



Legislative Fiscal Bureau

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November 30, 2005

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 770: Creation of a Wisconsin Aerospace Authority

Assembly Bill 770 was introduced on October 20, 2005, and referred to the Joint Committee on Finance.

SUMMARY OF BILL

Summary in Brief

Assembly Bill 770 would create a public body corporate and politic to be known as the Wisconsin Aerospace Authority. The following is a general summary of the Authority's powers, duties, organization, and financing, which will be followed by a more detailed summary of the bill's provisions.

The Wisconsin Aerospace Authority ("Authority") would be required, under the bill, to establish a spaceport in the City of Sheboygan, to be used as a launch or landing area for spacecraft. Some of the Authority's other principal duties would be to: (a) promote the state's aerospace industry and coordinate access to commercial, technical, and general aerospace information and services; (b) develop a business plan to promote and facilitate spaceport-related commercial and educational development in the state; (c) develop, promote, attract, and maintain space-related businesses in the state; and (d) provide aerospace services to the aerospace industry and general public, which may include: (1) space-related research, experimentation, and development of technology and other intellectual property (2) facilitating the development of commercial and non-commercial space-related opportunities for business, industry, education, and government; (3) consulting and administrative services; and (4) services or activities that promote and facilitate space-related educational opportunities and tourism.

The Authority would be governed by a Board of Directors composed of six members nominated by the Governor, one member of the Senate, one member of the Assembly, and the Director of the Wisconsin Space Grant Consortium. The members of the Board would not be compensated for their services, but would be compensated for actual and necessary expenses incurred in the performance of their duties. The Board would be required to appoint an Executive Director, who is not a member of the Board, and determine his or her compensation. In addition, the Authority would have the ability to hire employees, define their duties, and fix their rate of compensation and benefits. The Executive Director and any Authority employees would be deemed employees of the state for purposes of the Wisconsin Retirement System.

Some of the Authority's other principal powers would be, as follows: (a) buy, sell, or lease (as lessor or lessee) property, including real property, personal property, and intangible property rights; (b) exercise the right of eminent domain to acquire property; (c) make and execute contracts; (d) accept gifts, bequests, contributions, and other financial assistance from any person for the conduct of its business or for any other authorized purpose; (e) apply for and accept loans, grants, advances, aid and other forms of financial assistance or funding; (f) establish and collect fees, rents, rates, tolls, and other charges and revenues in connection with any service provided by the Authority or the use of any facility of the Authority; (g) develop, acquire, and manage any spaceport facilities in the state; (h) acquire or develop any intangible property right, including any patent or trademark and utilize such rights, including licensing in exchange for payment or royalties; and (i) issue bonds to fund any spaceport or related facility or service. Bonds issued by the Authority would not be debt of the state, but would be exempt from state and local taxation. No more than \$100,000,000 in Authority bonds could be outstanding at any one time.

Funding for the development of spaceport projects could be obtained through the Authority's own revenues (such as bonds proceeds, patent or trademark royalties, revenue from fees or rents for the use of Authority services or space, and gifts, bequests, and contributions), from federal grants, or from the Department of Transportation's existing aeronautics assistance program. For projects funded with federal aid, state funds (from DOT's aeronautics assistance program) would pay for up to one-half of the nonfederal share, while the Authority would bear the remaining nonfederal cost. For projects not involving federal aid, state funds would pay up to 80% of the cost, while the Authority would bear the remaining cost.

Generally, the Authority and its employees would be subject to the same state laws applying to other existing authorities (such as the Health and Educational Facilities Authority and the Housing and Economic Development Authority). There are, however, two exceptions to this general similarity. First, the Wisconsin Aerospace Authority would be exempted from the state's code of ethics for public officials and employees. Second, the Authority would not be subject to financial or program auditing by the Legislative Audit Bureau.

The Authority would be treated the same as a local government with respect to provisions that: (a) limit the liability for damages resulting from official acts to \$50,000; and (b) disallow

punitive damages or damages resulting from legislative, quasi-legislative, judicial, or quasi-judicial acts (so-called "discretionary" acts).

The following sections summarize the provisions of AB 770 in greater detail.

Wisconsin Aeronautics Authority Board of Directors

Under AB 770, the Wisconsin Aeronautics Authority Board of Directors would consist of the following: (a) six members nominated by the Governor, and appointed with the advice and consent of the Senate; (b) one member of the Senate, appointed by the Senate President; (c) one member of the Assembly, appointed by the Speaker of the Assembly; and (d) the Director of the Wisconsin Space Grant Consortium (WSGC). (The WSGC is a consortium of educational institutions that, in cooperation with NASA, provides scholarships and grants related to space science.) If the Wisconsin Space Grant Consortium ceases to exist or does not appoint a director, the bill specifies that an additional member would be nominated by the Governor. Other than the Director of the WSGC, each member of the Board would be required to be a resident of the state and have experience in the aerospace or commercial space industry, in education, or in finance, or shall have other significant experience related to the functions of the Authority as specified in the bill. Other than the Director of the WSGC, the terms of the members of the Board would be three years and would expire on June 30. No such member could serve more than three consecutive, three-year terms, but may be reappointed to additional terms after a one-year absence from the Board.

For the purposes of the initial appointments to the Board, the bill would establish staggered terms for the members. Specifically, for the terms of the six members appointed by the Governor, two each would expire on June 30 of 2006, 2007, and 2008, respectively. For the two members appointed by the legislative leaders, one would expire on June 30, 2006, and one would expire on June 30, 2007 (the bill does not specify which of the legislative appointments would expire on which date). Nominations to the Board would be required to be made no later than 60 days after the effective date of the bill. The members of the Board would be required to annually elect a chairperson and would be allowed to elect other officers as they consider appropriate.

The bill would specify that each member's appointment remains in effect until a successor is appointed, unless the member vacates or is removed from his or her office. If a member serves on the Board as a result of holding another office or position, that member must vacate his or her membership on the Board if he or she vacates the other office or position. Likewise, a member would have to vacate his or her position on the Board if he or she ceases to qualify for the position. A member who was nominated by the Governor could be removed by the Governor for cause. The Senate President or Speaker of the Assembly would be required to remove a member appointed from the Senate or Assembly, respectively, if the member were absent at two consecutive Board meetings without the prior written approval of the chairperson of the Board. A vacancy on the Board would be filled in the same manner as the original appointment to fill the remainder of the unexpired term, if any.

The Board would be required to appoint an Executive Director who is not a member of the Board and who would serve at the pleasure of the Board. The Board would determine the Executive Director's compensation.

Members of the Board would not be compensated for their services, but would be reimbursed for actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Reimbursements for travel expenses would be limited to the uniform travel schedule amounts approved for state employees. The bill would specify that no cause of action of any nature may arise against and no civil liability may be imposed upon a member of the Board for any act or omission in the performance of his or her powers and duties, unless the person asserting liability proves that the act or omission constitutes willful misconduct.

Five members of the nine-member Board would be considered a quorum for the purpose of conducting the business and exercising the powers of the Authority, notwithstanding the existence of any vacancy. The Board would be able to take action upon a vote of a majority of the members present, unless the bylaws of the Authority require a larger number. The Board would be required to meet at least once every six months, but may meet more frequently. The Executive Director would be allowed to call meetings of the Board more frequently than once every six months. The Board would be required to hold its first meeting no later than 30 days after all of the members are appointed, or no later than 120 days after a majority of members are appointed, whichever is earlier.

General Duties of the Authority

The following are the duties specified for the Authority: (a) establish a spaceport in the City of Sheboygan; (b) promote the state's aerospace industry, analyze trends in the aerospace industry and recommend actions to be taken by the state to compete in the global aerospace industry, and coordinate access to commercial, technical, and general aerospace information and services; (c) advertise and promote to the public the development and utilization of spaceport facilities, spaceport services, aerospace facilities, and aerospace services of the Authority; (d) develop, promote, attract, and maintain space-related businesses in the state, which may include expenditures for travel, entertainment, and hospitality for business clients or guests or other authorized persons, provided that such expenditures are limited to the uniform travel schedule amounts approved for state employees; (e) provide aerospace services to the aerospace industry and general public, provide commercial and noncommercial aerospace business opportunities for industry, education, and government, and develop projects within the state to foster and improve aerospace economic growth; (f) advise, cooperate, and coordinate with federal, state, and local governmental units, the aerospace industry, educational organizations, businesses, and the Wisconsin Space Grant Consortium, and any other person interested in the promotion of space-related industry; (g) furnish leadership in securing adequate funding for spaceports, spaceport facilities, spaceport services, aerospace facilities, and aerospace services in the state; (h) act as a central clearinghouse and source of information in this state for spaceports, spaceport facilities, spaceport services, aerospace facilities, and aerospace services, including furnishing such information to legislators, offices of government, educational institutions, and the general public; (i) develop, in cooperation with the

Wisconsin Space Grant Consortium, a business plan to promote and facilitate spaceport-related educational and commercial development in this state, and to stimulate and improve aerospace science, design, technology, and research in the state, which plan shall include information about the Authority and information and analysis about space-related industry, technology, design, manufacturing, marketing, and management; (j) assist any state agency, municipality, or other governmental unit, upon its request, in the development of any spaceport or spaceport facility; (k) use the Building Commission as a financial consultant to assist and coordinate the issuance of bonds; (L) comply with all applicable state and federal laws, including all environmental and aeronautics laws, in the exercise of the Authority's powers; (m) comply with all requirements under federal law related to the use or expenditure of federal aid, and comply with all lawful restrictions or conditions imposed by state law or by the terms of any gift, bequest, grant, loan, aid, contribution, or financial assistance relating to the use or expenditure of such funds; (n) to the extent permitted by applicable state and federal law, attempt to involve and utilize, with respect to any facility or service provided by the Authority, disadvantaged individuals, disadvantaged businesses, and minority businesses, as those terms are defined under current law; (o) establish a safety program that includes the development and implementation of a loss prevention program, safety policies, and regular and periodic facility and equipment inspections; (p) attempt to procure adequate liability and property insurance; and (q) establish the Authority's annual budget and monitor the fiscal management of the Authority.

Funding of the Authority

With respect to financing its operations and projects, AB 770 would give the Authority the powers to: (a) accept gifts, bequests, contributions, and other financial assistance, in the form of money, property, or services, from any person, for the conduct of its business or for any other authorized purpose; (b) apply for and accept loans, grants, advances, aid, and other forms of financial assistance or funding, in the form of money, property, or services, from any person, including federal aid, for the conduct of its business or for any other authorized purpose; (c) establish and collect fees, rents, rates, tolls, and other charges and revenues in connection with any service provided by the Authority or the use of any facility of the Authority; (d) utilize any intangible property rights for any permissible purpose under law, including licensing such rights in exchange for payment of royalties; (e) issue bonds in accordance with certain provisions (summarized below) and fund any spaceport, facility, or service of the Authority with bond proceeds; (f) borrow money or incur debt other than through bond issuance, and pledge property or revenues or provide other security for such debt; and (g) invest funds held by the Authority, including investments under the local government pooled-investment fund.

In addition to these sources of funding, the bill would specify that spaceport projects and the costs of the Authority are eligible to receive funding from the Department of Transportation's SEG, FED, and SEG-L appropriations for aeronautics assistance (which would be renamed "aeronautics and astronautics assistance"). For projects involving federal aid, the bill would specify that state funds could be used for not more than 50% of the nonfederal share of the cost of spaceport improvement projects. For projects not involving federal aid, state funds could be used for not more

than 80% of project costs, which may include the cost of the land, the cost of lands or interest in lands deemed necessary for the protection of the aerial approaches, the cost of formulating the project application and preparing the plans and specifications, and the cost of construction and of all facilities deemed necessary for the operation of the spaceport. In both cases, state funds could not exceed \$10,000,000 for the cost of a building project or building improvement project and no state funds could be used toward the cost of hangers. For projects involving federal funds, the DOT Secretary, upon agreement with the Authority, would be permitted to advance up to ten percent of the amount of any federal aid grant agreement for the payment of project costs, subject to reimbursement upon final liquidation and settlement of the project with the Authority and federal government.

The percentage of the costs borne by the state would be determined by DOT on the basis of the relative importance of the specific project to any state spaceport development program as a whole.

Bond Issuance

General provisions. The bill would allow the Authority to issue bonds for any corporate purpose, provided that any issuance is first authorized by a bond resolution. The bill would specify that all bonds are negotiable for all purposes, notwithstanding their payment from a limited source. The bonds of each issue would be payable from sources specified in the bond resolution under which the bonds are issued. The bonds would be required to bear the dates, mature at the times not exceeding 30 years from their dates of issue, bear interest at the rates, be payable at the times, be in the denominations, be in the form, carry the registration and conversion privileges, be executed in the manner, be payable in lawful money of the United States at the places, and be subject to the terms of redemption, as provided in the bond resolution. The bonds would be executed by the manual or facsimile signatures of the officers of the Authority designated by the Board. The bonds could be sold at public or private sale at the price, in the manner, and at the time determined by the Board. Pending preparation of definitive bonds, the Authority could issue interim receipts or certificates that the Authority shall exchange for the definitive bonds. The bill would limit the amount of bonds outstanding at any one time to \$100,000,000, excluding bonds issued to refund outstanding bonds.

The bill would allow the Authority to issue bonds to fund or refund any outstanding bond, including the payment of any redemption premium on the outstanding bond and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase, or maturity. The Authority could apply the proceeds of any bond issued to fund or refund any outstanding bond to purchase, retire at maturity, or redeem any outstanding bond. The Authority could also, pending application, place the proceeds in escrow to be applied to the purchase, retirement at maturity, or redemption of any outstanding bond at any time.

The bill would specify that the state covenants with the purchaser and all subsequent holders and transferees of bonds issued by the Authority, in consideration of the acceptance of any payment

for the bonds, that its fees, charges, gifts, grants, revenues, receipts, and other moneys received or to be received, pledged to pay or secure the payment of such bonds, shall be free and exempt from all state, city, county, or other taxation provided by the laws of the state. The bill would modify state income tax provisions to specify that interest earned on Authority bonds is exempt from taxation.

Bond resolution. Any bond resolution could contain provisions regarding any of the following: (a) pledging or assigning specified assets or revenues of the Authority; (b) setting aside reserves or sinking funds, and the regulation, investment, and disposition of these funds; (c) limitations on the purpose to which or the investments in which the proceeds of the sale of any issue of bonds may be applied; (d) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the terms upon which additional bonds may rank on a parity with, or be subordinate or superior to, the bonds authorized by the bond resolution; (e) funding, refunding, advance refunding, or purchasing outstanding bonds; (f) procedures, if any, by which the terms of any contract with bondholders may be amended, the amount of bonds the holders of which must consent to the amendment, and the manner in which this consent may be given; (g) defining the acts or omissions to act that constitute a default in the duties of the Authority to the bondholders, and providing the rights and remedies of the bondholders in the event of a default; and (h) other matters relating to the bonds that the Board considers desirable. Any of these provisions that are included in the bond resolution would be required to be a part of the contract with the holders of the bonds.

Joint Committee on Finance review of the bonding resolution. The bill would require the Authority, no less than 14 days prior to any commitment by the Authority for the issuance of bonds, to submit the bond resolution to the Governor, to the Chief Clerk of each house of the Legislature for distribution to the Legislature, and to the Cochairpersons of the Joint Committee on Finance. The Authority could proceed with any commitment for the issuance of bonds under the bond resolution if the Cochairpersons do not notify the Authority that the Committee has scheduled a meeting for the purpose of reviewing the bond resolution within 14 days after such submittal. If the Cochairpersons notify the Authority, within the 14-day period, that the Committee has scheduled a meeting to review the bond resolution, the Authority may proceed with any commitment for the issuance of bonds under the bond resolution only upon approval by the Committee.

Under the bill, neither the members of the Board nor any person executing the bonds would be liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance of the bonds, unless the personal liability or accountability is the result of willful misconduct.

Bond security. The Authority would be permitted to secure any bonds by a trust agreement, trust indenture, indenture of mortgage, or deed of trust by and between the Authority and one or more corporate trustees. The bond resolution providing for the issuance of bonds so secured would be required to pledge some or all of the revenues to be received by the Authority, including to the extent permitted by law, any grant, aid, loan, or other contribution, or would be required to mortgage, assign, or grant security interests in some or all of the property of the Authority, or both,

and could contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law. A bond resolution could contain any other provisions that are determined by the Board to be reasonable and proper for the security of the bondholders.

Responsibility of the state with respect to Authority bonds. The bill would specify that the state is not liable on the Authority's bonds and the bonds are not a debt of the state. Each bond of the Authority would be required to contain a statement to this effect on the face of the bond. The issuance of bonds could not, directly, indirectly, or contingently, obligate the state or any political subdivision of the state to levy any tax or to make any appropriation for payment of the bonds. These provisions would not, however, prevent the Authority from pledging its full faith and credit to the payment of bonds. The bill would specify that nothing in the provisions creating the Authority authorizes the Authority to create a debt of the state, and all bonds issued by the Authority are payable, and shall state that they are payable, solely from the funds pledged for their payment in accordance with the bond resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security for the bonds. The state would not be liable, under the bill, for the payment of the principal of or interest on any bonds of the Authority or for the performance of any pledge, mortgage, obligation, or agreement that may be undertaken by the Authority. The breach of any pledge, mortgage, obligation, or agreement undertaken by the Authority would not impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

The bill would specify that the state pledges to and agrees with the holders of bonds and persons that enter into contracts with the Authority, that the state will not limit or alter the rights vested in the Authority before the Authority has fully met and discharged the bonds and any interest due on the bonds, and has fully performed its contracts, unless adequate provision is made by law for the protection of the bondholders or those entering into contracts with the Authority.

Eligibility for private activity bonds. The Authority would also be included in a list of entities among which the Department of Commerce is required to allocate, by rule, the federal volume cap on private activity bonds.

Other Powers of the Authority

In addition to the powers related to the funding of the Authority outlined above, Assembly Bill 770 would specify that the Authority has all of the powers necessary or convenient to carry out the purposes and provisions established for the Authority, as well as the powers to: (a) adopt bylaws and policies and procedures for the regulation of its affairs and the conduct of its business; (b) have a direct right of action (to bring suit) against any third party to enforce any statutory provision related to the Authority or to carry out any power provided to it or to protect its interests as authorized by law; (c) have a seal and alter the seal at pleasure, have perpetual existence, and maintain an office; (d) hire employees, define their duties, and fix their rate of compensation and benefits; (e) employ any agent or special advisor that the Authority finds necessary and fix his or

her compensation, limited to the uniform travel schedule amounts approved for state employees; (f) appoint any technical or professional advisory committee that the Authority finds necessary to assist the Authority in exercising its duties and powers, define the duties of any committee, and provide reimbursement for the expenses of any committee, limited to the uniform travel schedule amounts approved for state employees; (g) buy, sell, lease as lessor or lessee, or otherwise acquire any interest in or dispose of any interest in property, including real property, personal property, and intangible property rights; (h) make and execute contracts and other legal instruments necessary or convenient for the conduct of its business or to the exercise of its powers, including: (1) procurement contracts; (2) lease or rental agreements; (3) lease-purchase, purchase and sale, and option to purchase agreements; (4) consulting agreements; (5) loan agreements; (6) financing agreements; (7) security agreements; (8) contractual services agreements; (9) affiliation agreements; and (10) cooperative agreements with any governmental unit or other person, including agreements for any jointly provided service or jointly developed or operated facility; (i) acquire, own, lease, construct, develop, plan, design, establish, create, improve, enlarge, reconstruct, equip, finance, operate, manage, and maintain: (1) any spaceport, spaceport territory, spaceport facility, aerospace facility, or other facility or site within the state related to conducting the business or exercising the powers of the Authority; (2) any spacecraft or other vehicle or aircraft related to conducting the business or exercising the powers of the Authority; (3) any program or project related to conducting the business or exercising the powers of the Authority; and (4) any intangible property right, including any patent, trademark, service mark, copyright, trade secret, certification mark, or other right acquired under federal or state law, common law, or the law of any foreign country; (j) offer, provide, furnish, or manage, and enter into contracts related to, any service or facility of the Authority; (k) procure liability insurance covering its officers, employees and agents, insurance against any loss in connection with its operations, property, and assets, and insurance on its debt obligations; (L) exercise the right of eminent domain in the manner provided under current law; (m) provide for and maintain wildlife conservation areas, and prohibit or control the pollution of air and water, in any spaceport or spaceport territory, beyond what is required under state or federal law; (n) specify the location of any utility facilities in any spaceport or spaceport territory; (o) divide any spaceport or spaceport territory into zones or districts of any number or shape; (p) prohibit any person from using the words "Wisconsin Spaceport" or "Spaceport Wisconsin" in any corporate or business-related name without prior written approval of the Authority; (q) maintain exclusive jurisdiction over spaceports of the Authority, subject to any requirement of federal law and to any duty of the Department of Transportation specified under statutory provisions related to aeronautics and astronautics; (r) delegate by resolution of the Board of Directors to one or more of the members of the Board or to the Executive Director any powers and duties that it considers proper; and (s) convey, with the approval of the Governor, any lands held by the Authority to the Department of Transportation.

Administrative Responsibilities of the Authority

Maintenance of records. The bill would require the Executive Director or another person designated by resolution of the Board to keep a record of the proceedings of the Authority and to be custodian of all books, documents, and papers filed with the Authority, the minute book or journal

of the Authority, and its official seal. The Executive Director or other person could cause copies to be made of all minutes and other records and documents of the Authority and could give certificates under the official seal of the Authority to the effect that the copies are true copies, and all persons dealing with the Authority may rely upon the certificates.

The bill would allow the Authority to transfer to or maintain in optical disk or electronic format any record in its custody and retain the record in that format only, subject to rules promulgated by the Department of Administration under current law provisions. Also subject to those rules, the Authority would be required to maintain procedures to ensure the authenticity, accuracy, reliability, and accessibility of records transferred to or maintained in optical disk or electronic format, and to ensure that the records stored in that format are protected from unauthorized destruction.

Any microfilm reproduction of an original record of the Authority, or a copy generated from an original record stored in optical disk or electronic format, would be considered an original record if all of the following conditions are met: (a) any device used to reproduce the record on film or to transfer the record to optical disk or electronic format and generate a copy of the record from optical disk or electronic format accurately reproduces the content of the original; (b) the reproduction is on film that complies with the minimum standards of quality for microfilm reproductions, as established by rule of the Public Records Board, or the copy generated from optical disk or electronic format comply with the minimum standards of quality for such copies, as established by rule by DOA under current law; (c) the film is processed and developed in accordance with the minimum standards established by the Public Records Board (not including copies generated from an electronic record); (d) the record is arranged, identified, and indexed so that any individual document or component of the record can be located with the use of proper equipment; and (e) the custodian of the record designated by the Authority executes a statement of intent and purpose describing the record to be reproduced or transferred to optical disk or electronic format and the disposition of the original record, and executes a certificate verifying that the record was received or created and microfilmed or transferred to optical disk or electronic format in the normal course of business and files the statement in the offices of the Authority. That statement of intent and purpose would be considered presumptive evidence of compliance with all conditions and standards outlined above.

Any microfilm reproduction of a record or copy of a record generated from an original record stored in optical disk or electronic format that meets the above requirements would be taken as, stand in lieu of, and have all the effect of the original document and would be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible. Likewise, any enlarged copy of a microfilm reproduction of a record or any enlarged copy of a record generated from an original record stored in optical disk or electronic format that is certified by the custodian to be a true copy, in accordance with current law requirements for such certification, shall have the same force as an actual-size copy.

The bill would require the Authority to maintain the confidentiality of records or portions of records held by the Authority containing any trade secret, notwithstanding other provisions of the bill that would require records of the Authority and the Board of Directors to be public records. Any portion of any meeting of the Authority concerning trade secrets would be required to be conducted in closed session and would remain confidential in all respects, including in any written record or audio or visual recording of the meeting.

Annual reports and business plan. The Authority would be required to keep an accurate account of all of its activities and of all of its receipts and expenditures, and annually in January make a report of its activities, receipts, expenditures, and financial condition to the Governor and the Chief Clerk of each house of the Legislature. The reports would be in a form approved by the State Auditor. For each year that it receives operating revenues, the Authority would be required to submit to DOA an audited financial statement that includes notes that explain in detail the specific sources of funding contained in the financial statement.

Within 180 days after the effective date of the bill, or within 60 days after the Authority receives any public or private source money sufficient to fund the cost of preparing a business plan, whichever is later, the Authority would be required to submit to DOA its business plan for the promotion of spaceport-related educational and commercial development in the state. The report would have to include an estimate of the costs of and funding for any planned projects of the Authority. The Authority would also be required to update and resubmit the plan upon request of DOA.

Other General Provisions

Limited immunity. The bill would include the Authority within a provision that provides limits on the damages that can be recovered resulting from official acts to \$50,000 and that disallows punitive damages or damages resulting from legislative, quasi-legislative, judicial, or quasi-judicial acts (so-called "discretionary" acts). In this respect, the Authority would be treated the same as local governments with respect to limits on liability.

Tax exemption. The bill would specify that the Authority would not be required to pay any taxes or assessments upon or in respect to any property acquired or used by the Authority and that the Authority's income would be free from taxation of every kind by the state or any political subdivisions in the state.

Authority employees included under the Wisconsin Retirement System (WRS). Similar to the treatment accorded to other state authorities, the Wisconsin Aerospace Authority would be deemed a state agency. As a state agency, the Authority would be required to participate in the WRS. Further, since Authority employees would be defined as state employees for WRS purposes, such employees would be eligible for participation in the nonretirement-related benefit programs administered by the Department of Employee Trust Funds. These benefit programs include group health insurance, group life insurance, income continuation insurance, long-term disability

insurance, the accumulated sick leave conversion credit program, the employee reimbursement account program, and the deferred compensation program.

Anti-discrimination provisions. The bill would specify that the Authority would be required to include certain anti-discrimination provisions in its contracts, which is also the case with existing authorities under current law.

Cooperation with governmental units. The bill would permit the state, any political subdivision of the state, municipality, or other governmental unit to enter into cooperative agreements with the Authority for furnishing any facility or service, including fire and police protection, and may provide, to the extent permitted by law, any funds, property, or services to the Authority.

Liability of state and political subdivisions limited. The bill would specify that neither the state nor any political subdivision of the state, nor any officer, employee, or agent of the state or of a political subdivision who is acting within the scope of employment or agency is liable for any debt, obligation, act, or omission of the Authority. All of the expenses incurred by the Authority in exercising its duties and powers would be payable only from funds of the Authority.

Political activities of the Authority's employees. The bill would prohibit employees of the Authority from directly or indirectly soliciting or receiving subscriptions or contributions for any partisan political party or any political purpose while engaged in their official duties as employees. No employee of the Authority would be allowed to engage in any form of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold partisan political office while engaged in his or her official duties as an employee or engage in any political activity while not engaged in his or her official duties as an employee to such an extent that the person's efficiency during working hours would be impaired or that he or she would be tardy or absent from work. Any violations of these prohibitions would be considered adequate grounds for dismissal.

If an employee would declare an intention to run for partisan political office, the employee would have to be placed on a leave of absence for the duration of the election campaign and if elected would no longer be employed by the Authority on assuming the duties and responsibilities of such office. An employee of the Authority could be granted, by the Executive Director, a leave of absence to participate in partisan political campaigning. Persons on leave of absence for either of these reasons would not be subject to the restrictions on partisan political activity described above, except as they apply to the solicitation of assistance, subscription, or support from any other employee in the Authority.

Board meetings subject to open meetings requirements. The bill would specify that all meetings of the Board of Directors would be subject to open meeting requirements under state statutes, except if the meeting involves issues related to trade secrets.

Investment in Wisconsin Aerospace Authority bonds. The bill would include Wisconsin Aerospace Authority bonds in the list of bonds in which the State of Wisconsin Investment Board, the Board of Commissioners of Public Lands, and any local government, school district, or technical college district may invest money. Authority bonds would also be considered legal investments for any bank, trust company, savings bank or institution, savings and loan association, credit union or investment company or a personal representative, guardian, trustee, or other fiduciary.

Applicability of current aeronautical provisions to astronautics. The bill would make numerous changes to provisions pertaining to the regulation of flight and aircraft, the development and operation of airports, liability for damages associated with flight, reciprocity between governments for the development of airport facilities, and flight clearance standards to also make those provisions applicable to spacecraft, spaceports, and astronautics. A different standard, however, would be established for spaceports relative to the regulation of approach space. Under AB 770, the height of structures, buildings, and natural growth could be restricted within five miles of a spaceport site, whereas the current law restrictions applying to airports may extend three miles from the airport site.

Provisions Pertaining to the Department of Transportation and the State

As noted above, AB 770 would make the Authority eligible to receive funding from DOT's existing appropriations for astronautics assistance. The DOT Secretary would be permitted to use state funds to assist the Authority in matching federal aid that may become available to the state or available for specific projects or joint projects within the state or in an adjoining state. The state would be required to promote the development of a spaceport system in the state or joint spaceports in Wisconsin and those in adjoining states. Astronautics would be included in the list of activities on which the Department would be permitted to expend state and federal funds for planning, promotion, and protection.

The DOT Secretary would be required to coordinate state aviation activities with the Authority and be required to inform himself or herself regarding all federal laws that affect astronautics. The Authority would be required to cooperate with the Secretary. The Secretary would be empowered to confer with or hold joint hearings with any federal astronautical agency.

The bill would also establish an advance land acquisition loan program for spaceport projects similar to an existing advance land acquisition program for airport projects, except that loans would have to be paid within ten years, rather than in five years under the current program for airport land acquisitions, and the overall limit for outstanding astronautics loans would be \$10,000,000, rather than \$6,500,000 for the current program. Specifically, under the program, the Department would be required to administer an advance land acquisition loan program to assist a county, city, village, town, or an owner of a spaceport in acquiring land necessary for spaceport projects. The Department would be given all powers necessary and convenient to implement the program, including the following powers: (a) to specify conditions of eligibility for loans, including a

mandatory requirement that the land to be acquired must be part of a planned spaceport improvement project or a land acquisition project that is essential to future spaceport development or to the safety of spacecraft using the spaceport; (b) to receive applications for loans and to prescribe the form, nature, and extent of the information which shall be contained in applications; (c) to establish standards for the approval of loans under this section, including a mandatory requirement that no loan may be made for an amount greater than 80% of the Department's assessment of the value of the property; (d) to enter into loan agreements with applicants to ensure the proper use and prompt repayment of loans; (e) to acquire lands as the designated agent of a loan recipient; and (f) to audit and inspect the records of loan recipients. Any loan agreement would have to include the requirements that the loan be repaid within a period not to exceed ten years and that the proceeds of any state or federal land acquisition funding received be fully pledged to repayment of the loan. The Department would be prohibited from making a loan for more than 80% of the estimated land acquisition costs, including the costs of any necessary project plans and environmental studies. The loan agreement would be required to designate DOT as the loan recipient's agent in the acquisition of the land. Title to the land acquired would be held by the loan recipient, but the Department would be allowed to retain a security interest in the land until the loan is repaid. The loan agreement would have to require the payment of interest and reasonable costs incurred by the Department.

The Department would make loans under the program from the SEG appropriation for aeronautics and astronautics assistance. The total outstanding balance of loans for astronautics land acquisition could not exceed \$10,000,000. The bill would specify that the Department may adopt rules as necessary to implement the program.

The bill would also include the Authority in the list of entities (primarily local governments) that are considered to have given consent to participate in the Department's unified certification disadvantaged business program if they accept federal aid for projects.

The Authority would be included, along with other existing authorities, in a list of agencies that the Department of Administration has freedom of access to examine books and accounts. The Authority would be required to cooperate with DOA in the exercise of DOA's duties.

Applicability of State Laws to the Wisconsin Aerospace Authority

As noted in the summary in brief, AB 770 includes provisions that would provide similar treatment to the Wisconsin Aerospace Authority as for other state-created authorities with respect to various state laws. There are, however, two exceptions. First, the bill would exclude the Authority from provisions requiring the Legislative Audit Bureau to audit the records of every state department, board, commission, independent agency, and authority. The Authority would, likewise, be exempted from a requirement to provide to LAB an annual report on all receivables due the state, and would be excluded from the definition of "department" for other provisions related to the Audit Bureau, which has the effect of excluding the Authority from LAB program

reviews. Second, the bill would exclude the Authority from provisions related to the code of ethics for public officials and state employees.

The Wisconsin Aerospace Authority would, along with other authorities, be included in the definition of, variously, "agency," "state agency," or "department," in provisions related to the following: (a) the employment of election officials; (b) the procedures used for the submission of any required reports to the Legislature; (c) the regulation of lobbying; (d) general provisions pertaining to the Department of Administration; (e) the Women's Council; (f) requirements for agencies to provide certain financial information to DOA; (g) dual employment; (h) purchasing; (i) historically significant furnishings; (j) the Department of Natural Resources' duties with respect to cooperation with state agencies in the management of state trails; (k) restrictions on the servicing of mobile air conditioners or refrigeration equipment and the dismantling of mechanical vapor compression refrigeration equipment; and (L) the Office of State Employment Relations. The bill would also include the Authority, along with other authorities, in the definition of "local government" in provisions related to the local government pooled-investment fund and would include the Authority in a list of entities that are prohibited from submitting a claim for compensation for damages associated with well contamination.

The Wisconsin Aerospace Authority would, along with other authorities, be excluded in the definition of "agency" for the purposes of provisions related to the following: (a) gasohol, alternative fuels, and hybrid-electric vehicles; (b) petty cash accounts; (c) the payment of interest on late payments under contract; (d) claims against the state; (e) federal indirect cost reimbursement; (f) engineering, architectural, project management, and other building construction services by DOA; and (g) DOA risk management. The bill would also exempt the Authority, as is the case for existing authorities, from provisions related to the surveillance by state agencies of its employees. As is the case for the University of Wisconsin Hospital and Clinics Authority, the Authority would be excluded from a requirement to award orders for materials, supplies, and equipment on the basis of life cycle cost estimates.

Definitions

Assembly Bill 770 would establish the following definitions for terms used in the creation of the Wisconsin Aerospace Authority provisions:

- "aerospace facilities" means facilities and infrastructure in the state used primarily to provide aerospace services, including: (a) laboratories and research facilities; (b) office, storage, and manufacturing facilities; (c) instructional and other educational facilities; (d) space museums; and (e) other buildings, equipment, and instruments related to the operations of the aerospace industry or to providing aerospace services;
- "aerospace services" means services that promote, advance, and facilitate space exploration and space-related commercial, technological, and educational development in this state, including: (a) space-related research, experimentation, and development of technology and other

intellectual property; (b) space-related business incubator services or services for start-up aerospace companies; (c) programs, projects, operations, and activities to develop, enhance, or provide commercial and noncommercial space-related opportunities for business, industry, education, and government; (d) services or activities that promote the commercialization of the space and aerospace industry and space-related economic growth; (e) services or activities that promote and facilitate space-related educational opportunities and tourism, including educational initiatives and operation or sponsorship of space museums and tourist attractions; (f) consulting services; and (g) administrative services;

- "spaceport" means any area of land or water that is used, or intended for use, as a spacecraft launch or landing area and any appurtenant areas that are used, or intended for use, for spaceport buildings or other spaceport facilities or rights-of-way, together with all spaceport buildings and facilities located thereon;

- "spaceport facilities" means facilities and infrastructure that are located within a spaceport and related to the operation or purpose of the spaceport, including: (a) spaceport launch or landing areas; (b) launch or landing control centers or other facilities; (c) structures, mechanisms, or devices for communicating with or navigating or tracking spacecraft; (d) buildings, structures, equipment, or other facilities associated with spacecraft construction, development, assembly, processing, testing, or evaluation; (e) buildings, structures, equipment, or other facilities associated with payload loading, assembly, processing, testing, or evaluation; (f) space flight hardware, software, or instrumentation; (g) facilities appropriate to meet the transportation, electric, gas, water and sewer, flood control, waste disposal, and other infrastructure needs within the spaceport; (h) facilities to meet public safety needs within the spaceport, including any facility related to spaceport security and emergency services such as fire and ambulance; (i) administrative facilities; and (j) other buildings, equipment, and instruments related to spaceport operations or the providing of spaceport services;

- "spaceport services" means any services provided in connection with the operation, management, or control of a spaceport or spaceport facilities, including: (a) the launching or landing of spacecraft; (b) communicating with or navigating or tracking spacecraft; (c) construction, development, assembly, processing, testing, or evaluation of spacecraft or payload; (d) loading spacecraft payload; (e) spaceport security and emergency services; and (f) administrative services;

- "spaceport improvement project" means any project to acquire, construct, develop, plan, design, establish, create, improve, enlarge, reconstruct, or equip any spaceport or spaceport facility;

- "spaceport territory" means a spaceport of the Authority in the state and any additional aerospace facilities associated with the spaceport that are in the immediate vicinity of the spaceport;

- "spacecraft" means any contrivance invented, used, or designed for navigation or flight beyond the Earth's atmosphere, including rockets, missiles, capsules, modules, and other vehicles, whether with or without passengers;
- "spacecraft launch or landing area" means any area used, or intended for use, for launching or landing spacecraft or for surface maneuvering, positioning, or preparation of spacecraft for imminent launching or immediately after landing, including any launch pad, landing area, or launch or landing control center;
- "astronautics" means the science and art of spacecraft flight and all activities related thereto;
- "Wisconsin Space Grant Consortium" means the statewide regional consortium designated as such by the federal administrator of the National Aeronautics and Space Administration;
- "payload" means any property, cargo, or persons transported by spacecraft; and
- "recovery" means the recovery of any spacecraft or payload, or any part of any spacecraft or payload, including any appurtenance, instrument, or equipment, that has detached from a spacecraft in flight or upon launch or landing.

The existing definition of "aircraft" would be amended to specify that it does not include spacecraft, and the definition of the term "aeronautics" would be amended to specify that it pertains to aircraft flight (excluding spacecraft flight).

FISCAL EFFECT

In its fiscal note prepared for AB 770, the Department of Transportation indicates that the fiscal effect on the Department's programs is indeterminate, due to the Department's lack of experience in the development of spaceport projects and lack of knowledge of the feasibility of such projects. The primary potential impact of the bill would be the funding of spaceport improvement projects from the Department's aeronautics assistance appropriation. The Department indicates that any spaceport projects that are funded from the current aeronautics assistance program would have the effect of reducing funding for airport development projects. The SEG appropriation for aeronautics assistance is funded at \$12,363,100 in 2005-06 and \$12,612,300 in 2006-07. DOT indicates that about 90% of the SEG funds available for airport development projects is used to match federal airport improvement aid, while the remainder is generally used for airport projects that are not eligible for federal aid. A reduction in the amount of SEG funds available for airport projects, therefore, could require a higher level of local match for federally-funded airport projects.

The Department of Administration also prepared a fiscal note for AB 770, indicating that its costs associated with the bill (including the review of the Authority's audited financial statements and business plan and providing assistance in the issuance of the Authority's bonds) would be minimal.

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