



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

September 14, 2017

TO: Members
Wisconsin State Assembly

FROM: Bob Lang, Director

SUBJECT: Amendments to August 2017 Special Session SSA 1 to SB 1: Foxconn/Fiserv
Legislation

On September 12, 2017, the Senate adopted SSA 1, as amended by SA 1 and SA 13, and passed the bill on a vote of 20-13. This memorandum summarizes the changes made by Senate Amendments 1 and 13.

JOB CREATION THRESHOLDS FOR EITM ZONE CAPITAL EXPENDITURE CREDITS (SA 1)

As amended by the Joint Committee on Finance, the bill would have specified that, before certifying a business to receive electronics and information technology manufacturing (EITM) zone capital expenditure credits, the Wisconsin Economic Development Corporation (WEDC) would have to attempt to ensure that the business has sought, and is seeking, to satisfy certain hiring goals in this state, as identified by WEDC, in connection with the business's capital expenditures in the zone. SA 1 to SSA 1 deleted this provision. Instead, WEDC would be required to establish job creation thresholds for a business certified for EITM zone credits for each year in the zone, and the claiming of EITM zone capital expenditure credits by that business would have to be tied to those job creation thresholds.

APPEAL OF DECISIONS RELATING TO ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE (SA 13)

Senate Amendment 13 would delete the SSA 1 provision which would provide for direct review by the Wisconsin Supreme Court of Circuit Court decisions related to an EITM zone. Rather, SA 13 would establish a specific appeals process through the Court of Appeals which must be initiated within 30 days after the date of a judgement or order. Under SA 13, the following would apply:

a. The revised appeals process related to a judgment or order vacating, enjoining, reviewing, or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an EITM zone would supersede all inconsistent provisions under current law addressing appeals and writs of error.

b. An appeal to the Court of Appeals from a judgment or order of the trial court vacating, enjoining, reviewing, or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an EITM zone may be taken to as a matter of right and is governed by process created under SA 13.

c. A party may initiate an appeal by filing a notice of appeal with the clerk of the trial court in which the order or judgment appealed from was entered and must specify in the notice of appeal the order or judgment appealed from, and pay the filing fee with the notice of appeal. The Clerk of the Circuit Court must transmit to the Court of Appeals, within three days of the filing of the notice of appeal, a copy of the notice of appeal, the filing fee, and a copy of the Circuit Court record of the case. The Clerk of the Court of Appeals must then file the appeal upon receipt of the above items.

d. The appealing party would be required to request a copy of the transcript of the reporter's notes of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within five days after the filing of the notice of appeal.

e. The appealing party, within five days after the filing of the notice of appeal in the Circuit Court, would be required to: (1) file a statement on transcript with the Clerk of the Court of Appeals; (2) file a copy of the statement on transcript with the Clerk of the Circuit Court; and (3) and serve a copy of the statement on transcript on the other parties to the appeal. The statement on transcript must either designate the portions of the transcript that have been requested by the appealing party or contain a statement by the appellant that a transcript is not necessary for the appeal. If a transcript is necessary for the appeal, the statement on transcript must also contain a statement by the court reporter stating the following: (1) the appealing party has requested copies of the transcript or designated portions for each of the other parties and has made arrangements to pay for the original transcript and for all copies for the other parties; (2) the date on which the appealing party requested the transcript and made arrangements to pay for it; and (3) the date on which the transcript is required to be served on the parties.

f. The court reporter must serve copies of the transcript on the parties indicated in the statement on transcript within five days after the date the appealing party requested copies of the transcript.

g. Appeals would generally be governed by the procedures for civil appeals and the current statutory procedures under Chapter 809, Subchapter VI (Rules of Appellate Procedure, Appellate Procedure in the Supreme Court), except as follows:

1. The appealing party must file a brief within 15 days after the filing of the record on appeal.
2. The respondent must file a brief within 10 days after the service of the appealing

party's brief.

3. The appealing party must file within 10 days after the service of the respondent's brief a reply brief or statement that a reply brief will not be filed.

4. Within three days of receipt of the appealing party's reply brief or statement that a reply brief will not be filed, the Court of Appeals must certify the appeal to the Wisconsin Supreme Court.

5. The Wisconsin Supreme Court would be required to give preference to a certification from the Court of Appeals. If the Supreme Court refuses to take jurisdiction of the appeal, the appeal continues in the Court of Appeals as though the certification had not been made.

h. Any judgment or order of a Circuit Court vacating, enjoining, reviewing, or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an EITM zone must be stayed automatically upon the filing of an appeal. Further, any party to the proceeding may apply to the Appellate Court in which the case is pending at the time to request that the stay be modified or vacated.

Under current law, an appeal to the Court of Appeals may be taken as of right or as a discretionary review. There are two methods of taking an appeal as of right. First, for civil cases, an appeal is started by filing a notice of appeal within 45 days after the filing of the judgment or order if a final decision has been entered, or within 90 days after filing if no final decision has been entered. Second, for criminal cases, and involuntary mental health commitments, juvenile dispositions and sexually violent person commitments, (but not for termination-of-parental-rights cases) an appeal is started by filing a notice of intent to pursue postconviction or postdisposition relief within 20 days after imposition of sentence or the final adjudication in a noncriminal case.

Discretionary appeals take two main forms. The Court of Appeals can accept or reject petitions for appeal from nonfinal judgments or orders. The other component of the Court of Appeals' discretionary jurisdiction is the court's power to order an individual or a lower court to do something they are legally obligated to perform or cease performing an action which they are performing.

Once the Court of Appeals takes appellate jurisdiction by a party's filing of a notice of appeal or by the court's granting of a petition for leave to appeal, the first step is to order a transcript and file a statement on transcript within 14 days after the filing of the notice of appeal. After the record is filed, the appellant's brief must be filed within 40 days. The respondent's brief is due 30 days after the latest one of the following: (a) service of the appellant's brief; (b) the date the court accepts the appellant's brief for filing; or (c) the filing of the record in the court of appeals. A reply brief may be filed within 15 days after service of the respondent's brief.

It should be noted that under current law, the Court of Appeals has adopted expedited appeal procedure for cases involving some issues. This fast-tracking procedure involves simplified briefing rules, immediate submission, and disposition by order rather than opinion. Other methods of expediting disposition include providing partial relief before the end of the case and summary disposition. In addition, statutes require certain types of appeals to be given preference.

Under current law, relief pending appeal is not usually automatic and should first be asked for in the Circuit Court.

Under current law, Supreme Court review is a matter of judicial discretion, not of right, and is granted only when special and important reasons are presented. Statutes specify that the "following, while neither controlling nor fully measuring the court's discretion, indicate criteria that will be considered:" (a) a real and significant question of federal or state constitutional law is presented; (b) the petition for review demonstrates a need for the Supreme Court to consider establishing, implementing or changing a policy within its authority; (c) a decision by the Supreme Court will help develop, clarify or harmonize the law, and 1. the case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation, or 2. the question presented is a novel one, the resolution of which will have statewide impact, or 3. the question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the Supreme Court; (d) the Court of Appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the Wisconsin Supreme Court or other Court of Appeals' decisions; or (e) the Court of Appeals' decision is in accord with opinions of the Supreme Court or the Court of Appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.

It should be noted that under current law, the Supreme Court may take jurisdiction of an appeal or any other proceeding pending in the Court of Appeals if: "(a) it grants direct review upon a petition to bypass filed by a party; (b) it grants direct review upon certification from the court of appeals prior to the court of appeals hearing and deciding the matter; or (c) it, on its own motion, decides to review the matter directly."