

# Attorneys: Portions of Foxconn law could be unconstitutional

September 20 2017, by Scott Bauer

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Nonpartisan attorneys for the Wisconsin Legislature are warning that portions of a newly signed law speeding up legal appeals related to a planned flat-screen display factory could be unconstitutional.

The analysis of the law passed for Foxconn Technology Group was prepared by attorneys for the Wisconsin Legislative Council on Tuesday at the request of Democratic Senate Minority Leader Jennifer Shilling.

The analysis, which didn't reach any definitive legal conclusions, came a day after Republican Gov. Scott Walker signed into law a \$3 billion incentive package for Foxconn. The Taiwan-based electronics giant plans to invest up to \$10 billion on a liquid crystal display screen factory in the southeastern part of the state that could employ 13,000 people.

Walker spokesman Tom Evenson stood by the law Wednesday.

"We believe this is a constitutional measure which will provide prompt resolution of disputes and prevent frivolous lawsuits from stone-walling thousands of good-paying jobs," Evenson said.

The Wisconsin Department of Justice is also confident that the law "will pass constitutional muster," Republican Attorney General Brad Schimel's spokesman Johnny Koremenos said in an email.

"Moreover, we are surprised that members of the legislature turned to staff attorneys at Legislative Council who have no expertise in this area

as opposed to asking DOJ for an analysis," he said.

The chief duty of attorneys at the Legislative Council is to provide legal advice to lawmakers. They do that through memos like the one Shilling requested and by staffing legislative committees and assisting with legal questions during the drafting of bills.

The Foxconn bill, which passed the Republican-controlled Legislature with bipartisan support, gives Foxconn an unprecedented expedited appeals process and allows the Wisconsin Supreme Court to take certain cases directly from the circuit court, skipping the state appeals court.

Private attorneys have questioned whether the changes to legal process afforded Foxconn in the bill could be violation of separation of powers constitutional provisions. The Legislature's attorneys said that three parts of the law could "plausibly" be subject to legal challenges on separation of powers grounds.

One provision cited as most subject to a constitutional challenge requires rulings in certain legal cases related to Foxconn to be automatically put on hold while they are appealed. The Legislature's attorneys noted that could be ripe for a separation of powers challenge because whether to suspend judicial rulings is a central function of the judicial branch, not the Legislature.

However, the attorneys said it could be determined that the requirement does not unduly burden or substantially interfere with court powers and therefore should be upheld.

The law automatically suspends any circuit court ruling related to a decision by a state or local official, board, commission, authority or other department related to the newly created information technology manufacturing zone where the Foxconn plant will be located.

The other provisions relate to the power given to the Wisconsin Supreme Court to automatically hear those appeals, skipping the usual stop at the state appeals court level.

"It is difficult to predict with any certainty how a court may rule regarding the Act's constitutionality," the nonpartisan attorneys concluded.

The law, which exempts Foxconn from a host of state environmental regulations to speed construction of the plant, was expected to face legal challenges. The provisions at issue would speed up those lawsuits to prevent major delays in the project.

"We should not be giving a foreign corporation preferential treatment in our state courts," Shilling, who requested the memo, said in a statement. "This latest Republican effort to tip the judicial scales in favor of wealthy special interests is eroding public trust in our courts."

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