



Legislative Fiscal Bureau

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January 31, 2011

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: January 2011 Special Session Assembly/Senate Bill 6: Wisconsin Economic Development Corporation

January 2011 Special Session Assembly Bill 6 and Senate Bill 6, are identical bills which would create the Wisconsin Economic Development Authority (WEDC). The bills were introduced on January 11, 2011. The bills were referred to the Senate Committee on Economic Development and Veterans and Military Affairs, and to the Assembly Committee on Jobs, Economy and Small Business. The committees held a joint public hearing on the bills on January 13. On January 27, 2011, the Assembly Committee on Jobs, Economy, and Small Business adopted Assembly Amendments 3, 4, 5, and 6 to SS AB 6, and recommended the bill for passage, as amended, by a vote of 8 to 5. Also, on January 27, 2011, the Senate Committee on Economic Development, Veterans and Military Affairs adopted Senate Amendments 13, 14, 15, and 16 to SS SB 6, and recommended the bill for passage, as amended, by a vote of 5 to 2.

BACKGROUND

The Wisconsin Department of Commerce is generally charged with fostering economic development in Wisconsin. Commerce is organized into six divisions and the Secretary's Office shown in the Department's 2010 organizational chart (Attachment 1). Commerce administers four general program areas: economic and community development; housing assistance; regulation of industry, safety and buildings; and executive and administrative services.

The Department is responsible for technical and financial assistance programs that are designed to assist businesses in planning, site selection, initial capitalization, permitting, employee training, research and development, business expansion, and export development. Financial and technical support for community development projects are provided through federal small cities community development block grant (CDBG) programs and the Main Street program for

downtown revitalization. The Bureau of Supportive Housing provides financial assistance to local units of government and housing-related organizations by managing federal and state funding programs that are designed to expand and improve affordable housing for the elderly, people with disabilities, low- and moderate income residents, and homeless persons. The Division of Environmental and Regulatory Services regulates underground and above ground flammable or combustible liquid storage tank systems, provides petroleum product quality assurance, and administers low and medium risk petroleum contaminated sites and the Petroleum Environmental Cleanup Fund Award (PECFA) program. The Division of Safety and Buildings develops, administers, and enforces state laws and rules related to building construction, safety and health, including state laws related to elevators, 1- and 2-family dwellings (including building, electrical, plumbing, ventilation and fire codes), and public swimming pools. The Division also conducts plan reviews, inspections, and investigations, issues permits and credentials, and provides training.

The 2011-12 adjusted base level funding for the Department is \$183 million with 393 authorized positions as shown in Attachment 2.

SUMMARY OF BILL

Special Session AB 6 and SB 6 are identical bills (referred to as "the bill") that would create the Wisconsin Economic Development Corporation (WEDC) as an Authority, which is a public body corporate and politic. The WEDC would have a board of directors (Board) that would include the Governor, who would serve as chairperson, and eleven members nominated by the Governor, and appointed with the advice and consent of the State Senate. The Secretary of Administration and the Secretary of Revenue would be nonvoting members of the Board. A majority of the voting members of the Board would constitute a quorum for the purpose of conducting business, exercising powers, and all other purposes, notwithstanding vacancies. The Board could take action based on a majority vote by the voting members present.

The Board would be required to develop and implement economic programs to provide business support, expertise, and financial assistance to companies that were investing and creating jobs in Wisconsin, and to support new business start-ups, and business expansion and growth in the state. The Board would have authority to develop and implement any other programs related to economic development in Wisconsin, and have all the powers necessary and convenient to carry out its responsibilities. In addition, the Board would be specifically authorized to: (a) adopt, amend, and repeal any bylaws, policies, and procedures for regulating its affairs and conducting its business; (b) have a seal and alter it; (c) maintain an office; (d) sue and be sued; (e) accept gifts, grants, loans, or other contributions from private and public sources; (f) establish the corporation's annual budget, and monitor the fiscal management of the corporation; (g) execute contracts and other instruments required for the operation of WEDC; (h) employ any officers, agents, and employees that it may require, and determine their qualifications, duties, and compensation; (i) issue notes, bonds, and any other obligations; (j) make loans and provide grants; (k) incur debt; (L) procure liability insurance; and (m) elect to participate in the Wisconsin retirement system.

The Governor would be required nominate a chief executive officer (CEO) for WEDC who would be appointed with the advice and consent of the Senate, to serve at the pleasure of the Governor. The Board would be authorized to delegate to the CEO any powers and duties that the Board considered proper, and would determine his or her compensation.

Authority employees would not be state employees. However, the bill would include WEDC in the definition of an employer under Chapter 40 of the statutes relating to the Wisconsin Retirement System (WRS) and would include WEDC in the definition of state agency in Chapter 40, but only if the Authority elects to become a participating employer under the WRS. [If the WEDC chooses to participate in the WRS, the Authority's employees would also be eligible to participate in group insurance and other benefit programs offered by the state to its employees, including state employee health insurance coverage and the state's deferred compensation program.]

The Board could request that Commerce provide staff or other resources to assist the Board in its activities and the Board and Commerce would be required to coordinate their economic development programs, to the greatest practicable extent.

The bill would create a statutory appropriations schedule (section 20.192) for fiscal years 2009-10 and 2010-11 to fund WEDC activities, including a GPR, PR, FED, and two SEG, continuing appropriations. The bill would not specifically appropriate any funding for these appropriations in the schedule that would be created. The specific appropriations would be under the program title of promotion of economic development, and include:

- a. A continuing GPR operations and programs appropriation for the operations of WEDC and for funding economic development programs developed and implemented by the Board [20.192 (1) (a)].
- b. A continuing PR appropriation for transferred general fund moneys from the Department of Commerce for the operations of WEDC and for funding economic development programs developed and implemented by the Board [20.192 (1) (k)].
- c. A continuing federal aid (FED) programs appropriation for federal moneys allocated to fund programs administered by WEDC [20.192 (1) (m)].
- d. A continuing SEG recycling and renewable energy fund programs appropriation for programs administered by WEDC [20.192 (1) (r)].
- e. A continuing SEG appropriation for segregated fund moneys transferred from the Department of Commerce for the operations of WEDC and for funding economic development programs developed and implemented by the Board [20.192 (1) (sk)].

The bill would require the Board to submit an annual report to the Legislature on the activities of WEDC and the programs developed and implemented by the Board. The bill would provide statutory limited liability under which the state or any political subdivision, or any officer,

employee, or agent of such governmental entities, who was acting within the scope of his or her employment would not be liable for any debt, obligation, act, or omission of WEDC.

Before July 1, 2011, the bill would authorize the Secretary of Administration to abolish any position from the Department of Commerce and to transfer funds from any Commerce GPR, PR, SEG, or certain federal appropriations to the corresponding WEDC appropriation for transferred funds, unless the transfer would violate federal conditions on the use of funds, or the state or federal constitution.

The bill includes statutory cross references that would exclude WEDC from state law provisions related to state energy conservation activities; the state building program; Department of Administration (DOA) rules on employee surveillance; the definition of state agency under DOA administrative provisions; required use of alternative fuels; the state resource recovery and recycling program; DOA state agency finance provisions for petty cash accounts; state agency interest on late payments and submission of improper claims for payment; indirect cost reimbursement for federal funds; local ordinances or regulations, including those relating to material used, permits, supervision or installing of construction, payment of permit fees, or other restrictions; DOA powers related to charges for building construction services; and DOA risk management fees. The cross references would include WEDC under state law provisions related to state agency reports to the Legislature; lobbying laws, DOA and Legislative Fiscal Bureau access to records; compliance with state, rules, and regulations and local zoning laws; maintaining financial accounts, records and information as prescribed by DOA; nondiscrimination clauses in contracts; claims for compensation from well contaminants; and servicing and repair of certain ozone depleting equipment. The Authority would be provided a property tax exemption and state income/franchise and sales tax exemptions. Although similar treatment is not uniformly provided to all other boards, authorities or similar entities (such as the Health Insurance Risk-Sharing Plan Authority and the University of Wisconsin Hospitals and Clinics Authority), none of these provisions would apply exclusively to WEDC.

The bill would exclude WEDC from the definition of agency under state employment relations law (Chapter 230); Authority employees would, therefore, not be subject to state employment relations law applicable to most state employees. WEDC would be exempted from the general prohibition on dual employment, similar to the treatment of the Health Insurance Risk Sharing Plan Authority. However this prohibition applies to most other Authorities (including the Wisconsin Housing and Economic Development Authority, the UW Hospitals & Clinics Authority, the Health and Educational Facilities Authority, the Bradley Center Corporation, and the Fox River Navigational System Authority). While WEDC would not be excluded from review by the Legislative Audit Bureau, it is not specifically enumerated as being subject to review as has been the practice for the creation of some recent authorities (such as the Lower Fox River Remediation Authority, the Wisconsin Aerospace Authority, and professional football and baseball districts). The bill would not provide a specific exemption for WEDC from coverage of the state ethics, open records and open meetings laws. Therefore, the Code of Ethics for Public Officials and Employees would apply to the CEO and to the WEDC Board members. Further, the CEO and Board members

would file annual statements of economic interests. State open meetings and records provisions would also apply.

SENATE AMENDMENT 13 AND ASSEMBLY AMENDMENT 4 (Identical Amendments)

Senate Amendment 13 and Assembly Amendment 4 would modify the bill to provide that the DOA Secretary would have authority to transfer funds from Commerce to WEDC until the later of July 1, 2011, or the effective date of the 2011-13 biennial budget act. (This amendment would need a technical correction to reconcile with SA 15 and AA 5.)

SENATE AMENDMENT 14 AND ASSEMBLY AMENDMENT 3 (Identical Amendments)

Senate Amendment 14 and Assembly Amendment 3 would modify the composition of the WEDC Board to include 6 rather than 11 members nominated by the Governor, and appointed with the advice and consent of the Senate, to serve at the pleasure of the Governor. In addition, under the amendment, the Board would also include: (a) three members appointed by the Speaker of the Assembly, consisting of one majority member and one minority member, appointed as are members of Assembly standing committees, and one person employed in the private sector, to serve at the Speaker's pleasure; and (b) three members appointed by the Senate Majority Leader, consisting of one majority member and one minority member, appointed as are members of Senate standing committees, and one person employed in the private sector to serve at the Majority Leader's pleasure. Under the amendments, the Board would have 13 members (the Governor, six gubernatorial appointments and six legislative appointments).

SENATE AMENDMENT 15 AND ASSEMBLY AMENDMENT 5 (Identical Amendments)

Senate Amendment 15 and Assembly Amendment 5 would delete two statutory appropriations created for WEDC under the bill:

- a. A continuing SEG recycling and renewable energy fund appropriation for programs administered by WEDC [20.192 (1) (r)].
- b. A continuing SEG appropriation for segregated fund moneys transferred from Commerce for the operations of WEDC and for funding economic development programs developed and implemented by the WEDC Board.

The amendments would limit the DOA Secretary's authority to abolish positions in Commerce to staff assigned duties relating to economic development programs. The amendment would also limit the DOA Secretary's authority to transfer Commerce funds to WEDC to GPR, PR and FED appropriations under Economic and Community Development [20.143 (1)] and Executive and Administrative Services [20.143 (4)] that are used to fund Commerce economic development programs. This would preclude the transfer of SEG funds (such as funds from the recycling and renewable energy fund, petroleum inspection fund, and environmental fund) from Commerce to

WEDC. It would also preclude the transfer of funds (and the elimination of positions) related to Commerce's housing, PECFA, petroleum inspection, and safety and buildings programs. Funds transferred and positions deleted from Executive and Administrative services [20.143 (4)] would be limited to those that are related to Commerce economic development programs.

Attachment 3 shows the appropriations and the fiscal year 2010-11 budgeted levels that would remain subject to transfer under the amendment. However, it should be noted that FY11 is more than half over, so amounts actually available to transfer would be much lower than the amounts shown in the attachment. Further, Commerce may be reducing expenditures in a number of these appropriations in order to allow for lapses and transfers to the state general fund required under 2009 Act 28. In addition, although certain federal appropriations are listed in Attachment 3, funds could only be transferred from these appropriations to the extent allowed under federal law.

SENATE AMENDMENT 16 AND ASSEMBLY AMENDMENT 6 (Identical Amendments)

Senate Amendment 16 and Assembly Amendment 6 would include WEDC in a listing of state agencies that are subject to a statutory requirement enacted under 2007 Wisconsin Act 125 that requires, by July 1, 2012, the Legislative Audit Bureau (LAB) to prepare a financial and performance evaluation of the economic development programs administered by the Department of Commerce, University of Wisconsin System, Department of Agriculture, Trade, and Consumer Protection (DATCP), Department of Natural Resources (DNR), Department of Tourism, Wisconsin Housing and Economic Development Corporation (WHEDA), Wisconsin Technical College System (WTCS), and Department of Transportation. The amendments would require the LAB to conduct biennial financial and program evaluation audits of the economic development programs administered by WEDC, beginning in 2013. LAB would charge WEDC for the costs related to the biennial audit. WEDC would also be enumerated as a specific Authority subject to LAB's audit authority.

Under the amendments, beginning on January 1, 2012, WEDC would be subject to the general state prohibition on dual employment, which precludes full-time agency employees from holding any other position with a state agency or authority from which the individual receives more than \$12,000 in compensation.

The amendments would require that, for each economic development program developed and implemented by the WEDC Board, the Board: (a) establish clear and measurable goals for the program that are tied to statutory or programmatic policy objectives; (b) establish at least one quantifiable benchmark for each program goal; (c) require that each recipient of a grant or loan under the program submit a report to WEDC, and that each contract with a grant or loan recipient specify the frequency and format of, and the performance measures to be included in, the report; (d) establish a method for evaluating the projected results of the program with actual outcomes, as determined by evaluating the program's objectives and benchmarks; and (e) annually, independently verify, from a sample of grants and loans, the accuracy of the information submitted by recipients to WEDC.

The amendments would further require that, for each economic development program developed and implemented by the WEDC Board, the Board require:

a. That each recipient of an economic development program grant or loan of at least \$100,000 submit to WEDC a verified statement describing the recipient's expenditure of the grant or loan funds, signed by both an independent certified public accountant and the director or principal officer of the recipient, to attest to the accuracy of the verified statement. Also, the Board would have to require that the recipient of a grant or loan make documents supporting the verified statement available for inspection, and include this requirement in the contract with the grant or loan recipients.

b. That the Board, if a recipient of an economic development program grant or loan submitted false or misleading information to WEDC, or failed to comply with the terms of the contract entered into with WEDC, and without the recipient providing satisfactory explanation for the noncompliance, do all of the following: (1) recoup payments made to the recipient; (2) withhold future payments to be made to the recipient; and (3) impose a financial penalty on the recipient.

The amendments would require the WEDC Board to submit, by January 1, to the chief clerk of each house for distribution to the Legislature, a report identifying the economic development projects that the WEDC Board intends to develop and implement during the calendar year. In addition, by October 1 of each year, the WEDC Board would be required to submit to the Joint Legislative Audit Committee and the Chief Clerk of each house, for distribution to the Legislature, a report for the previous fiscal year on each of the WEDC economic development programs that contained all of the following: (a) a description of each program; (b) a comparison of expected and actual program outcomes; (c) the number of grants made under the program; (d) the number of loans made under the program; (e) the amount of each grant and loan made under the program; (f) the recipient of each grant or loan made under the program; (g) the sum total of all grants and loans awarded to and received by each recipient under the program; and (h) any recommended changes to the program. The WEDC Board would be required to make this information accessible to the public on an Internet-based system.

"Economic development program" would be defined to mean a program or activity having the primary purpose of encouraging the establishment and growth of business in this state, including the creation and retention of jobs.

FISCAL EFFECT

The bill would create the Authority and related Board to develop and implement state economic development programs. A separate appropriations schedule would be created in the statutes for WEDC for 2009-10 and 2010-11 which would include a GPR, FED, PR and two SEG appropriations. The bill would not directly fund any WEDC appropriation, however the Secretary of Administration would be authorized to transfer existing funds from the Department of Commerce to WEDC for operations and economic development programs before July 1, 2011.

Consequently, these provisions would not be expected to have a net fiscal effect.

The bill also would authorize the Secretary of Administration to abolish any position under the Department of Commerce. If the Secretary were to eliminate positions at Commerce and not use the related funding for WEDC or other purposes, state expenditures would be reduced. However, the bill does not require the Secretary to take such actions.

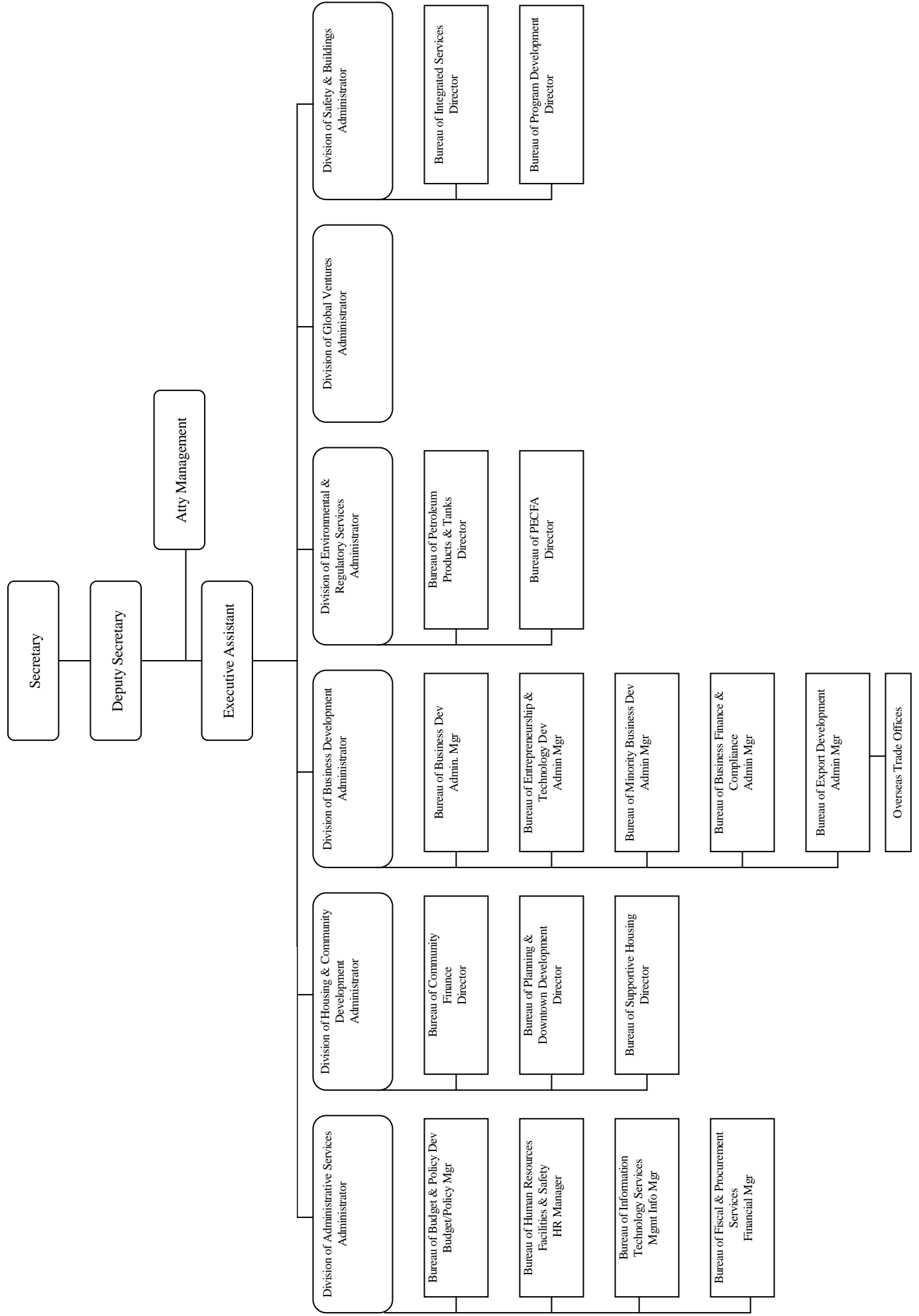
The bill would authorize the Authority to issue bonds and contains no limits on bonding authority. However, any bonds issued would not be general obligations of the state. The Board would be directed to provide business support, expertise and financial assistance to Wisconsin businesses; however no specific programs would be created. Uniform definitions of economic development activities, goals, accountability measures and reporting requirements that were applied to other state entities involved in economic development (such as Commerce, WHEDA, UW System, and DATCP) under 2007 Act 125 would not apply to WEDC. No funding would be directly provided to the Authority, though the DOA Secretary would be authorized to transfer from Commerce appropriations (GPR, PR and SEG) to WEDC for the remainder of this fiscal year. Transfers would not be limited to Commerce economic development related appropriations. No current Department of Commerce duties or programs would be modified or repealed. Administration officials indicate the intent would be to reorganize Commerce funding and functions and flesh out WEDC funding and programs under the biennial budget bill. Attachment 4 shows the \$41.4 million in base-level Commerce appropriations for economic development grant and loan programs for state businesses.

Senate Amendments 13, 14, 15, and 16 and Assembly Amendments 3, 4, 5, and 6, would modify the DOA Secretary's authority to abolish Commerce positions and transfer Commerce funds to apply during the 2010-11 fiscal year, unless the 2011-13 biennial budget is effective after fiscal year end, modify the composition of the WEDC Board, limit the DOA Secretary's authority to abolish positions in and transfer funds from Commerce to economic development related functions, require LAB program and financial audits of WEDC, and establish WEDC transparency, accountability and reporting requirements. While the amendments would not have any net fiscal effect, AA 5 and SA 15 would restrict the Commerce appropriations that would be subject to potential transfer to the Authority (to those shown in Attachment 3). Further, under AA 6 and SA 16, LAB would charge WEDC for the cost of a biennial audit. Revenues would be received as program revenue (PR) to cover the costs of the audit each biennium beginning in 2013.

Prepared by: Ron Shanovich
Attachments

ATTACHMENT 1

Commerce 2010 Organizational Chart



ATTACHMENT 2

Commerce Budget by Program FY 2011-12 Base Level

<u>Program</u>	<u>GPR</u>	<u>Staff</u>	<u>FED</u>	<u>Staff</u>	<u>PR</u>	<u>Staff</u>	<u>SEG</u>	<u>Staff</u>	<u>All Funds</u>	<u>Share</u>	<u>All Staff</u>	<u>Share</u>
Economic Development	\$17,434,100	44.85	\$35,873,700	17.05	\$7,425,300	8.00	\$21,680,700	3.25	\$82,413,800	45%	73.15	19%
Housing Assistance	5,128,000	6.80	34,285,300	15.35	1,126,300	0.00	0	0.00	40,539,600	22	22.15	6
PECFA/Safety & Building Regulation	2,815,000	0.00	1,711,600	17.40	32,224,600	165.00	17,936,100	67.30	54,687,300	30	249.70	63
Administrative Services	<u>1,447,000</u>	<u>7.50</u>	<u>459,900</u>	<u>6.90</u>	<u>3,680,600</u>	<u>33.45</u>	<u>0</u>	<u>0.00</u>	<u>5,587,500</u>	<u>3</u>	<u>47.85</u>	<u>12</u>
Totals	\$26,824,100	59.15	\$72,330,500	56.70	\$44,456,800	206.45	\$39,616,800	70.55	\$183,228,200		392.85	

ATTACHMENT 3

Commerce Appropriations Subject to Potential Transfer Under AA 5 and SA 15

20.143 Commerce, department of

(1) Economic and Community Development

(a)	General program operations	GPR	\$3,959,900
(b)	Economic development promotion, plans and studies	GPR	28,200
(bk)	Wisconsin venture fund	GPR	136,000
(c)	Wisconsin development fund	GPR	9,462,900
(cp)	Rural outsourcing grants	GPR	250,000
(d)	High-technology business development corporation	GPR	534,700
(dr)	Main street program	GPR	383,100
(er)	Rural economic development program	GPR	569,300
(fi)	Forward innovation fund; grants and loans	GPR	884,600
(fj)	Manufacturing extension center grants	GPR	1,126,400
(fw)	Women's business initiative corporation	GPR	99,000
(g)	Gifts, grants, and proceeds	PR	492,000
(gh)	Renewable energy fund; repayments	PR	0
(gm)	Administration of grants and loans	PR	216,100
(gr)	Woman-owned business certification processing fees	PR	291,000
(gv)	Wisconsin development fund; entrepreneurial assistance grants	PR	45,000
(ie)	Wisconsin development fund, repayments	PR	3,801,500
(ig)	Gaming economic development and diversification; repayments	PR	328,500
(im)	Minority business projects; repayments	PR	567,200
(io)	Forward innovation fund; repayments	PR	0
(ir)	Rural economic development loan repayments	PR	113,900
(jp)	Manufactured housing rehabilitation and recycling	PR	65,700
(kc)	Clean air act compliance assistance	PR	232,500
(kf)	American Indian economic development; technical assistance	PR	88,300
(kg)	American Indian economic liaison and gaming grants specialist and pgm mktg	PR	104,200
(kj)	Gaming economic development and diversification; grants and loans	PR	1,079,400
(m)	Federal aid, state operations	FED	1,307,100
(mr)	Loans to manufacturing businesses	FED	0
(n)	Federal aid, local assistance	FED	<u>34,400,000</u>

General Program Revenue	\$17,434,100
Program Revenue	7,425,300
Federal Revenue	<u>35,707,100</u>
TOTAL -- Program 1	\$60,566,500

(4) Executive and Administrative Services

(a)	General program operations	GPR	\$1,447,000
(g)	Gifts, grants and proceeds	PR	12,000
(k)	Sale of materials or services	PR	39,600
(kd)	Administrative services	PR	3,629,000
(pz)	Indirect cost reimbursements	FED	<u>459,900</u>

General Program Revenue	\$1,447,000
Program Revenue	3,680,600
Federal Revenue	<u>459,900</u>
TOTAL -- Program 4	\$5,587,500

ATTACHMENT 4

Commerce 2011-12 Base Level State Business Development Funding

<u>Program</u>	<u>Base Funding</u>	
Wisconsin Development Fund (WDF)	\$9,462,900	GPR
	<u>3,801,500</u>	PR
Total	13,264,400	
Gaming Economic Diversification	1,079,400	GPR
	<u>328,500</u>	PR
Total	1,407,900	
Forward Innovation Fund	884,600	GPR
	<u>567,200</u>	PR
Total	1,451,800	
Rural Economic Development (RED)	569,300	GPR
	<u>113,900</u>	PR
Total	683,200	
Brownfields Grants	6,570,500	SEG
Renewable Energy Grants & Loans	14,850,000	SEG
Rural Outsourcing Grants	250,000	GPR
Wisconsin Venture Fund	136,000	GPR
Entrepreneurial Assistance Grants	45,000	PR
Manufacturing Extension Center Grants	1,126,400	GPR
Wisconsin Technology Council Grants	534,700	GPR
Woman's Business Initiative Corporation	99,000	GPR
Diesel Truck Idling Reduction Grants	<u>1,000,000</u>	SEG
Total by Funding Source	\$13,062,900	GPR
	5,935,500	PR
	<u>22,420,500</u>	SEG
Total All Funds	\$41,418,900	