**Legislative Fiscal Bureau**
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February 16, 2011

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Provisions of Senate Amendment LRB ___ to SS SB 11

This memorandum describes the changes that Senate Amendment LRB ___ would make to January 2011 Special Session Senate Bill 11.

**1. Technical Correction to Tax Credit for New Hires**

2011 Act 3 created an income and franchise tax deduction and credit for businesses that relocate to Wisconsin from outside the state, and 2011 Act 5 created an income and franchise tax deduction based on the increased number of full-time equivalent (FTE) employees hired by a business in Wisconsin. Act 5 includes a provision under the individual income tax specifying that a claimant of the deduction for new FTE hires may not also claim the credit for relocating to Wisconsin. However, the word "credit" should have been "deduction." This amendment makes a technical correction to the Act 5 provisions to use the proper wording.

**2. Tax Incremental Financing District -- Inclusion of Wetlands**

2011 Act 10 exempts an activity affecting a Village of Ashwaubenon wetland from the water quality standards applicable to wetlands and from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice hearing or procedure, penalty, specified rule promulgated, order issued, or ordinance adopted if the activity meets certain requirements, including the site of the activity is zoned for community business use and is part of a tax incremental financing (TIF) district. However, under current law, a TIF district cannot include a wetland. The proposed amendment would modify this limitation to allow a wetland that has been converted in compliance with state law to no longer be a wetland to be included in a TIF district. The amendment would also specify that for an area that is identified on a wetland map and that is

within the boundaries of a TIF district, or is part of a TIF district parcel, the area would be considered part of the TIF district for determining the applicability of exemptions from, or compliance with, water quality standards that are applicable to wetlands.

**3. Medical Assistance Program Changes**

The amendment would specify that all of the provisions relating to the study and implementation of medical assistance (MA) program changes would sunset on January 1, 2015. It is not clear whether an emergency rule promulgated under the procedures established in the bill would remain in effect after that date.

Any emergency rules or plans approved by the Joint Committee on Finance, any amendment to the MA state plan, and any waiver agreements DHS enters into as a result of these provisions would terminate on January 1, 2015 if they are inconsistent with the MA statutes that are in effect as of that date. Further, if MA eligibility for non-disabled, non-pregnant adults is reduced to individuals with family income no greater than 133% of the federal poverty level as of July 1, 2012, as provided under the bill, this group would again become eligible for MA as of January 1, 2015, unless the statutes are modified to reflect this reduction in the eligibility standard for this group.

**4. Medical Assistance Benefits Funding**

| | 2010-11 | |
|---|---|---|
| Change to Bill | $42,700,000 | GPR |
| | 82,600,000 | FED |

The amendment would increase medical assistance (MA) benefits funding in the bill by an additional $42.7 million GPR in 2010-11 to enable DHS to partially fund June, 2011, capitation payments to health maintenance organizations and other entities that provide MA services through managed care in the current fiscal year to take advantage of the higher federal medical assistance percentage (FMAP) that applies to MA benefit payments made through June 30, 2011. The amendment would increase estimated FED funding for MA benefits costs by $82.6 million in 2010-11.

The bill would provide $134 million GPR and $6.7 million SEG from the MA trust fund in 2010-11 to address a projected shortfall in funding for MA benefits during the 2009-11 biennium. That projected shortfall assumes that DHS, consistent with past practice, will defer certain June, 2011, capitation payments to managed care entities until July, 2011.

Federal matching funds help support the cost of benefits under the state's MA program at a rate based on the state's FMAP. In recent years, Wisconsin's FMAP has been approximately 60.0%, meaning federal matching funds supported 60.0% of most of the program's benefit costs. The American Recovery and Reinvestment Act of 2009, however, temporarily increased states' FMAPs during the period October 1, 2008, though December 31, 2010. That period was subsequently extended through June 30, 2011. As a result of that extension, Wisconsin's FMAP during the final

quarter of state fiscal year 2010-11 (April 1, 2011, through June 30, 2011) is expected to be 65.92%. Under current law, that FMAP will revert to 60.16% on July 1, 2011.

With the scheduled decline in the state's FMAP beginning July 1, 2011, deferring June, 2011, capitation payments will result in the state receiving less federal matching funds to support those payments. The amendment would increase funding for MA benefits by $42.7 million GPR in 2010-11 in order to pay a portion of the June, 2011, MA capitation payments that would otherwise be deferred into July, 2011. Doing so would generate approximately $7.2 million in additional federal matching funds in 2010-11, compared to the federal matching funds that would be generated if the payments were made in July, 2011. The amendment would enable the state to pay $42.7 million GPR in 2010-11 to make MA capitation payments that would cost $49.9 million GPR if they are made in July, 2011. If enacted, the administration indicates that the $49.9 million GPR savings for MA benefits that would be realized in 2011-12 will be included in the Governor's 2011-13 biennial budget bill as a GPR lapse from the Department of Health Services in the 2011-13 biennium.

**5. Sale or Contractual Operation of State-Owned Power Plants**

*Joint Finance Review.* Specify that the Department of Administration (DOA) could not sell, enter a lease, or contract for any of the operations of a state-owned heating, cooling or power plant unless such a transaction was approved by the Joint Committee on Finance under a 14-day passive review process. Require the Department of Administration to submit the following to the Committee as part of any request: (a) estimated value of the facility as determined by DOA and at least one qualified privately-owned assessor; (b) full cost of retiring remaining debt for the facility; (c) a cost benefit analysis that considers the short-term and long-term costs and benefits to the state for selling, leasing, or entering a contract for facility operations; (d) the length and conditions of any proposed sale, lease or service agreement between the state and a proposed purchaser; (e) the estimated budgetary impact for affected state agencies for at least the current and following biennium; and (f) any other information requested by the Committee.

*Repayments of Tax Exempt Bonding.* Authorize the Building Commission to determine and make payments to the federal government so as to avoid an adverse effect on any exclusion of interest from gross income for federal income tax purposes on public debt, revenue obligations, appropriation obligations, operating notes, and master lease obligations and to make payments to advisors that assist in making the determination. This provision would allow the state to make payments to federal Internal Revenue Service (IRS) so as to retain the tax exempt status of bonds issued to finance a power plant or facility in the event that plant or facility is subsequently sold to a private entity for which that tax exempt status would not apply. Under current law, the Building Commission has the authority to only make payments to federal government so that public debt, revenue obligations, and operating notes are not treated as arbitrage bonds. The payment provisions under the amendment are broad enough to continue to allow these payments to be made. The amendment would also modify the existing program revenue appropriation from which current law payments can be made to incorporate the payments allowed under the amendment.

Modify the portions of the bill relating to the payment of any debts owed on the heating, cooling and power plants in the event of a sale, lease, or contract for service to specify that debt service shall be repaid for the portion of a building project that was related to the construction of the heating, cooling, or power plant.

Require DOA to determine any actions that may be necessary or appropriate as to avoid an adverse effect on any exclusion of interest on such public debt from gross income for federal income tax purposes should a plant be sold, leased or where there would be a contractual services agreement. This may include payments to advisors or the IRS. Net proceeds from the sale of a plant would be in the following order, based on sufficiency of funds: (a) payments to advisors or the IRS determined by DOA to be necessary and appropriate; (b) the repayment of any federal funds used to acquire, construct, or improve the plant, that are required under federal law; (c) to deposit sufficient amounts in the bond security and redemption fund to repay the principal and the interest on any portion of the total debt used to construct the plant; and (d) budget stabilization fund.

**6. Group Insurance Board Membership Requirement**

Remove the provision which would require that any designee of the Attorney General to the Group Insurance Board must be an attorney.

**7. Replacement of Classified Positions with Unclassified Positions**

Modify the Governor's recommendation to specify that 2.0 classified positions under the Department of Justice would move from classified to unclassified service (1.0 position under s. 20.455(1)(a) legal services general program operations, and 1.0 position under s. 20.455(3)(a) administrative services general program operations). Specify that the Department of Justice may have five rather than the currently authorized three unclassified division administrator positions. The Department of Administration indicates that there would be one communications and one legislative liaison position moved into unclassified service.

**8. Elimination of Retirement and Health Care Coverage Benefits for Limited-Term Employees**

Remove the provision which would prohibit state employees who have limited-term appointments from participating in the Wisconsin Retirement System (WRS) and prohibit these employees from receiving health insurance coverage under the state employee plan offered by the Group Insurance Board.

**9. Study of Potential Modifications of the Wisconsin Retirement System and State Employee Health Insurance Options**

Modify the provision which creates a GPR sum sufficient appropriation in the Department of Employee Trust Funds to fund a study of possible modifications to the Wisconsin Retirement

System, and a study of possible modifications to state employee health insurance options, to require a 14-day passive review by the Joint Committee on Finance prior to any expenditure.

**10. Required Retirement Contributions Rates for Retirement Systems in the City of Milwaukee and Milwaukee County**

Modify a provision that would require contributions of one-half of all actuarially required contributions from the retirement systems operated by the City and County of Milwaukee to be one-half of all employee required contributions.

The bill would provide that, beginning on the effective date of these provisions, in the retirement systems operated by the City of Milwaukee and Milwaukee County, except as otherwise provided in a collective bargaining agreement entered into with represented local police and firefighters, employees would be required to pay one-half of all actuarially required contributions for funding benefits under the retirement system. The employer (the City or the County) would not be allowed to pay, on behalf of an employee, any of the employee's share of the actuarially required contributions. The modification would delete the word "half of all actuarially required" and substitute the words "all employee required" to utilize terminology more consistent with the provisions of City of Milwaukee retirement system.

**11. Local Government Civil Service Systems**

Require a local governmental unit (a political subdivision of the state, a special purpose district in the state, an agency or corporation, of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing) that does not have a civil service system on the effective date of the bill to establish a grievance system not later than the first day of the fourth month beginning after the effective date of the bill. Provide that, to comply with the required grievance system a local governmental unit may establish either a civil service system under any provision authorized by law, to the greatest extent practicable, if no specific provision for the creation of a civil service system applies to that local governmental unit, or establish a grievance procedure as described below.

Provide that, any civil service system that is established under any provision of law, and any grievance procedure that is created under the above provisions, must contain at least all of the following provisions: (a) a grievance procedure that addresses employee terminations; (b) employee discipline; and (c) workplace safety.

If a local governmental unit creates a grievance procedure under these provisions, the procedure must contain at least all of the following elements: (a) a written document specifying the process that a grievant and an employer must follow; (b) a hearing before an impartial hearing officer; and (c) an appeal process in which the highest level of appeal is the governing body of the local governmental unit.

Provide that, if an employee of a local governmental unit is covered by a civil service

system on the effective date of the bill, and if that system contains provisions that address the above provisions, the provisions that apply to the employee under his or her existing civil service system continue to apply to that employee.

Provide that the treatment of provisions first apply on the first day of the fourth month beginning after the effective date of the bill.

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