



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**August 2017 Special Session  
Senate Bill 1**

**Senate Substitute Amendment 1**

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### **AUGUST 2017 SPECIAL SESSION SENATE BILL 1**

August 2017 Special Session Senate Bill 1 (the “bill”) allows the Wisconsin Economic Development Corporation (WEDC) to create an electronics and information technology manufacturing zone (EITM zone) in which: (1) businesses may be certified to claim certain tax credits and exemptions; (2) special provisions apply to tax incremental financing activities conducted by a municipality; (3) certain environmental review and permitting requirements are waived; and (4) 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 Senate Substitute Amendment 1 (the “substitute amendment”) are described below. For more information on the bill, see the analysis attached to the bill prepared by the Legislative Reference Bureau, an Information Memorandum on the companion bill (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.

## **SENATE 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 authorizes project cost expenditures for a TID in an EITM zone for: (1) constructing or expanding fire stations; (2) purchasing police and fire equipment; (3) general government operating expenses related to providing police and fire protection services; and (4) 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. 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.

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

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

The substitute amendment also changes the compensation category of the “economic development liaison” position created in 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 WEDC may not include any area outside Wisconsin in its designation of an EITM zone.

The substitute amendment requires WEDC to contract with a business certified to receive 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. 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 resolves a discrepancy in the bill relating to the percentage of capital expenditures made by a certified business 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 business.

The substitute amendment requires WEDC, before certifying a business to receive tax credits, to attempt to ensure that the business has sought and is seeking to satisfy certain hiring goals in Wisconsin, as identified by WEDC, in connection with the business’s capital expenditures in the zone. The substitute amendment also prohibits WEDC from certifying a business to claim EITM zone tax credits for services performed outside Wisconsin.

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

Under the substitute amendment, 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.

### **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 in 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, under ch. 66, Stats., 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 places a limitation on the authority to expend the proceeds of the general obligation bonds. Specifically, the substitute amendment provides for a 14-day passive review period, during which the Legislature’s Joint Committee on Finance may object to the expenditure. If the committee objects and then votes to deny the request within 30 days of that objection, the expenditures may not be made.

### **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.”

The bill provides an exemption from state wetlands permitting requirements for a discharge into a wetland located in an EITM zone, if the discharge is related to the construction, access, or operation of a new manufacturing facility in the zone, and all adverse impacts to functional values of wetlands are compensated at a ratio of two-to-one using one of the four mitigation methods: (1) purchasing credits from a mitigation bank located in Wisconsin; (2) participating in the in lieu fee subprogram; (3) completing mitigation within the state; or (4) participating in an escrow subprogram.

The substitute amendment deletes the mitigation option (4) above (i.e., participation in an escrow subprogram). That subprogram closed following federal approval of a Wisconsin Wetland Conservation Trust in-lieu fee program.

The substitute amendment also adds requirements related to the mitigation option (2) above (i.e., participation in the in lieu fee subprogram). Specifically, for wetlands mitigation required under the bill that is conducted by participation in the “in lieu fee subprogram,” the substitute amendment requires the DNR to identify and consider mitigation that could be conducted within the same watershed, and it 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 million in the 2019-21 biennium to provide funding, through grants or other means, to facilitate worker training and employment.

The persons eligible to apply for and receive grants must include institutions of higher education, which 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.

DWD is required to consult with the Technical College System Board and WEDC on the implementation of the program and it must create an annual report on its activities with respect to the 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**

The bill appropriates \$10 million in the current (2017-18) fiscal year for grants that DOA may issue to a "local governmental unit" for the unit's expenditures for costs that DOA determines are associated with development occurring in an EITM zone. The bill specifies that these costs may include costs related to infrastructure and public safety.

The substitute amendment increases the appropriation for the grants to \$15 million. It also defines "local governmental unit" to mean a city, village, town, county, or technical college district that contains any part of an EITM zone.

The substitute amendment provides that payments received under the grant program are excluded from the calculation of payment eligibility under the expenditure restraint program.

### **Moral Obligation Pledge**

The bill includes a provision by which the Legislature formally recognizes that it has a "moral obligation" to appropriate funding for a percentage of the principal and interest for certain debt obligations that may be incurred by a local governmental unit related to an EITM zone. Specifically, the bill provides that the Legislature expresses its expectation and aspiration that it will appropriate funds to pay up to 40% of the principal and interest of a local governmental unit's obligations undertaken to finance costs related to development occurring in or for the benefit of an EITM zone, if ever called upon to do so, if DOA approves the obligation before it is issued by the local government unit.

The substitute amendment defines "local governmental unit" to mean a city, village, town, county, or technical college district that contains any part of an EITM zone.

The substitute amendment clarifies that the moral obligation pledge applies only to "municipal obligations," as defined in s. 67.01 (6), Stats.; requires DOA to "designate" the pledge rather than "approve" municipal obligations to which the pledge applies; requires a local governmental unit to submit a plan to 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.

The substitute amendment also provides that the DOA Secretary may contract with a local governmental unit to implement the moral obligation pledge provisions.

### **Enterprise Zones**

The bill expands the enterprise zone program from 30 to 35 zones. The substitute amendment deletes this expansion.

### **Direct Judicial Review**

The substitute amendment creates new judicial rules of procedure relating to review of decisions relating to an EITM zone. Under the substitute 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 substitute 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 10, 2017, by the Committee on Senate Organization, by request of Governor Scott Walker. The substitute amendment was introduced on September 7, 2017, by the Joint Committee on Finance. On the same day, the Joint Committee on Finance recommended adoption of the substitute amendment, and passage of the bill, as amended, on successive votes of Ayes, 12; Noes, 4.

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