



WISCONSIN LEGISLATIVE COUNCIL

2005-06 SESSION IN REVIEW

Commerce and Taxation

The Wisconsin Legislature considered many items in the 2005-06 Session relating to commerce and taxation. Because of the large number of proposals, the number summarized in the memorandum is limited. Legislative Council Act Memos provide a more thorough description of the acts described in this memorandum and are available at www.legis.state.wi.us/lc.

The 2005-06 Legislature enacted legislation relating to financial institutions, consumer affairs, construction, and tax incremental financing. Legislation was also enacted to eliminate motor vehicle fuel tax indexing and state income tax on Social Security benefits. Legislation to impose tax and spending limits on government were considered statutory limits were enacted after being partially vetoed but constitutional spending limits failed to pass both houses.

COMMERCE

Financial Institutions - One of the more substantive bills enacted relating to financial institutions was 2005 Wisconsin Act 212, relating to crimes against financial institutions. This Act establishes a new subchapter of specific property crimes against financial institutions. Under the Act, a financial institution is defined as a bank; savings bank; savings and loan association; mortgage banker; mortgage broker; trust company; credit union; or a company that controls one of these organizations. The specific crimes established by the bill include: theft against a financial institution; fraud against a financial institution; loan fraud; concealment of collateral; bribery; extortion; robbery of a financial institution; mail and wire fraud; and organization of financial crimes.

Prepayment penalties on variable rate residential mortgages is addressed by Act 128. This Act now permits prepayment penalties on variable rate mortgages provided that: (1) the lender makes variable rate loans without prepayment penalties and provides the borrower with a written statement of that fact; (2) the borrower acknowledges in writing that he or she received the statement; (3) prepayment penalties are limited to the first three years of the loan; and (4) prepayment penalties are not charged in connection with the sale of a home.

Act 217 permits an out-of-state bank to establish a branch in Wisconsin without acquiring an existing Wisconsin bank as required under prior law. An out-of-state bank may now establish a Wisconsin bank if the Division of Banking of the Wisconsin Department of Financial Institutions determines that the laws governing in the home state of the out-of-state bank are reciprocal to those of

Wisconsin. The Act also permits an out-of-state bank to acquire a Wisconsin bank if the home-state acquisition laws are found reciprocal to Wisconsin law by the Division of Banking.

2005 Senate Bill 465, which failed to pass prior to adjournment, would have eliminated certain exceptions to s. 943.24, Stats., commonly referred to as the worthless check statute. The bill proposed the elimination of the exemption for post-dated checks or checks given for past consideration in order to prevent individuals from evading the prohibition on writing worthless checks by intentionally post-dating the check.

2005 Assembly Bill 160 also failed to pass prior to adjournment of the 2005-2007 Legislative Session. This bill would have required a person who wished to register as a loan originator with the Division of Banking of the Department of Financial Institutions to pass a competency examination prior to licensure.

Consumer Affairs - Act 255 establishes a new method by which a merchant may take possession of motor vehicle collateral or goods subject to a motor vehicle consumer lease without undertaking judicial proceedings, often referred to as self-help repossession. To do so, a merchant must mail to the customer a notice that, among other things, includes the following information:

1. A statement that, as a result of the customer's default on the consumer credit transaction, the merchant may have the right to take possession of the collateral or goods without further notice or court proceeding.
2. A statement that if the customer is not in default or objects to the merchant's right to take possession of the collateral or goods, the customer may, no later than 15 days after the merchant has given the notice, demand that the merchant proceed in court by notifying the merchant in writing.
3. A statement that if the merchant proceeds in court, the customer may be required to pay court costs and attorney fees.

The Act also provides that a merchant who repossesses motor vehicle collateral or goods under a motor vehicle consumer lease must notify, verbally or in writing, the local law enforcement agency about the repossession. A person who intentionally violates this provision may be fined not more than \$500, an exception to the general maximum fine of \$2,000 found in s. 425.401, Stats.

Act 474 eliminates shareholder liability for corporations organized under Wisconsin law. Previously, a shareholder could be held liable for amounts owed to an employee for up to six months of work up to the total value of shares owned by the shareholder.

2005 Senate Bill 268 and its companion, 2005 Assembly Bill 587, attempted to revise current regulations relating to rental-purchase agreements, also commonly known as rent-to-own contracts. These bills and their accompanying amendments sought to exempt rental-purchase agreements from the Wisconsin Consumer Act and establish new unique requirements solely regulating rental-purchase transactions. These transactions are defined by the bills as an agreement between a rental-purchase company and a lessee for the use of rental property if: (1) the rental property is to be used primarily for personal, family, or household purposes; (2) the agreement has an initial term of four months or less and is automatically renewable with each payment after the initial term; (3) the agreement does not obligate

or require the lessee to renew the agreement beyond the initial term; and (4) the agreement permits, but does not obligate, the lessee to acquire ownership of the rental property.

The proposed bills then established a number of specific notices and requirements for transactions that fit the definition of rental-purchase agreements. The bills also established specific provisions for the lessee's right to cure and the renter's right to repossess property under a rental-purchase agreement. For more information regarding the original proposals and their amendments, see Legislative Council Staff Amendment Memoranda on 2005 Senate Bill 268 and 2005 Assembly Bill 587.

Buildings and Construction - Act 201 establishes a process for resolving construction defect disputes between homebuilding contractors and homeowners. Contractors must notify consumers of the dispute resolution process at the time of contracting for building services. The Act directs the Department of Commerce to prepare a brochure explaining the homeowner/contractor dispute resolution process for contractor distribution.

The process established in the Act requires that consumers notify contractors of alleged defects in writing and contractors to respond in writing in most cases. The Act establishes time limits for notification and response depending upon the specific situation. A homeowner may not sue a contractor for an alleged construction defect, under the Act, unless the dispute resolution process is followed. The Act also establishes a limit on homeowner damages to fair market value of the settlement offer, or actual cost of repairs, if the homeowner rejects a reasonable settlement offer or does not permit the contractor to repair the defect.

Act 200 establishes new continuing education requirements for persons applying for a building permit under the dwelling code. Under the Act, a person may not obtain a building permit unless the person verifies the following:

1. Annual completion of at least six hours of continuing education relevant to the professional area of expertise of the person seeking to obtain a building permit, approved by the department.
2. Attendance at one or more professional meetings or educational seminars designed for both building contractors and building inspectors.
3. For a person who does not hold a certificate of financial responsibility on April 11, 2006, successful completion of an examination developed by the department on the continuing education courses required under this subsection.

Commerce may revoke the certification of a person who does not meet the continuing education requirements or who violates certain other requirements specified under current law.

The Act renames the current Contractor Financial Responsibility Council as the Contractor Certification Council (Council) and requires that the Council recommend appropriate contractor continuing education courses to the Department of Commerce.

The Act directs a municipality issuing a building permit to require an owner who applies for a building permit to sign a statement advising the owner that if he or she hires a contractor to perform

work under the building permit and the contractor is not bonded or insured, certain consequences, specified under current law, may occur.

Act 87 makes a number of changes to the professional duties of real estate brokers and salespeople. The Act repeals a broker's duty to provide brokerage services in good faith and replaces a broker's duty to account for property within a reasonable time with a duty to safeguard property held by the broker according to rules promulgated by the Department of Regulation and Licensing under authority granted by current law. The Act modifies the duty to loyally represent the client's interests. Under the Act, a broker satisfies this duty by doing the following: (1) placing the client's interests ahead of the broker's interests; and (2) placing the client's interests ahead of the interests of nonclients in the transaction by not disclosing information and advice to nonclients if disclosure is contrary to the client's interests. The Act creates a duty to provide, upon the client's request, information and advice on matters that are material to a transaction and a duty to negotiate on behalf of a client. A client may waive the broker's duty to negotiate, but only in writing.

Act 87 also establishes specific new provisions regarding real estate brokerage services, subagency, multiple representation relationships, and broker liability. For detailed information on these provisions, please consult the Wisconsin Legislative Council Act Memorandum on this Act titled *Real Estate Practice*.

TAXATION

Tax and Spending Limits - One of the more significant and contentious issues that occupied legislative attention for much of the session was whether to impose tax and spending limits on the state and local governments. Both statutory and constitutional limits were considered by the Legislature.

In 2005 Enrolled Assembly Bill 100 (the 2005-07 Biennial Budget Bill), the Legislature approved expenditure limits on state government. The legislation provided that, beginning in fiscal year 2007-08, state general-purpose revenue appropriations and certain other expenditures may not exceed the amount of those expenditures in the previous fiscal year as increased by the prior year's percentage increases in the Consumer Price Index and in state population plus 1%. Amounts received over the expenditure limits would be required to be deposited in a fund designated as the "taxpayer protection fund." Moneys in the taxpayer protection fund could only be appropriated upon a recommendation from the Governor and approval by a vote of three-fourths of those voting in each house of the Legislature. In addition, if the balance in the taxpayer protection fund exceeds 10% of allowable expenditures, that amount would be required to be returned to taxpayers as a reduction in state income taxes.

These provisions were deleted from the bill by the Governor, using his partial veto.

Also in 2005 Enrolled Assembly Bill 100, the Legislature would have prohibited any city, village, town, or county from increasing its total property tax levy over the prior year's levy by more than a percentage equal to the percentage change in equalized property value due to new construction, less improvements removed. Adjustments to the property tax levy limits would be allowed under specified circumstances, including the repayment of certain debts. Also, amounts in excess of the levy limits could be approved by voters in a referendum. The expenditure limits would have applied to property tax levies collected in 2006, 2007, and 2008. In addition, technical colleges would have been prohibited from increasing their property tax levy by more than 2.6% over the prior year's levy.

The Governor used his partial veto to modify these provisions. As enacted in Act 25, any city, village, town or county is prohibited from increasing its total property tax levy over the prior year's levy by more than 2% or the percentage change in equalized property value due to new construction, less improvements removed, whichever is greater. In addition, the expenditure limits will apply to property tax levies collected in 2006 and 2007, but not 2008. Also, the levy limits on technical colleges was vetoed.

2005 Assembly Joint Resolution 77 and Senate Joint Resolution 63 were identical constitutional amendments that would have imposed revenue limits on the state and on local governments. These were before the Legislature on first consideration. They would have limited the annual growth in revenues by a formula that would include, depending upon the unit of government affected, the percentage increase in the Consumer Price Index, population growth, enrollment growth, or property value growth. In the final days of the legislative session, a number of substitute amendments were offered to these proposals. However, none of these proposed constitutional amendments were approved by both houses of the Legislature prior to adjournment.

Motor Vehicle Fuel Tax Indexing Eliminated - Act 85 eliminates motor vehicle fuel tax rate indexing, under which the motor vehicle fuel tax is annually adjusted by the percentage change in the Consumer Price Index, after the adjustment that was made on April 1, 2006.

The Act also provides that beginning on July 1, 2007, moneys in the transportation fund may be appropriated only for statutorily specified transportation purposes and moneys in the transportation fund that are not appropriated may not be transferred to any other fund, except for transfers to the transportation infrastructure fund by the Joint Committee on Finance. In addition, the Act advances by one month (from May 1, 2006 to April 1, 2006) a scheduled one cent reduction in the three cent per gallon petroleum inspection fee.

State Income Tax on Social Security Benefits Eliminated - A significant tax reduction on retirees was enacted into law with the passage of Act 25, which eliminated the state income tax on Social Security benefits. Beginning in taxable year 2008 (with respect to which returns are filed in 2009), no state income taxes will be imposed on Social Security benefits, regardless of the amount of other income received by the recent unit of the Social Security benefits.

As approved by the Legislature in 2005 Enrolled Assembly Bill 100, the state income tax on Social Security benefits would have been phased out over a three-year period in 2007, 2008, and 2009. However, the Governor used his item veto authority to eliminate the phase-in and provide that Social Security will be exempt from state income taxes in 2008.

Tax Incremental Financing - A number of revisions to the tax incremental financing statutes were enacted during the 2005 Legislative Session. Tax incremental financing is a fiscal tool used by local governments to improve blighted areas and promote economic development by financing projects with increased property tax revenues that are levied on the increased value of property within the tax incremental district.

Act 6 expands the circumstances under which municipalities may create mixed-use development tax incremental districts (TIDs), provides that no amendment to a TID project plan is required if the only change proposed is to extend the expenditure period as authorized by state law that takes effect after the

initial project plan was first adopted, and makes several other minor policy and technical changes in the tax incremental financing statutes.

Act 357 authorizes a county in which no cities or villages are located (Florence and Menomonie Counties) to create a TID if the town in which the TID is to be located approves its creation. (Counties are otherwise prohibited from creating TIDs.)

Act 13 authorizes a town to create a TID if it is under a cooperative plan with a city or village that includes annexation of all or part of the town in the future, if the annexing city or village approves the creation of the TID, and if the TID is located solely within territory that is to be annexed by the city or village.

Act 330 expands the type of projects for which town tax incremental financing may be used to include certain farm product warehousing and storage facilities.

A number of other amendments to the tax incremental financing statutes were approved by the 2005 Legislature, including authorizing a city or village to simultaneously create a new TID and subtract territory from an existing TID (Act 328), authorizing the Town of Madison to reduce the territory of an environmental remediation TID (Act 246), authorizing the City of Monroe to allocate tax increment from one TID to another TID under certain circumstances (Act 331) and approving a TID created by the Village of Kimberly notwithstanding certain procedural errors by the village in creating the TID (Act 385).

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