstances that have created ongoing, frequent accumulation and use of reserves. Currently, an audit is not required.

**Revenue**

1. Require that any reduction in individual income tax rates due to increased sales tax collections on remote sales by out-of-state sellers to buyers in Wisconsin under the U.S. Supreme Court case, *South Dakota v. Wayfair, Inc.*, be approved by the Legislature by law. Currently, the reduction in the income tax rates would be made solely upon certification of the Department of Revenue (DOR).

**Building Commission**

1. Provide that the Joint Committee on Legislative Organization be authorized to enter into leases for the Legislature and legislative services agencies. Currently, this authority is granted to the Building Commission and Department of Administration.

2. 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.

3. Modify the membership of the Building Commission to eliminate the citizen member that is appointed by the Governor and serves at the Governor's pleasure. The Building Commission currently has eight members, including the Governor, the Governor's citizen appointee, and three Senators and three Representatives. Both parties are represented in the membership from each house.

**Unclassified Positions**

1. Eliminate the following unclassified positions:

<u>Agency</u>	<u>FTE</u>
<b>Administration</b>	
Office of Business Development Director and Deputy	2.0
Regional Intergovernmental Affairs Directors	<u>3.0</u>
Subtotal Eliminations	5.0

2. Convert the following unclassified positions to classified positions:

<u>Agency</u>	<u>FTE</u>
<b>Administration</b>	
Division Administrator of Facilities Development and Management	1.0
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	3.0
Economic Development Liaison	1.0
Interagency Council on Homelessness Director	1.0
<b>Agriculture, Trade, and Consumer Protection</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	3.0
<b>Children and Families</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	3.0
Division Administrator of Milwaukee Child Welfare	1.0
<b>Commissioner of Insurance</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	2.0
<b>Corrections</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	3.0
<b>Employment Relations Commission</b>	
Chief Legal Counsel	1.0
<b>Financial Institutions</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	2.0
<b>Health Services</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	3.0
Office of Children's Mental Health Services Director	1.0
<b>Justice</b>	
Solicitor General's Office	4.0
Office of School Safety Director	1.0
<b>Labor and Industry Review Commission</b>	
General Counsel	1.0
<b>Military Affairs</b>	
WISCOM Director of Emergency Communications	1.0
<b>Natural Resources</b>	
Unspecified Conversions (Administrators, Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	4.0
<b>Public Service Commission</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	4.0
<b>Revenue</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	3.0

<u>Agency</u>	<u>FTE</u>
<b>Safety and Professional Services</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	2.0
Unspecified Conversion	1.0
<b>Tourism</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	1.0
<b>Transportation</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	3.0
<b>Workforce Development</b>	
Unspecified Conversions (Chief Legal Advisors, Comm. Directors, or Leg. Advisors)	2.0
Legislative Liaison	<u>1.0</u>
Subtotal Conversions	53.0
Total Eliminations and Conversions	58.0

### **Administrative Rule Process**

1. Remove the requirement that the Governor approve a statement of scope when promulgating rules. Remove the requirement that no state employee or official may perform any activity in connection with the drafting of a proposed rule except for the activity necessary to prepare the statement of the scope of the proposed rule until the Governor approves the statement. Retain current law that the individual or body with policy-making powers over the subject matter of the proposed rule must approve the statement of scope before any state employee or official may perform any activity in connection with the drafting of a proposed rule except for the activity necessary to prepare the statement of the scope of the proposed rule.

2. Remove the requirement that an agency may not file an emergency rule with the Legislative Reference Bureau, and an emergency rule may not be published, without gubernatorial approval.

### **Health Services**

1. Require the Department of Health Services, prior to the implementation of any medical assistance provider rate or benefit changes, to submit a proposal to the Joint Committee on Finance under a 14-day passive review process, if all of the following apply: (a) the change has an estimated annualized fiscal effect of greater than some established threshold; (b) funding for the change was not specifically included in the biennial budget act; and (c) the change is not explicitly required under the federal law or rules for the program.

In the medical assistance program, changes to provider reimbursement rates or benefits are generally the subject of biennial budget deliberations, with funding provided in accordance with the estimated fiscal effect of the change. On occasion, however, DHS may change reimbursement rates or services outside the biennial budget process. Any fiscal effect of these changes can be absorbed

if the MA budget has sufficient estimated surplus, thus not requiring any legislative oversight. Some rate and benefit changes are adopted routinely and have a minor fiscal effect in the context of the overall budget for MA. Others, however, are more significant. Establishing a threshold for approval of \$10,000,000 (all funds), for instance, would continue to allow the Department to have reasonable discretion to manage the program to meet broad goals, such as maintaining sufficient provider access, but would require any more significant changes to be subject to legislative review and approval.

2. Prohibit the Department of Health Services from requesting any waivers of federal laws relating to Medicaid or the supplemental nutrition assistance program unless: (a) legislation has been enacted directing the Department to request a new waiver, or to request the renewal, or modification that differs from a current waiver agreement; (b) the authorizing legislation specifies the population and services that would be affected, and identifies what provisions in federal law would be waived; and (c) the Department's waiver request is submitted to the Joint Committee on Finance for review and approval prior to its submission to the appropriate federal agency.

### **Children and Families**

1. Require the Department of Children and Families submit requests to reallocate funding among public assistance and local assistance allocations listed under s. 49.175 of the statutes to the Joint Finance Committee under a 14-day passive approval process. Currently, the Department must seek the approval of the Secretary of the Department of Administration prior to reallocating funding among economic support programs funded with the federal temporary assistance for needy families block grant (TANF).

### **WEDC**

1. Require the Wisconsin Economic Development Corporation (WEDC) to promulgate its policies and procedures for its grant, loan, tax credit, and other economic development programs in accordance with the statutory procedures for the administrative rulemaking process.

2. Require that claims for the refundable enterprise zone, business development, and electronics and information technology manufacturing (EITM) zone tax credits be filed with, and paid by, WEDC from the existing GPR appropriations for the credits using policies and procedures developed by the WEDC Board. Currently, after WEDC verifies that a claimant is eligible for the credit, both WEDC and the claimant must submit a verification to DOR before the eligible business can receive the credit. In addition, require credits earned by pass-through entities to be claimed by, and paid to, the business entity instead of the individual owners of the business, effective with credits earned by pass-through entities on January 1, 2019. For credits earned after that date, prohibit partners, members of limited liability companies, and shareholders of tax-option (S) corporations from claiming the credits individually. Currently, if a business earns a credit and the business is structured as a pass-through entity with multiple owners, DOR must verify that each owner is eligible to claim their respective portion of the credit.

3. Convert the sum sufficient GPR appropriations to pay refundable tax credit claims in 2018-19 for the business development tax credit, EITM zone tax credit, and information technology manufacturing zone tax credit programs under Shared Revenue and Tax Relief into continuing GPR appropriations under WEDC to be paid as grants to state businesses. Currently, no limit exists for the amount of credits that WEDC can verify to be claimed by eligible businesses in a single fiscal year, which creates uncertainty in the budgetary impact of WEDC's tax credit activities. Specify that all current law provisions under the business development, enterprise zone, and EITM zone tax credit programs regarding WEDC's economic development program goals, benchmarks, performance measures, evaluations, reports and supporting documents, contracts, CPA review, and penalties would apply to the new grant programs. However, delete the current law provision under the enterprise zone tax credit program that limits the number of zones that WEDC may designate. Require any claims for business development tax credits, enterprise zone tax credits, or EITM zone tax credits to be made to WEDC, rather than DOR, beginning on the effective date of this provision.

4. Reduce WEDC's discretion under its appropriations for programs and operations as follows: (a) convert WEDC's all monies received economic development fund operations and programs SEG appropriation to a sum certain continuing appropriation; and (b) convert WEDC's sum sufficient operations and programs GPR appropriation to a sum certain continuing appropriation.

### **Natural Resources**

1. Provide for a legislative review or rule-making process for state park and forest daily admissions rates and nightly campsite fees. Currently, the DNR secretary is authorized to establish nightly campsite fees of not less than \$15 for residents and \$19 for non-residents, and up to \$30 for residents and \$35 for non-residents. The statutes also authorize the DNR Secretary to increase maximum nightly campsite fees by an additional \$5.

2. Require that admissions fees and educational program fees at the Horicon Marsh Education and Visitor Center be set through administrative rule. Currently, the DNR may set admissions fees without review by the Natural Resources Board or the Legislature.

### **Workforce Development**

1. Increase legislative oversight of the "Fast Forward" workforce development program either by restoring separate appropriations for the component programs, specifying funding amounts for each component program, or otherwise narrowing statutory language. Currently, grants may be awarded at the discretion of the Department for any of the programs listed in the appropriation or to any public or private organizations for the development and implementation of workforce training programs.

### **Administration**

1. Create a Department of Employment Relations (or Office of State Employment Relations) and transfer the positions and functions of DOA's Division of Personnel Management to

the newly created agency. Specify that the Secretary of the Department (or the Director of the Office) would be appointed by the Governor with the advice and consent of the Senate. Currently, classification and compensation policy, state employment relations, equity and inclusion policy, and human resource services are centrally administered within DOA's Division of Personnel Management.

2. Require that the Administrator of DOA's Division of Personnel Management be subject to Senate confirmation. Currently, no Senate confirmation of this appointment is required.

3. Modify provisions relating to the primary appropriation for the enterprise resource planning system (known as the STAR system) to repeal and recreate it as an annual PR appropriation with forestalling authority and expenditure authority of \$25.0 million in 2018-19. Currently, the appropriation is a continuing appropriation for which expenditures are only limited to the amounts DOA determines it will assess state agencies.

4. Specify that DOA must provide a report to the Joint Committee on Finance and the Joint Committee on Information Policy and Technology once every six months, beginning March, 2019, relating to the management of the enterprise resource planning system (STAR system) and require that the report include: (a) year-to-date expenditures from the system appropriation; (b) master lease originations since the date of the last report; (c) state agencies assessments (most recently charged as well as charges estimated for future fiscal years); (d) the status of the appropriation deficit; and (e) updated information relating to DOA's efforts regarding benefits realization, including any actual or anticipated savings or efficiencies associated with the system. Currently, a report relating to the enterprise resource planning system is not required.

5. Modify DOA's information technology and communication services self-funded portal appropriation from a continuing appropriation to an annual appropriation. Specify that DOA must submit to the Joint Committee on Finance an annual report on the administration of the self-funded portal.

### **Wisconsin Housing and Economic Development Authority (WHEDA)**

1. Require WHEDA to promulgate policies and procedures for grant, loan, tax credit and other programs in accordance with the statutory procedures for the administrative rule process.