

State of Wisconsin



2017 Senate Bill 173

Date of enactment: **November 27, 2017**

Date of publication*: **November 28, 2017**

2017 WISCONSIN ACT 70

AN ACT *to renumber* 66.0627 (1) (a); *to renumber and amend* 75.106 (4); *to amend* 66.0627 (title), 66.0627 (8) (a), 66.0627 (8) (d), 66.1105 (4) (gm) 4. c., 75.106 (2), 292.13 (1m) (intro.) and 292.13 (2); and *to create* 24.63 (5), 66.0627 (1) (ad), 66.1105 (20), 66.1106 (15), 66.1109 (2m), 66.1109 (4g), 66.1110 (4m), 75.106 (4) (b), 285.675, 292.15 (1) (c) and 292.15 (2) (at) of the statutes; **relating to:** remediation of contaminated land; air pollution control requirements for certain manufacturing facilities constructed on formerly contaminated land; reassigning tax deeds on tax delinquent brownfield properties; creating a new method for the creation of environmental remediation tax incremental financing districts; loans and repayment assistance by a political subdivision for certain brownfield revitalization projects and collection of the debt by special charge; state trust fund loans for brownfield projects; conversion of business improvement districts; and annexations to business improvement districts and neighborhood improvement districts.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 24.63 (5) of the statutes is created to read:
24.63 (5) BROWNFIELD PROJECT LOANS. A state trust fund loan to a city, village, or town made for the purpose of funding a project related to brownfields, as defined in s. 238.13 (1) (a), may not be included in arriving at the debt limitation under sub. (1) or the constitutional debt limitation under article XI, section 3, of the constitution if all of the following apply:

- (a) The term of the loan is not more than 15 years.
- (b) The loan is not in default.
- (c) The department of natural resources verifies to the board that the site on which the project will occur is a brownfield, or, if the project encompasses more than one site, verifies that not less than 50 percent of the project area is brownfield.

SECTION 2. 66.0627 (title) of the statutes is amended to read:

SECTION 2. 66.0627 (title) of the statutes is amended to read:

66.0627 (title) Special charges for current services and energy and water efficiency improvement loans certain loan repayments.

SECTION 3. 66.0627 (1) (a) of the statutes is renumbered 66.0627 (1) (am).

SECTION 4. 66.0627 (1) (ad) of the statutes is created to read:

66.0627 (1) (ad) "Brownfield revitalization project" means any of the following actions when taken upon commercial or industrial premises that are located on, or that constitute, brownfields, as defined in s. 238.13 (1) (a):

1. Site assessment.
2. Remediation.
3. Lead or asbestos abatement.
4. Demolition.
5. Standard site preparation actions not included in subs. 1. to 4.

SECTION 5. 66.0627 (8) (a) of the statutes is amended to read:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

66.0627 (8) (a) A political subdivision may make a loan, or enter into an agreement regarding loan repayments to a 3rd party for owner-arranged or lessee-arranged financing, to an owner or lessee of a premises located in the political subdivision for a brownfield revitalization project or for making or installing an energy efficiency improvement, a water efficiency improvement, or a renewable resource application to the premises. If a political subdivision makes a loan or enters into an agreement under this paragraph, the political subdivision may collect the loan repayment as a special charge under this section. Notwithstanding sub. (4), a special charge imposed under this paragraph may be collected in installments and may be included in the current or next tax roll for collection and settlement under ch. 74 even if the special charge is not delinquent. If a political subdivision makes a loan, or enters into an agreement regarding loan repayments to a 3rd party, for a brownfield revitalization project under this paragraph, the repayment period may exceed 20 years.

SECTION 6. 66.0627 (8) (d) of the statutes is amended to read:

66.0627 (8) (d) A political subdivision that, under par. (a), makes a loan to, or enters an agreement with, an owner for making or installing an improvement or application that costs \$250,000 or more shall require the owner to obtain a written guarantee from the contractor or project engineer that the improvement or application will achieve a savings-to-investment ratio of greater than 1.0 and that the contract or engineer will annually pay the owner any shortfall in savings below this level. The political subdivision may determine the method by which a guarantee under this paragraph is enforced. This paragraph does not apply to a loan or agreement for a brownfield revitalization project.

SECTION 7. 66.1105 (4) (gm) 4. c. of the statutes is amended to read:

66.1105 (4) (gm) 4. c. Except as provided in subs. (10) (c), (16) (d), (17), ~~and~~, (18) (c) 3., and (20) (d) 1. the equalized value of taxable property of the district plus the value increment of all existing districts does not exceed 12 percent of the total equalized value of taxable property within the city. In determining the equalized value of taxable property under this subd. 4. c. or sub. (17) (c), the department of revenue shall base its calculations on the most recent equalized value of taxable property of the district that is reported under s. 70.57 (1m) before the date on which the resolution under this paragraph is adopted. If the department of revenue determines that a local legislative body exceeds the 12 percent limit described in this subd. 4. c. or sub. (17) (c), the department shall notify the city of its noncompliance, in writing, not later than December 31 of the year in which the department receives the completed application or amendment forms described in sub. (5) (b).

SECTION 8. 66.1105 (20) of the statutes is created to read:

66.1105 (20) ENVIRONMENTAL REMEDIATION DISTRICTS. (a) In this subsection:

1. “Environmental pollution” has the meaning given in s. 299.01 (4).

2. “Environmental remediation tax incremental district” means a tax incremental district created under this section, most of the territory of which consists of areas that contain significant environmental pollution, and which is subject to the conditions and limitations contained in this subsection.

(b) Before a city may adopt a resolution under sub. (4) (gm) with regard to an environmental remediation tax incremental district, the local legislative body shall do all of the following:

1. Obtain under par. (c) a certified site investigation report from the department of natural resources. The city shall submit a copy of the certified report to the department of revenue before the department may allocate tax increments under sub. (6).

2. Certify to the department of revenue that at least one of the items specified in this subd. 2. a. or b. apply. The starting point for determining a tax incremental district’s remaining life, under this subd. 2. a. and b., is the date on which the planning commission adopts the project plan under sub. (4) (f) or an amendment to the project plan under sub. (4) (h). The certified item shall be one of the following:

a. The project plan specifies that the city expects all project costs to be paid within 90 percent of the tax incremental district’s remaining life, based on the district’s termination date as calculated under sub. (7) (ak) to (au).

b. The project plan specifies that expenditures may be made only within the first half of the tax incremental district’s remaining life, based on the district’s termination date as calculated under sub. (7) (ak) to (au), and the limitation on the expenditure period does not apply to any expenditure that is made to address significant environmental pollution that was not identified in the original certified site investigation report described in par. (c). No expenditure under this subdivision may be made later than the time during which an expenditure may be made under sub. (6) (am).

(c) To obtain a certified site investigation report, the city shall send to the department of natural resources a detailed description of the significant environmental pollution that exists in the proposed district, and a proposed remedial action plan that contains cost estimates for anticipated project costs and a schedule for the design, implementation, and construction that is needed to complete the remediation with respect to the proposed district in accordance with rules promulgated by the department of natural resources. If the department of natural resources agrees with the city’s description of the condi-

tions in the proposed district and approves of the city's proposed remedial action plan, it shall provide the city with written certification that the department of natural resources has approved the site investigation report. If the department of natural resources does not approve the report, the city may modify and resubmit the report to the department of natural resources.

(d) With regard to an environmental remediation tax incremental district created under this subsection:

1. The city may designate one environmental remediation tax incremental district created under this subsection to which the 12 percent limit specified in sub. (4) (gm) 4. c. does not apply. Once the city makes such a designation, it may not so designate another environmental remediation tax incremental district until the current district so designated terminates.

2. Notwithstanding the provisions of sub. (5), the tax incremental base of the district shall be \$1 when the district is created.

(e) An environmental remediation tax incremental district created under this subsection may not allocate positive tax increments under sub. (6) (e) or (f) to another tax incremental district that is not an environmental remediation tax incremental district.

SECTION 9. 66.1106 (15) of the statutes is created to read:

66.1106 (15) SUNSET. No district may be created under this section on or after the effective date of this subsection [LRB inserts date].

SECTION 10. 66.1109 (2m) of the statutes is created to read:

66.1109 (2m) A municipality may annex territory to an existing business improvement district if all of the following are met:

(a) An owner of real property used for commercial purposes and located in the territory proposed to be annexed has petitioned the municipality for annexation.

(b) The planning commission has approved the annexation.

(c) At least 30 days before annexation of the territory, the planning commission has held a public hearing on the proposed annexation. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication, a copy of the notice together with a copy of a detail map showing the boundaries of the territory proposed to be annexed to the business improvement district shall be sent by certified mail to all owners of real property within the territory proposed to be annexed. The notice shall state the boundaries of the territory proposed to be annexed.

(d) Within 30 days after the hearing under par. (c), the owners of property in the territory to be annexed that would be assessed under the operating plan having a valuation equal to more than 40 percent of the valuation of all property in the territory to be annexed that would be assessed under the operating plan, using the method of

valuation specified in the operating plan, or the owners of property in the territory to be annexed that would be assessed under the operating plan having an assessed valuation equal to more than 40 percent of the assessed valuation of all property in the territory to be annexed that would be assessed under the operating plan, have not filed a petition with the planning commission protesting the annexation.

SECTION 11. 66.1109 (4g) of the statutes is created to read:

66.1109 (4g) A municipality may convert a business improvement district under this section into a neighborhood improvement district under s. 66.1110 if an owner of real property that is subject to general real estate taxes, that is used exclusively for residential purposes, and that is located in the business improvement district petitions the municipality for the conversion. If the municipality approves the petition, the board shall consider and may make changes to the operating plan under s. 66.1110 (4) (b).

SECTION 12. 66.1110 (4m) of the statutes is created to read:

66.1110 (4m) A municipality may annex territory to an existing neighborhood improvement district if all of the following conditions are met:

(a) An owner of real property subject to general real estate taxes and located in the territory proposed to be annexed has petitioned the municipality for annexation.

(b) The planning commission has approved the annexation.

(c) At least 30 days before annexation, the planning commission has held a public hearing on the proposed annexation. Notice of the hearing shall be published as a class 2 notice under ch. 985. Before publication, a copy of the notice, together with a copy of a detail map showing the boundaries of the territory proposed to be annexed to the neighborhood improvement district, shall be sent by certified mail to all owners of real property within the territory proposed to be annexed. The notice shall state the boundaries of the territory proposed to be annexed.

(d) Within 30 days after the hearing under par. (c), one of the following has not filed a petition with the planning commission protesting the proposed annexation:

1. The owners of property in the territory to be annexed that would be assessed under the operating plan having a valuation equal to more than 40 percent of the valuation of all property in the territory to be annexed that would be assessed under the operating plan, using the method of valuation specified in the operating plan.

2. The owners of property in the territory to be annexed that would be assessed under the operating plan having an assessed valuation equal to more than 40 percent of the assessed valuation of all property in the territory to be annexed that would be assessed under the operating plan.

SECTION 13. 75.106 (2) of the statutes is amended to read:

75.106 (2) **ASSIGNMENT AUTHORIZED.** Before a judgment is issued under s. 75.521 or a tax deed is executed under s. 75.14, the governing body of a county may assign to a person the county's right to take judgment with respect to any parcel that is subject to ~~the county's foreclosure action~~ under s. 75.521 or to take a tax deed with respect to any parcel subject to s. 75.14, if all of the following apply:

(a) The governing body of the county provides written notice to the governing body of the city, town, or village in which the parcel ~~that is subject to the county's foreclosure action~~ is located at least 15 days before the governing body of the county meets to consider the approval of the assignment.

(b) The governing body of the county produces a written assignment that is signed on behalf of the county, the assignee and the city, town, or village in which the parcel ~~that is subject to the county's foreclosure action~~ is located.

(c) The assignment identifies the parcel for which a judgment or tax deed is assigned.

(d) The parcel for which a judgment or tax deed is assigned is a brownfield.

(e) The assignment requires an environmental assessment of the parcel and requires that the department be provided the results of that assessment before a final judgment under s. 75.521 or a tax deed under s. 75.14 related to the parcel is granted to the assignee.

(f) The assignment requires that, if the parcel is contaminated by the discharge of a hazardous substance, as determined by the assessment under par. (e), and if the assignee elects to accept the judgment or deed assigned under this subsection regardless of the contamination, the assignee enter into an agreement with the department, before a final judgment is issued under s. 75.521 or a tax deed is issued under s. 75.14 related to the parcel, to clean up the parcel to the extent practicable; to minimize any harmful effects from the hazardous substance pursuant to rules the department promulgates; and to maintain and monitor the parcel pursuant to rules the department promulgates.

(g) The assignment and an affidavit from the county treasurer that attests to the county governing body's approval of the assignment are filed with the court that is presiding over the county's foreclosure action under s. 75.521 or, in the case of a tax deed issued under s. 75.14, with the register of deeds.

SECTION 14. 75.106 (4) of the statutes is renumbered 75.106 (4) (a) and amended to read:

75.106 (4) (a) An assignee who is granted a judgment under sub. (3) shall take title to, and is the owner of, the parcel that is the subject of the assignment, except that a person who commences an action under s. 75.521 (14a) related to the parcel shall commence the action against

only the county that assigned judgment to the parcel under sub. (2). An assignment under sub. (2) may provide that an assignee ~~under sub. (2)~~ who is granted a judgement under sub. (3) shall indemnify the county that makes the assignment and hold the county harmless against any loss, expense, liability, or damage that the county may incur as a result of an action under s. 75.521 (14a).

SECTION 15. 75.106 (4) (b) of the statutes is created to read:

75.106 (4) (b) An assignee who is assigned a tax deed under sub. (2) shall take title to, and is the owner of, the parcel that is the subject of the assignment, except that a person who commences an action under s. 75.144 or 893.25 related to the parcel shall commence the action against only the county that assigned the tax deed under sub. (2). An assignment of a tax deed under sub. (2) may provide that an assignee shall indemnify the county that makes the assignment and hold the county harmless against any loss, expense, liability, or damage that the county may incur as a result of an action under s. 75.144 or 893.25.

SECTION 16. 285.675 of the statutes is created to read:
285.675 Pilot program for manufacturing facilities on brownfields. (1) In this section:

(a) "Green Tier Program" means the program under s. 299.83.

(b) "Registration permit" means an air pollution control permit under s. 285.60 (2g).

(2) The department shall implement a pilot program under which a participating owner or operator is not required to make changes to the air pollution controls for a stationary source due to new or modified legal requirements, except as required under the federal clean air act, for 10 years after the department grants coverage under a registration permit for the stationary source.

(3) The department may allow an owner or operator to participate in the pilot program under this section only if all of the following apply:

(a) The stationary source is a minor source and is eligible for coverage under a registration permit.

(b) The stationary source is a manufacturing facility that the owner or operator is constructing.

(c) The stationary source is located on property on which the owner or operator has conducted the activities required under s. 292.15 (2) (a) 2., (ae) 2., or (ag) 1. and the owner or operator has obtained a certificate of completion from the department under s. 292.15 (2) (a) 3., (ae) 3., or (ag) 2. for the property.

(d) The owner or operator is a participant in tier I or tier II of the Green Tier Program and the manufacturing facility is included in the program.

(4) The department may specify limitations on participation in the pilot program, such as limitations on the number of participants or on the location in which the pilot program operates.

(5) No later than the first day of the 60th month beginning after department implements the pilot program, the department shall submit a report, to the governor and to the standing committees of the legislature with jurisdiction over environmental matters under s. 13.172 (3), on the pilot program, including the environmental and economic effects of the pilot program and the department's recommendations about whether the pilot program should be expanded.

SECTION 17. 292.13 (1m) (intro.) of the statutes is amended to read:

292.13 (1m) EXEMPTION FROM LIABILITY FOR SOIL CONTAMINATION. (intro.) A person is exempt from s. 292.11 (3), (4) and (7) (b) and (c) with respect to the existence of a hazardous substance in the soil, including sediments, or in vapor emitted from the soil or groundwater on property possessed or controlled by the person if all of the following apply:

SECTION 18. 292.13 (2) of the statutes is amended to read:

292.13 (2) DETERMINATIONS CONCERNING LIABILITY. The department shall, upon request, issue a written determination that a person who possesses or controls property on which a hazardous substance exists in the soil or groundwater, or in vapor emitted from the soil or groundwater, is exempt from s. 292.11 (3), (4) and (7) (b) and (c) if the person satisfies the applicable requirements in subs. (1) and (1m). The department may revoke its determination if it determines that any of the requirements in sub. (1) or (1m) cease to be met.

SECTION 19. 292.15 (1) (c) of the statutes is created to read:

292.15 (1) (c) "Property" means the area of real property that is included in an application to obtain an exemption under this section, made up of a legally identifiable parcel or legally identifiable contiguous parcels created in compliance with applicable laws.

SECTION 20. 292.15 (2) (at) of the statutes is created to read:

292.15 (2) (at) *Subdivision, transfer, or other change in property.* If, after the date on which the voluntary party submits the application for exemption for the property, a parcel within the property is subdivided or transferred, a parcel within the property is combined with a parcel not within the property, or any other similar change is made to parcels affecting the property, the property that is included in an application to obtain an exemption under this section shall remain the same unless the voluntary party submits an application to the department to modify the property. If the voluntary party proposes to modify the property because of a subdivision, transfer, or other change to parcels affecting the property, the voluntary party shall submit a revised application or applications to obtain an exemption under this section for the modified property or properties as defined under sub. (1) (c). If the department approves a voluntary party's proposed modification, each parcel within the modified property not otherwise excluded under sub. (6m) or (7) shall meet all of the requirements under par. (a), (ae), (af), or (ag) to be eligible for an exemption under this section.