



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**August 2017 Special Session
Assembly Bill 1**

**Assembly Substitute
Amendment 1 and Assembly
Amendment 24 to Assembly
Substitute Amendment 1;
and Senate Amendment 1**

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AUGUST 2017 SPECIAL SESSION ASSEMBLY BILL 1

August 2017 Special Session Assembly Bill 1 (the “bill”) allows the Wisconsin Economic Development Corporation (WEDC) to create an electronics and information technology manufacturing zone (EITM zone) in which businesses may be certified to claim certain tax credits and exemptions, special provisions apply to tax incremental financing activities conducted by a municipality, certain environmental review and permitting requirements are waived, and special utility rate and project review provisions apply. The bill also provides for grants to local governments and state support of local obligations relating to an EITM zone, bonding authorization for specified highway construction, and changes to state law related to the administration of “enterprise zones,” among other changes. The changes made to the bill under Assembly Substitute Amendment 1 (the “substitute amendment”), as amended, and Senate Amendment 1 to the bill, as passed by the Assembly, are summarized below.

For more information on the bill, see the analysis attached to the bill prepared by the Legislative Reference Bureau, an Information Memorandum (IM-2017-05) prepared by the Wisconsin Legislative Council staff entitled, “Foxconn Legislation”: August 2017 Special Session, Assembly Bill 1’ [<http://www.legis.wisconsin.gov/lc>] and a memorandum prepared on the fiscal effects of the bill by the Legislative Fiscal Bureau [<https://legis.wisconsin.gov/lfb>], dated August 8, 2017. For more information on the substitute amendment, see the analysis attached to the substitute amendment prepared by the Legislative Reference Bureau.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Town Incorporation

The substitute amendment allows a town that is adjacent to a city or village that contains an EITM zone, created under the bill, to become a city or village if the town holds and approves an incorporation referendum. The other statutory incorporation procedures do not apply, including the need for approval by the incorporation review board.

The substitute amendment also prohibits the annexation of territory in a town that has a pending incorporation petition.

The bill does not contain provisions that relate to town incorporation.

Tax Incremental Financing

Under current law, a municipality may not create a new tax incremental district (TID) unless the sum of the value increments of all existing TIDs in the municipality, plus the base value of a proposed TID, do not exceed 12% of the total value of taxable property in the municipality. [s. 66.1105 (4) (gm) 4. c. and (7), Stats.] The substitute amendment clarifies that a municipality is exempt from this 12% restriction for a TID created in an EITM zone as allowed under the bill and that such a TID does not count toward this 12% restriction if the municipality seeks to create another TID outside of the EITM zone.

The substitute amendment also requires the Department of Administration (DOA) to certify any project cost expenditures that are proposed to be incurred outside of an EITM zone TID, on the basis of whether the expenditure benefits the district.

Unlike under current law, the substitute amendment also authorizes project cost expenditures for a TID in an EITM zone for: (1) constructing or expanding fire stations; (2) purchasing police and fire equipment; and (3) general operating expenses. These types of expenditures are capped at 15% of the total positive increment over the life of the TID. Capital expenditures under this authority may only be made over the first seven years following the creation of the TID and expenditures for constructing or expanding fire stations must be made within a one-mile radius of the EITM zone.

Lastly, the substitute amendment also extends the expenditure period for a TID within an EITM zone to the TID's unextended termination date of the TID. Generally, under current law, no expenditure may be made later than five years prior to the unextended termination date of a TID.

New Positions

The substitute amendment creates a new five-year project position in WEDC for an "electronics manufacturing small business development director, with duties including coordinating with the economic development liaison in the DOA that is created under the bill

and providing outreach to local economic development organizations. \$110,000 is allocated to WEDC for this purpose in each of the 2017-18 and 2018-19 fiscal years.

The substitute amendment also changes the compensation category of the “economic development liaison” position created in the DOA from category three to category four and converts this position from a permanent position to a five-year project position.

EITM Zone Tax Credits

The substitute amendment specifies that wages paid to an employee by a certified employer in an EITM zone under the bill are not eligible for the payroll tax credits available under the bill unless the employee makes more than \$30,000 per year in wages paid by the claimant. Under the bill, WEDC could have designated an area in which an EITM zone is created as a Tier I county or municipality which would have allowed payroll tax credits for wages paid to employees making over \$22,620 per year in wages. Additionally, the substitute amendment clarifies that the payroll tax credits are calculated based only on zone payroll for full-time employees “employed by the claimant.”

The substitute amendment also resolves a discrepancy in the bill relating to the percentage of capital expenditures made by a certified entity in an EITM zone that would be subject to the capital expenditures tax credits authorized under the bill, clarifying that a capital expenditures credit of “up to 15%” may be applied to a certified entity under the bill.

Lastly, the substitute amendment adds a provision that specifies that WEDC may seek to recoup EITM zone tax credits provided to an entity if the entity fails to meet certain requirements, commonly referred to as WEDC’s “clawback” authority.

Public Service Commission Functions

Current law generally requires a public utility to obtain authorization from the Public Service Commission (PSC) through the “certificate of authority” process before starting most types of construction projects. [s. 196.49, Stats.] The bill exempts utility projects located within an EITM zone from this requirement. The substitute amendment instead provides that this exemption applies to any project that is primarily to provide service to a new customer within an EITM zone.

The substitute amendment also directs the PSC to determine whether an entity is eligible to receive electric service under the market rates provisions in the bill. Under the bill, the utility providing service determined a customer’s eligibility.

County Sales Tax Revenue Bonds

Under current law, a county is generally authorized to levy a 0.5% sales and use tax on sales and purchases made within the county. The substitute amendment specifies that a county in which an EITM zone exists may issue bonds whose principal and interest are paid through the county sales tax authority and requires a county that chooses to do so to continue the

collection of this tax until such payments are complete. The bill does not address the use of county sales tax revenue to pay for revenue bonding.

Highway Funding

Under the bill, the issuance of up to \$252,400,000 in general obligation bonding is authorized for the I 94 north-south corridor project, contingent on the receipt of federal funding to support the project. The substitute amendment requires the Legislature's Joint Committee on Finance to approve the use of this funding source.

DNR Regulatory Authority in an EITM Zone

The substitute amendment specifies that the Department of Natural Resources (DNR) must ensure that the conditions of applicable permits, licenses, and approvals under the DNR's jurisdiction are met for all activities related to the construction, access, or operation of a new manufacturing facility in an EITM zone, except as otherwise specifically provided.

The substitute amendment also modifies inconsistent wording in the bill to make each of the four navigable waters activity permit exemptions in the bill applicable if the activity is "related to the construction, access, or operation of a new manufacturing facility in an EITM zone."

For wetland impacts mitigation required under the bill that is conducted by participation in the "in lieu fee subprogram" that exists under current law, the substitute amendment requires the DNR to identify and consider mitigation that could be conducted within the same watershed, and authorizes mitigation outside of the watershed only upon agreement between the DNR and the person conducting the wetlands-related activity that gave rise to the mitigation requirement.

Workforce Training and Wisconsin Worker Preference

The substitute amendment creates a new electronic technology manufacturing workforce program under which the Department of Workforce Development (DWD), subject to approval by the Legislature's Joint Committee on Finance, must allocate \$20,000,000 in the 2019-21 biennium to provide funding, through grants or other means, to facilitate worker training and employment in this state. DWD is required to consult with the technical system board and WEDC on the implementation of this program, and must create an annual report on its activities with respect to this program.

The substitute amendment also requires the UW System Board of Regents and the Technical College System Board to consult together on strategies to address long-term workforce development issues for the future economy, including strategies for the fields of engineering, computer science, and electronic technology manufacturing. These boards are required to prepare a joint report that includes recommendations to address long-term workforce development issues.

Lastly, the substitute amendment requires WEDC, to the extent possible, to attempt to include terms in any agreement negotiated with a business certified as eligible to receive tax credits in an EITM zone that encourage the business's hiring of Wisconsin residents.

Grants to Local Governments and the Moral Obligation Pledge

For purposes of the provisions in the bill related to grants by the DOA to local governments and the Legislature's "moral obligation pledge" to cover 40% of local municipal obligations, the substitute amendment specifies that a "local governmental unit" means a county, city, village, or town. The substitute amendment also clarifies that the moral obligation pledge applies only to "municipal obligations," as defined in s. 67.01 (6), Stats., requires the DOA to "designate" the pledge rather than "approve" municipal obligations to which the pledge applies, requires a local unit of government to submit a plan to the DOA describing its proposed issuance of debt obligations that would be subject to the pledge, and adds a statement of statewide public purpose applicable to the pledge.

ASSEMBLY AMENDMENT 24 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 24 limits the types of general operating expenses that may qualify as project cost expenditures for a TID. Specifically, the only general operating expenditures that may qualify under the amendment are expenditures related to providing police and fire protection services.

SENATE AMENDMENT 1 TO ASSEMBLY BILL 1, AS ENGROSSED

Senate Amendment 1 makes numerous changes, described below, to the bill as passed by the Assembly and engrossed for referral to the Senate.

EITM Zone Administration

Geographical Limits

Senate Amendment 1 specifies that WEDC may not include any area outside Wisconsin in its designation of an EITM zone. The amendment also prohibits WEDC from certifying a business to claim EITM zone tax credits for services performed outside Wisconsin.

Hiring Goals

Senate Amendment 1 specifies that WEDC shall attempt to ensure that a business certified to receive EITM zone tax credits for capital expenditures has sought and is seeking to satisfy certain hiring goals in Wisconsin, as identified by WEDC, in connection with the business's capital expenditures.

Contract Requirement

The Senate Amendment requires WEDC to contract with a business certified to receive EITM zone tax credits.

Legislative Audit Bureau Evaluation

Under Senate Amendment 1, the Legislative Audit Bureau (LAB) is directed to evaluate the process used by WEDC to verify information submitted to the corporation by the claimant of the tax credits created under the bill, and to evaluate whether WEDC appropriately verified the amount of tax credits a claimant may claim. The LAB would conduct this evaluation annually for five years, beginning in 2018.

Enterprise Zones

The engrossed bill expands the enterprise zone program from 30 to 35 zones. The Senate Amendment deletes this expansion.

Local Government

Expenditure Restraint Program

The Senate Amendment excludes payments received under the bill's grant program for local expenditures from the calculation of payment eligibility under the expenditure restraint program.

Donor TID Restriction

The Senate Amendment prohibits a TID created in an EITM zone from acting as a donor district to other TIDs.

Eligible TIF Project Costs

Senate Amendment 1 specifies that payments made by a city or village to a county or other municipality that issues obligations to finance project costs of a TID in an EITM zone may be included as eligible project costs of that TID.

County Sales Tax Revenue Bonds

The engrossed bill authorizes the issuance of county sales tax revenue bonds under ch. 67, Stats. Senate Amendment 1 moves this authorization from ch. 67, Stats., relating to municipal bonds, to ch. 66, Stats., relating to municipal revenue obligations.

Grants for Local Government Expenditures

The engrossed bill creates a grant program for local government expenditures and funds it with a \$10,000,000 appropriation. The Senate Amendment increases this appropriation to \$15,000,000 and adds technical college districts to the definition of local governmental unit for purposes of the grant program.

Moral Obligation Pledge

The engrossed bill creates the grant program for local government expenditures and the state's moral obligation pledge in the same section of the statutes, and provides that the DOA

secretary may contract with a local unit of government to implement the grant program. Senate Amendment 1 extends DOA's authority to contract with a local unit of government to the implementation of the moral obligation pledge as well.

Highway Funding

The engrossed bill requires approval by the Joint Committee on Finance in order to expend the proceeds of the general obligation bonds relating to the I-94 north-south corridor project that are authorized by the bill. The Senate Amendment allows for expenditure of these proceeds following expiration of a 14-day passive review. In order to object to the expenditure under the Senate Amendment, the committee must object within 14 days and vote to deny the request within 30 days of that objection.

Wetlands Mitigation

The engrossed bill provides various options for wetlands mitigation relating to construction, access, or operation of a new manufacturing facility in an EITM zone. The Senate Amendment deletes one of these options, participation in an escrow subprogram under s. 281.36 (3s), Stats., on account of the closure of the subprogram following federal approval of Wisconsin Wetland Conservation Trust in-lieu fee program.

Workforce Training

For the worker training and employment program created under the engrossed bill, Senate Amendment 1 specifies that the persons eligible to apply for and receive grants must include institutions of higher education. For purposes of the amendment, institutions of higher education include the campuses of the UW System and the Technical College System, as well as private nonprofit institutions that are members of the Wisconsin Association of Independent Colleges and Universities.

Direct Judicial Review

The Senate Amendment creates new judicial rules of procedure relating to review of decisions relating to an EITM zone. Under the Senate Amendment, any party may immediately appeal as of right to the Supreme Court from any order of a circuit court vacating, enjoining, reviewing or otherwise relating to a decision by a state or local official, board, commission, condemnor, authority, or department concerning an EITM zone. The amendment specifies that the Supreme Court must take jurisdiction of such an appeal, and that any order of a circuit court is stayed automatically pending appeal.

BILL HISTORY

The bill was introduced on August 1, 2017, by the Committee on Assembly Organization and Representatives Vos, Steineke, August, Kerkman, Weatherston and Wichgers, by request of Governor Scott Walker. The substitute amendment was introduced by Representatives Neylon, Vos, Steineke, and Nygren on August 11, 2017. On August 14, 2017, the Assembly Committee

on Jobs and the Economy recommended adoption of Assembly Substitute Amendment 1, and passage of August 2017 Special Session Assembly Bill 1, as amended, on successive votes of Ayes, 8; Noes, 5. On August 17, 2017, Representatives Ballweg and Neylon introduced Assembly Amendment 24 to the substitute amendment. On the same day, the Assembly adopted Assembly Amendment 24 to the substitute amendment, adopted the substitute amendment, as amended; and passed the bill, as amended, on a vote of Ayes, 59; Noes, 30; and Paired, 6.

On September 6, 2017, the Joint Committee on Finance introduced Senate Amendment 1 on a vote of Ayes, 16; Noes, 0; and recommended adoption of the amendment and concurrence in the bill, as amended, on votes of Ayes, 12; Noes, 4.

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