



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

TO: MEMBERS OF THE SPECIAL COMMITTEE ON NANOTECHNOLOGY

FROM: Mary Matthias, Senior Staff Attorney, and Larry Konopacki, Staff Attorney

RE: Options for Legislation--Interagency Collaboration on Nanotechnology

DATE: November 30, 2010

This Memo was prepared at the direction of the Chair and Vice-Chair of the Special Committee on Nanotechnology and expands and further develops Option IX. B. from Memo No. 2, which was distributed to the committee on October 19, 2010. The purpose of this Memo is to provide a basis for committee discussion of the ways that appropriate executive branch agencies, the University of Wisconsin (UW) System, and other entities could be required to collaborate to assess and address concerns related to nanotechnology with respect to research facility safety, workplace safety, environmental protection, consumer product marketing and safety, emergency management, and other concerns.

This Memo provides a number of options that could be included in legislation to attempt to address these concerns, ranging from fairly simple agency collaboration requirements to more detailed regulatory authority over substances identified as potential risks.

### **Interagency Workgroup Structure**

The committee has heard from presenters about an interagency workgroup that, until recently, has been meeting periodically to discuss issues related to nanotechnology. The committee could choose to formalize this workgroup. Members could be included from the State Lab of Hygiene, the Department of Natural Resources, the Department of Agriculture, Trade and Consumer Protection, the Department of Health Services, the Department of Workforce Development, the Division of Emergency Management in the Department of Military Affairs, the UW System, and the Technical College System.

### **Interagency Workgroup Responsibilities**

The committee could choose to assign one or more of the following responsibilities to an interagency workgroup:

#### ***Basic Collaboration***

The interagency workgroup could simply be required to meet periodically and to keep abreast of and report to one another on scientific research and emerging issues related to nanotechnology. This would facilitate ongoing dialogue among the identified agencies, and ensure that agency activities relating to nanotechnology would be coordinated and efficient. This option would also ensure that there would be an established forum within which problems or proposals that may arise could be addressed.

#### ***Information Gathering and Dissemination***

The interagency workgroup could also be assigned responsibilities related to collecting information on the risks and benefits of nanotechnology and sharing that information with the public. These tasks could be similar to those that would be assigned to the nanotechnology information hub under WLC: 0037/1 if the committee chooses not to recommend that legislation. For instance, the workgroup could be required to monitor and share information on emerging scientific research on the benefits and risks of nanomaterials, provide information to business on best practices for handling such materials, and to develop and implement a state educational program about the benefits and risks of nanomaterials.

#### ***Health and Safety Petition Review and Report***

The interagency workgroup could also be required to establish a system to accept, review, and possibly act on petitions from individuals or groups concerned about possible risks related to particular nanomaterials.

Under this scenario, a petition would have to reference objective scientific data or other literature indicating that a particular nanomaterial or use of a nanomaterial poses a potential risk to the health of Wisconsin citizens (including workers) or to the environment. The petition could be required to include additional information such as whether the material or a particular use of the material is regulated in any other state or jurisdiction, whether any alternatives exist, and whether risks might be mitigated by use of labeling, safe practices in manufacture, handling, disposal, or other restriction.

#### **Review and Investigation**

The workgroup could be required to review petitions and to make an initial finding as to the reasonable probability of the petition's merit. If the group finds that a reasonable probability exists, a range of actions could be authorized or required. These options could include:

- Require the workgroup to review the data set forth in the petition and to review other available published reports containing environmental, health, and safety information on the substance.

- Require the workgroup to solicit public input on the subject of the petition.
- Require the workgroup to conduct or arrange for testing of the safety or environmental effects of the material.

### Report

The workgroup could be required to prepare a report on its findings related to a petition. The report could include recommendations for action to be taken if the report indicates that a material poses a substantial risk to health or the environment. Those recommendations could include, but not be limited to, any of the following:

- That the state should gather information on the import, manufacture, or use of the material in the state.
- That the state should encourage or monitor research and studies on the material.
- That one or more state agencies should exercise existing regulatory authority to address identified risks.
- That the federal government should regulate or study the material.
- That the State Legislature should enact legislation to address the risks or to provide additional regulatory authority necessary to address identified issues.

### ***Environmental, Health, and Safety Research***

In addition to the previous discussion of petition review, the workgroup could be required to set priorities for and conduct environmental, health, and safety research related to emerging concerns it identifies related to nanotechnology. This option may provide the workgroup with the ability to conduct more thorough investigations into petitions, although the type of research that could be anticipated to be necessary may require an extended time period and may be costly.

### ***Expanded Regulatory Authority***

The workgroup member agencies, as appropriate, could also be given additional authority to regulate nanomaterials, or chemicals generally, that are identified as posing a threat to research facility safety, workplace safety, the environment, consumers, or emergency response personnel. With respect to particular substances, the workgroup could be provided with authority to place restrictions on handling, manufacturing, or use, to impose requirements on end-of-life management, to ban particular materials, or to require certain labeling or reporting requirements.

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