

TO: Milwaukee County Intergovernmental Relations Committee

FROM: Liz Stephens, Legislative Liaison
Milwaukee County Board of Supervisors

RE: Select Provisions Affecting Milwaukee County Included in the 2015-17 Biennial Budget

DATE: July 27, 2015

On July 10, 2015 the Legislature submitted the 2015-17 biennial budget to the Governor for his signature. On July 12, 2015 the Governor signed the budget with partial vetoes. Following is an overview of selected provisions included in the budget.

I. PREVAILING WAGE

Repeals the state prevailing wage law that applies to local projects of public works.

Retains the prohibition against local governmental units enacting or administering their own prevailing wage laws or similar ordinances. "Local government" has the meaning in Wis. Stat. § 66.0903(1)(d) which means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing. "Political subdivision" commonly refers to a city, village, town, or county. This prohibition would likely not prevent contracting entities from voluntarily entering into prevailing wage agreements with local governments.

Repeals all provisions directing the Department of Workforce Development (DWD) to determine prevailing wage rates and redefine "prevailing wage rate" for state projects to instead mean the applicable prevailing wage rate as determined by the U.S. Department of Labor under the federal Davis-Bacon Act.

Exempts from the state prevailing wage law laborers, workers, mechanics, or truck drivers that are employed to transport excavated material or mineral aggregate away from or to a project site of public works.

Eliminates various statutory provisions with respect to the prevailing wage law for projects other than state highway projects and provide the Department of Administration (DOA) with rule-making authority, including emergency rule authority, to enforce and administer the law other than for state highway projects which are administered by the Department of Transportation (DOT). Eliminate DWD's existing role in enforcing and administering the prevailing wage law and transfer that role to DOA.

Specifies that DOA promulgate any rules that the Department determines are necessary to implement and ensure compliance with the state's prevailing wage law. Specifies that if requested by any person performing prevailing wage work, DOA or DOT (as applicable) inspect

the payroll records of any contractor, subcontractor, or agent performing work on a state prevailing wage project to ensure compliance with state law.

Eliminates the requirement that state agencies post prevailing wage rates and hours of labor on sites, for projects other than state highway projects.

Retains enforcement and oversight of the prevailing wage law on state highway projects by DOT. Moves DOT prevailing wage provisions from the purview of the general employment statutes to be under DOT's general highway construction authority.

Specifies that if a person who is not a DOA employee or the contracting state agency or who is not an employee of DWD that is conducting an investigation contacts an employee performing prevailing wage work for the purpose of investigating compliance with the prevailing wage law, the person shall provide a written statement to the employee stating that the person is not affiliated with DOA, the contracting state agency, or DWD and disclosing the principal source of funding for the investigation.

Deletes provisions for liquidated damages and debarment in regard to state projects.

Specifies that these provisions take effect on January 1, 2017, and apply to any request for bids issued on or after that date. If a project is not subject to bidding requirements, the amendment applies to a contract that is entered into on or after that date.

II. DUTIES AND POWERS OF THE COUNTY EXECUTIVE IN POPULOUS COUNTIES

Modifies the current law provision regarding the duties and powers of the county executive in counties with a population of 750,000 or more to authorize the county board to continue to exercise authority related to the acquisition of property with regard to land that is zoned as a park on or after the effective date of the biennial budget act, other than land zoned as a park in the City of Milwaukee that is located within the area west of Lincoln Memorial Drive, south of East Mason Street, east of North Van Buren Street, and north of East Clybourn Avenue. Otherwise, authorize the county executive to exercise the authority vested with the county board under current law provisions with regard to: (a) making orders concerning county property and commencing and maintaining actions to protect county interests; (b) transferring county property; (c) constructing, maintaining, and financing county-owned buildings and public works projects; and (d) leasing lands to the Department of Natural Resources.

Modifies the current law provision pertaining to the sale or lease of property that requires actions of the county executive to be consistent with established county board policy and to be approved by the board to instead allow the county executive's action to not be consistent with established county board policy and to take effect without submission to or approval by the county board. Repeal the current law provision stating that the county board may only approve or reject the contract as negotiated by the county executive. Requires the proceeds of the sale of property under this provision to first be applied to any debt attached to the property. Specifies that the sale of county land by the county executive not take effect until a majority of the following individuals sign a document certifying that they believe the sale is in the best interest of the county: the county executive or the executive's designee; the county comptroller or

comptroller's designee; and an individual who is a resident of the municipality where the property is located, who has been appointed, at least biennially, by the Executive Council for Milwaukee County, as defined under current law, who has demonstrable experience in real estate law or real estate sales or development, and who is not an elective official. Requires a copy of that document to be attached to the bill of sale and requires a second copy of that document to be retained by the county.

I. MENTAL HEALTH CRISIS SERVICE GRANTS AND EMERGENCY DETENTION PROCEDURES

Modifies the list of persons who are authorized to conduct a crisis assessment ("physician who has completed residency in psychiatry, a licensed psychologist, or a mental health professional") to modify "mental health professional" with the phrase "as determined by the Department" and specifies that a crisis assessment may be conducted in person, by telephone, or by telemedicine or video conferencing technology.

Deletes the provision that would eliminate the alternative emergency detention procedures for Milwaukee County (to retain current law) and deletes the elimination of the Milwaukee County emergency detention pilot program. Extend the sunset date for the pilot program from May 1, 2016, to July 1, 2017.

II. COUNTY AND MUNICIPAL LEVY LIMIT -- ADJUSTMENT FOR UNUSED LEVY AUTHORITY CARRIED FORWARD FROM PRIOR YEARS

Creates a levy limit adjustment allowing a political subdivision to increase its allowable levy by the amount of unused levy authority from prior years for levies adopted beginning in 2015, as follows: (a) establish the annual carryforward factor as the difference between the actual percent increase in a political subdivision's levy attributable to the political subdivision's valuation factor and the political subdivision's valuation factor; (b) establish the maximum carryforward factor as the sum of the annual carryforward factors for the five preceding years, but not including any year prior to 2014(15), less any carryforward adjustment made under (d) in a prior year; (c) specifies that if the result of the preceding calculation exceeds 5%, the maximum carryforward factor would be reduced to 5%; (d) specifies that a political subdivision may increase its levy by its maximum carryforward factor with a two-thirds vote of the political subdivision's governing body, provided that the political subdivision's level of outstanding general obligation debt in the current year is less than or equal to the political subdivision's level of outstanding general obligation debt in the previous year; and (e) specifies that any political subdivision that adjusts its allowable levy under this provision cannot also adjust its allowable levy under the carryforward adjustment authorized under current law.

III. OPPORTUNITY SCHOOLS AND PARTNERSHIP PROGRAMS

Creates an Opportunity Schools and Partnership Program (OSPP) within the Milwaukee Public Schools (MPS) under the management and control of a Commissioner appointed by the County Executive. Create an OSPP within MPS under which the MPS Superintendent would have the authority to establish a program. Allow for an OSPP to be created in other school

districts that meet certain conditions. Make various changes to current law related to MPS facilities and surplus property.

Selection of the Commissioner. Requires the Governor, the Mayor of the City of Milwaukee, and the County Executive to each appoint a person who is not an elected official to compile a list of candidates for the position of Commissioner. Specifies that, within 120 days after the effective date of the bill, the County Executive must select an individual to serve as the Commissioner from that list. In the event of a vacancy in the Commissioner position, requires the County Executive to notify the Governor and Mayor, who shall follow the same procedure to fill the vacancy. Requires the County Executive to select an individual to fill the vacancy within 120 days after providing notice. Specifies that the Commissioner report to the County Executive and could only be removed from the position for cause. Specifies that the County Executive would establish the salary for the Commissioner.

Other Provisions. Specifies that the Corporation Counsel of the County would be the legal adviser of and attorney for the Commissioner and his or her OSPP, except that the Commissioner would retain an attorney in any matter if the County Executive, the County Corporation Counsel, or the Commissioner determines that any of the following applies: (a) the Commissioner or his or her OSPP requires specialized legal expertise not possessed by the County Corporation Counsel; (b) the County Corporation Counsel does not have sufficient staff to adequately represent the interests of the Commissioner or his or her OSPP; or (c) a conflict of interest exists. Require the County Corporation Counsel to notify the Commissioner as soon as a determination is made. Requires the Commissioner to provide the County Corporation Counsel with reasonable notice of any meeting at which the Commissioner will consider retention of an attorney.

IV. CHANGES TO FAMILY CARE, IRIS, AND AGING AND DISABILITY RESOURCE CENTERS

Requires DHS to submit a request to the U.S. Department of Health and Human Services (HHS) for changes to the state's current waiver under which Family Care and IRIS operates. Requires that the waiver request provide for the expansion of the Family Care program statewide. If a federal waiver is approved, requires DHS to make the Family Care program available statewide by January 1, 2017, or a date determined by the Department, whichever is later. If the Department specifies a date later than January 1, 2017, requires the Department to submit the date to the Legislative Reference Bureau for publication in the Wisconsin Administrative Register. If such a waiver is approved, permit the Department to expand the program statewide, notwithstanding the requirement that the Department submit proposals for Family Care expansion to the Joint Committee on Finance (JFC) for approval. Permit DHS to eliminate the community integration program (CIP), community opportunities and recovery program (CORP), and community options program (COP) after the Family Care program is available to all eligible residents in a county.

In addition to requesting the statewide expansion of Family Care, requires that the waiver request include the following components: (a) specifies that MA-funded long-term care consumers receive both long-term care and acute care services, including Medicare-funded services to the extent allowable by CMS, from integrated health agencies (IHAs); (b) increase

the size of regions currently served by managed care entities, such that each region has sufficient population to allow for adequate risk management by IHAs; (c) specifies that there shall be no less than five regions; (d) requires multiple IHAs in all regions of the state; (e) requires IHAs to make available a consumer-directed option under the long-term care program, under which the IHA would assist individuals in developing individualized support and service plans, ensure that all services are paid according to the plan, and assist enrollees in managing all fiscal requirements, and which shall include, but is not limited to, the ability to select, direct, and/or employ persons offering any of the services available under the IRIS program as of July 1, 2015, and the ability to manage, utilizing the services of an IHA serving as a fiscal intermediary, an individual home and community-based services budget allowance based on a functional assessment performed by a qualified entity and the availability of family and other caregivers who can help provide needed support; (f) modify the state's long-term care programs, including allowing for audits of providers, in order to improve accountability in the provision of services; (g) establish an open enrollment period for the state's long-term care programs that coincides with the open enrollment period for the Medicare program; (h) requires that rates paid to IHAs be set through an independent actuarial study; and (i) preserve the "any willing provider" provision, which requires IHAs to contract for long-term care services with any provider that agrees to accept the reimbursement rate and satisfies any quality of care, utilization, or other criteria that the IHA requires of similar providers for the same services, for a minimum of three years in each region following the implementation date of the program in that region.

Directs DHS to consult with stakeholders, including representatives of consumers of long-term care and long-term care providers, and the public prior to developing its final waiver request to be submitted to JFC. Specifies that DHS hold no less than two public hearings regarding the proposed Family Care waiver prior to its submission to JFC. In addition, requires DHS to submit, as part of the MA quarterly status reports submitted by September 30, 2015, and December 30, 2015, progress reports regarding the development of the waiver proposal. Specifies that the progress reports must include, but are not limited to, information regarding outcomes of discussions with stakeholders and CMS.

Additionally, requires DHS to develop its final recommendations in accordance with the ten key principles determined by CMS to be essential elements of a strong managed long-term services and supports program, which include: (a) adequate planning and transition strategies; (b) stakeholder engagement; (c) enhanced provision of services in home and community-based settings; (d) alignment of payment structures with programmatic goals, including improving the health of enrollees, improving the experience of enrollees, and reducing costs through these improvements; (e) support for beneficiaries, including counseling regarding options and enrollment from an independent source at no cost to the beneficiary and the availability of ombudsman resources; (f) person-centered processes, including an option to self-directs services; (g) a comprehensive and integrated service package; (h) qualified providers; (i) participant protections, including systems to manage incidents and appeals processes for program participants; and (j) comprehensive quality assurance and oversight procedures.

Requires DHS to submit a summary of the proposed concept plan associated with the waiver request to the Committee for review and approval or disapproval without changes no later than April 1, 2016, prior to the Department's submitting any proposed changes to the state's

MA waiver agreements or a state plan amendment to CMS for that agency's approval. If a state plan amendment or waiver request is approved and is substantially consistent with the initial waiver application, as approved by JFC, permit the Department to, notwithstanding the current Family Care statutes, implement any programmatic changes in accordance with the approved waiver. If the state plan amendment is not approved or if a waiver that is substantially consistent with the initial waiver request, as approved by JFC, is not approved, the waiver may not be implemented, and the Family Care program shall continue to operate in accordance with statutes in effect on July 1, 2015. Requires the Department include in its 2017-19 biennial budget request any proposed statutory changes necessary to conform the statutes to the approved waiver or state plan amendment.

Specifies that language under s. 46.2895 of the statutes relating to tribal or band long-term care districts shall be maintained until a waiver from CMS for the provision of tribal long-term care services relating to those long-term care districts is approved. Requires long-term care advisory committees to, in addition to their current statutory responsibilities, provide for review and assessment of the self-directed services option. Specifies that a long-term care district, defined under s. 46.2895 of the statutes, is permitted to operate a health maintenance organization in accordance with state law.

Requires DHS to evaluate the functional screen and options counseling for reliability and consistency among ADRCs, and to provide a report regarding these activities by January 1, 2017.

Specifies that the Department assess which responsibilities of ADRC governing boards are duplicative with current Department procedures, and propose changes to the statutory requirements of these boards that remove duplication to JFC no later than July 1, 2016.

Requires DHS to study the integration of income maintenance consortia and ADRCs, and to present a report to JFC no later than April 1, 2016 with recommendations regarding potential efficiencies that may be gained, if any, from the integration of these entities, as well as whether such a merger would be appropriate in light of the responsibilities of each entity.