



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 770	Assembly Substitute Amendment 1, Assembly Amendment 2 to Assembly Substitute Amendment 1, and Senate Amendment 1
<i>Memo published: March 2, 2018</i>	<i>Contact: Scott Grosz, Principal Attorney</i>

2017 Assembly Bill 770 makes various changes relating to local regulation of property development. This amendment memo summarizes Assembly Substitute Amendment 1 (“the substitute amendment”) to 2017 Assembly Bill 770 (“the bill”). The amendment memo also provides an overview of key differences between the substitute amendment and the bill, and describes modifications contained in Assembly Amendment 2 to the substitute amendment and Senate Amendment 1 to the bill (as passed by the Assembly).

THE SUBSTITUTE AMENDMENT

The substitute amendment makes various changes, described below, relating to housing and local regulation of property development.

Tax Incremental Financing, Levy Limit Exception, and Impact Fee Reduction for Workforce Housing

The substitute amendment makes several changes to current law relating to the development of certain housing. First, the substitute amendment authorizes municipalities to create tax incremental districts (TIDs) for workforce housing development, defined to mean development of housing for which both of the following criteria apply:

- The housing costs a household no more than 30% of the household’s gross median income.
- The construction cost per housing unit, including rental housing, is not more than 80% of the median price for new residential construction in the county.

A workforce housing development TID created under the substitute amendment is generally subject to applicable requirements under the tax incremental financing (TIF) law, with the following significant differences:

- The life span of a workforce housing development TID is 15 years, rather than 23 years or more for other TIDs.
- The creation of a workforce housing development TID requires a three-fourths vote of the Joint Review Board, rather than a majority vote for other TIDs.¹
- One hundred percent of the area of the workforce housing development TID must be used for workforce housing. The substitute amendment defines “workforce housing development” as development that contains only newly platted single-family dwelling units.

Second, the substitute amendment creates an exception to general local levy limits to allow a city, village, or town to increase its levy by \$1,000 for each new, single-family residential dwelling unit for which it has issued an occupancy permit, if both of the following apply to the dwelling unit:

- It is located on a parcel no more than one quarter of an acre in a city or village, or on a parcel no more than one acre in a town.
- It sold for not more than 80% of the median price of a new housing unit in the city, village, or town.

Finally, the substitute amendment expands a provision of current law relating to impact fees. Current law generally authorizes cities, villages, and towns to enact ordinances that impose impact fees on developers to offset the cost of infrastructure improvements required to accommodate new land developments. However, an impact fee ordinance may provide an exemption from, or reduction in the amount of, impact fees on land development that provides low-income housing, if costs are not shifted to other land developments. [s. 66.0617 (2) and (7), Stats.] The substitute amendment similarly authorizes cities, villages, and towns to provide exemptions from or reductions of impact fees for land developments that provide “workforce housing,” as defined for purposes of the TIF law, above.

Other Changes Relating to Impact Fees

Generally, under current law, impact fees are payable to a municipality upon issuance of a building permit by the municipality. [s. 66.0617 (6) (g), Stats.] For impact fees in excess of \$75,000, the substitute amendment specifies that a developer may defer payment for a period of four years from the date of issuance of a building permit, or until six months before the

¹ The Joint Review Board includes five representatives, one each from the school district, technical college district, county, and city or village where a proposed TID is located, along with one public member selected by a majority of the other board members before the planning commission holds the public hearing or hearings. [s. 66.1105 (4m) (a), Stats.]

municipality incurs costs related to the development for which the fees were imposed, whichever is earlier. If the developer elects to defer payment, the developer shall maintain a bond or irrevocable letter of credit in the amount of the unpaid fees. Payments may not be deferred for fees on projects that have previously been approved. The substitute amendment also directs a municipality that collects an impact fee to provide the developer with an accounting of how the fee will be spent.

Additionally, current law describes the timeframe after collection in which impact fees must be used. Generally, impact fees must be used within a reasonable amount of time after collection, or they must be returned with interest. [s. 66.0617 (9), Stats.] Generally, the substitute amendment specifies that impact fees that are not used within eight years must be refunded to the payer with interest. Fees collected for costs related to lift stations or sewage treatment or collection must be used within 10 years, unless the municipality adopts a hardship resolution to extend the time period for an additional three years. The substitute amendment specifies that an impact fee is paid on the date a developer obtains a bond or irrevocable letter of credit.

Current law provides that a person aggrieved by any fee imposed by a political subdivision may appeal the reasonableness of the fee in relation to the service for which the fee is imposed by filing a petition within 60 days after the fee's imposition. [s. 66.0628 (4) (a), Stats.] The substitute amendment revises the filing deadline to 90 days after the fee is due and payable.

Preemptions of Certain Local Regulations

The substitute amendment prohibits cities, villages, towns, and counties from doing any of the following:

- Enacting an ordinance or adopting a resolution that limits the installation of banners over the entire height and length of a fence surrounding a construction site.²
- Prohibiting a private person from working on the job site of a construction project on a Saturday or Sunday, or imposing more restrictive conditions on such work than apply on weekdays.
- Making or enforcing an ordinance that applies to a dwelling and is more restrictive than the state Uniform Dwelling Code or that is contrary to an order of the Department of Safety and Professional Services (DSPS) with respect to the enforcement of the Uniform Dwelling Code.³

² For the preemption to apply, the installation must be by a person who owns the construction site or is otherwise in lawful possession or control of the site.

³ Current law requires local ordinances relating to the construction and inspection of new dwellings to "meet the requirements of" the Uniform Dwelling Code. [s. 101.65 (1) (a), Stats.] The substitute amendment replaces that requirement with a more specific preemption.

- Imposing more stringent requirements on a developer relating to the installation of a water meter station than are required to ensure the proper functioning of such a station.
- Enacting or enforcing an ordinance requiring a certain number or percentage of residential dwelling units in a land development be made available for rent or sale to an individual or family with a family income at or below a certain level.
- Establishing a general expiration date for an approval related to a planned development district of less than five years after the date of the last approval required for completion of the project.

Procedure for Amending a City Zoning Ordinance

Under current law, if 20% of certain affected landowners protest a proposed change to a city zoning ordinance, three-fourths of the members of a city's common council must vote in favor of the amendment before it takes effect. [s. 62.23 (7) (d) 2m. a., Stats.]

The substitute amendment repeals the statutory provisions relating to protests of city zoning ordinances.

Land Division and Plat Approval

The substitute amendment makes various changes relating to the requirements for land division and plat approval. Key changes to current law include:

- Authorizing land divisions by certified survey map for land that is zoned for multi-family use, whereas current law allows such divisions only for land zoned commercial, industrial, or mixed-use.
- Specifying that the estimated cost to complete public improvements for a subdivision is to be determined as follows:
 - By an initial estimate provided by the governing body, if accepted by the subdivider.
 - If the estimate is rejected by the subdivider, by a bona fide bid from a subdivider's contractor, if the governing body accepts the bid.
 - If the bid is rejected by the governing body, by an estimate of the cost to complete the work in event of default, if the estimate is within 10% of the subdivider's bid.
 - If the cost to complete the work differs by more than 10% from the bid, by mutual agreement between the subdivider's engineer and the municipality's engineer.
- Specifying that the installation of asphalt or a concrete binder course constitutes "substantial completion" for purposes of road dedications.
- Authorizing a subdivider to provide any security required by a city, village, or town in the form of a performance bond, letter of credit, or combination of the two.

- In certain circumstances, requiring municipalities to issue a permit to commence construction of a foundation or any other noncombustible structure before non-safety-related public improvements have been completed.
- Authorizing a city, village, town, or county to offer a subdivider the option of paying a fee in lieu of dedicating land for a public park.

Stormwater Regulation

Current law describes the manner in which property may be classified in order to make equitable charges for services rendered by a storm and surface water system. [s. 66.0821 (4) (c), Stats.] The substitute amendment specifies that no additional charges, beyond those charged to similar properties, may be charged to a property for services rendered for a property that continually retains 90% of the difference between the post-development and predevelopment runoff on site.

Subject to certain exceptions, under current law, a city, village, town, or county may not enact an ordinance relating to stormwater management unless the ordinance strictly conforms to uniform statewide standards. [s. 281.33 (3m), Stats.] The substitute amendment revises an exception for ordinances relating to flood control to instead address ordinances relating to peak flow to address existing flooding problems or to prevent future flooding problems, except an ordinance may not require more than 90% of the difference between pre-development and post development annual runoff volume to be retained on the site.

Local Reporting Requirements

The substitute amendment requires cities and villages with populations of 10,000 or more to prepare and post reports by January 1, 2020, and to update the reports annually thereafter, regarding a city's or village's implementation of the housing element of its comprehensive plan. Those reports must contain specified information relating to plat approvals, proposed new dwelling units, undeveloped parcels, and an analysis of the city's or village's residential development regulations, including a calculation of the financial impact of those regulations.

In addition, the substitute amendment requires cities and villages with populations of 10,000 or more to prepare and post a report by January 1, 2020, regarding the city's or village's development fees. The report must contain the amounts of specified types of fees, the total amount of relevant fees imposed in the prior year, and the amount of such fees imposed per new residential dwelling unit in the prior year. The substitute amendment prohibits a city or village from imposing a fee that it does not properly post in the report.

Compensation for Condemnations

The substitute amendment modifies current law relating to determining fair market value in condemnation cases and makes changes relating to payments for certain displaced persons in such cases. Specifically, the substitute amendment **requires** (rather than **authorizes** under current law) a court or condemnation commission to consider comparable property sales as a

basis for determining fair market value in a condemnation action and requires a court or commission to consider cost- or income-based appraisals if provided by the owner.

With respect to certain persons displaced from a business or farm operation as a result of a condemnation, the substitute amendment revises the maximum amount of payments that a condemnor must pay to such persons for the cost of purchasing or renting a replacement business or farm operation. In addition to the payments required under current law, the substitute amendment also requires a condemnor to pay those persons certain litigation expenses and certain “reasonable project costs,” defined to mean the total of specified capital, financing, professional services, imputed administrative, and infrastructure costs that a person must reasonably incur to establish a comparable replacement business or farm operation.

With regard to payment caps, currently set at \$50,000 for purchase and \$30,000 for rental, the substitute amendment sets the caps at \$100,000 and \$80,000 respectively, if the condemnor is a village, town, or city, and removes the caps for other condemnors. The substitute amendment also specifies that a court must award litigation expenses if the award for the claimant exceeds the sum of the jurisdictional offer or highest written offer and the itemized costs by 15%.

Timeline for Local Building Inspections

The substitute amendment creates a new timeline for inspections provided by a local building inspector. Specifically, the substitute amendment requires a local building inspector to complete an inspection no later than 14 business days after receiving a request from a developer for an inspection. If a local inspector does not complete an inspection within that time, the substitute amendment authorizes a developer to request a state inspector with a comparable level of zoning and building inspection qualification as the local building inspector to perform the inspection. The substitute amendment requires a city, village, town, or county to accept a certificate of inspection provided by a state inspector in those circumstances.

DIFFERENCES BETWEEN THE SUBSTITUTE AMENDMENT AND THE BILL

Differences between the substitute amendment and the bill include the following:

- **Workforce housing development TIF.**
 - The substitute amendment defines workforce housing development to mean development that contains only newly platted single-family dwelling units. Under the bill, the definition refers to newly platted residential uses.
 - The substitute amendment requires a three-fourths vote of the Joint Review Board for creation of a workforce housing development TID. The bill requires a unanimous vote.
- **Levy limits.** The substitute amendment revises the provision in the bill relating to levy limit increases to apply it to towns, rather than just cities and villages.

- **Impact fees.** The provisions of the bill and the substitute amendment differ substantially with respect to the treatment of impact fees. The bill does not include the provision on impact fee reports that appears in the substitute amendment. Additionally, in contrast to the provisions of the substitute amendment, described above, the bill includes provisions specifying that:
 - Impact fees may not include amounts for an increase in service capacity greater than the capacity necessary to serve the development for which the fee is imposed.
 - Impact fees may not include expenses for operation or maintenance of a public facility.
 - Impact fees shall be payable upon issuance of a building permit or six months before costs are incurred, whichever is later.
 - Impact fees that are not used within eight years after they are collected must be refunded with interest.
- **Timeline to contest fees charged by a political subdivision.** The substitute amendment revises the timeline to contest fees to 90 days after the fee is due and payable. The bill specifies the timeline as 60 days after the fee is paid.
- **Definition of “construction project” for limitation on weekend work.** In the definition of “construction project,” the substitute amendment adds the requirements that the project is directly related to onsite work of a residential or commercial real estate development project and that a political subdivision may not prohibit a private person from working on the job site of a construction project on the weekend.
- **Estimates of costs to complete public improvements.** The provisions of the bill and the substitute amendment differ substantially with respect to the estimates of costs to complete public improvements for a subdivision. In contrast to the provisions of the substitute amendment, described above, the bill includes provisions specifying that:
 - The governing body may not require security to complete public improvements equal to more than 110% of the estimated costs.
 - The estimated cost to complete public improvements may not exceed a bona fide bid from a subdivider’s contractor, or if such a bid was not obtained, a mutually agreed-upon estimate.
 - A governing body shall accept a bond if the bond is consistent with a standard surety bond form. The substitute amendment allows the governing body to reject the bond form if it demonstrates that it does not sufficiently ensure performance in the event of default, and requires the surety company to be licensed in Wisconsin.
- **Dedication of land for parks.** Under the fee-in-lieu provision for the dedication of land for parks, the substitute amendment specifies that if the subdivider elects to

dedicate land, unless the municipality, town, or county agrees otherwise, the subdivider may only dedicate land that is consistent with the governing body's park plan or contiguous to or within the boundaries of the land being subdivided.

- **Stormwater management.** In contrast to the substitute amendment, described above, the bill prohibits cities, villages, towns, and counties from enacting or enforcing an ordinance relating to stormwater management, unless the ordinance strictly conforms to state standards.
- **Reporting requirements.** The substitute amendment makes local reports regarding development fees applicable to cities and villages with populations of 10,000 or more, rather than all municipalities under the bill, and it extends the deadline for completion of initial reports from January 1, 2019 to January 1, 2020.
- **Expiration dates for planned development district approvals.** The substitute amendment specifies that a provision in the bill prohibiting a political subdivision from establishing an expiration date of less than five years for an approval related to a planned development district does not prohibit a political subdivision from establishing timelines for completion of work related to an approval.
- **Condemnation.**
 - Income- and cost-based appraisals. With regard to consideration of income- and cost-based appraisals, the substitute amendment specifies that these appraisals must be provided by the owner in order to be considered by the court.
 - Litigation expenses. With regard to the award of litigation expenses, in contrast to the substitute amendment, described above, the bill specifies that the litigation expenses must be awarded if the award of damages for the claimant exceeds the amount of damages initially allowed by the condemnor by 15%.
 - Payment caps. Generally, the bill revises payment caps for purchase and rental of property to \$100,000 and \$80,000, respectively.
- **Protests of city zoning ordinances.** The bill amends a provision requiring a three-fourths vote of city council members before a city zoning ordinance may be amended despite a protest from 20% or more of affected landowners to authorize cities to amend their zoning ordinances based on a majority vote of the members of the city council, despite a protest by affected landowners. The substitute amendment instead repeals the relevant statutory provision. The changes under the bill and substitute amendment appear to have the same practical effect.
- **Building inspection.** With regard to the provisions of the bill relating to acceptance of state building inspections, the substitute amendment specifies that the state inspector must have a comparable level of zoning and building inspection qualifications as the local building inspector.

- **Bedroom size and number.** The bill prohibits cities, villages, and towns from regulating the size of a bedroom in a rental unit or requiring a certain number of bedrooms in a rental unit. The substitute amendment removes those provisions of the bill.

MODIFICATIONS CONTAINED IN ASSEMBLY AMENDMENT 2 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 2 makes several changes to Assembly Substitute Amendment 1, including the following:

- Assembly Amendment 2 deletes the provisions of the substitute amendment relating to authority for the creation of workforce housing tax incremental districts.
- With respect to use of cost- or income-based appraisals in condemnation actions, Assembly Amendment 2 requires a court or commission to consider an appraisal if provided by the condemnor or condemnee, rather than the owner, as prescribed in the substitute amendment.
- With respect to the award of litigation expenses, Assembly Amendment 2 specifies that a court must award litigation expenses if the award of the judgment for the claimant exceeds the amount of damages allowed by the condemnor by 15%. Additionally, Assembly Amendment 2 sunsets the award of litigation expenses on January 1, 2019, and revises the initial applicability of the provisions to allow for submission of revised claims in certain cases.
- Assembly Amendment 2 creates additional standards for impact fees under s. 66.0617 (6), Stats., including requirements that impact fees may not include amounts for increases in service capacity greater than the capacity necessary for the development for which the fee is imposed and that fees may not include expenses for operation or maintenance of a public facility.
- With respect to the development fee report required under the substitute amendment, Assembly Amendment 2 modifies the report to be a new housing fee report, reporting on residential development fees.
- With respect to prohibition of local limitations on weekend work, Assembly Amendment 2 revises the prohibition to apply only to Saturdays.
- With regard to a subdivider's dedication of land for a public park, Assembly Amendment 2 revises the provision to specifically reference land that is consistent with local park and comprehensive plans.

MODIFICATIONS CONTAINED IN SENATE AMENDMENT 1 TO ASSEMBLY BILL 770 (AS SHOWN BY ASSEMBLY SUBSTITUTE AMENDMENT 1)

With regard to the levy limit exception for affordable single-family residential dwelling units, Senate Amendment 1 specifies that amounts levied under the exception may be used only for police, fire, and emergency medical services, and that a municipality may not decrease the amount it spends on those services below the amount spent in the preceding year.

BILL HISTORY

On January 17, 2018, the Assembly Committee on Housing and Real Estate recommended adoption of Assembly Substitute Amendment 1 on a vote of Ayes, 9; Noes, 0, and recommended adoption of Assembly Bill 770, as amended, on a vote of Ayes, 6; Noes, 3.

Representative Brooks offered Assembly Amendment 2 to Assembly Substitute Amendment 1 on February 12, 2018. On February 13, 2018, the Assembly adopted Assembly Amendment 1 to the substitute amendment, adopted the substitute amendment, and passed Assembly Bill 770.

On February 20, 2018, the Senate adopted Senate Amendment 1, which was offered by Senator Nass on February 19, 2018. The Senate then concurred in Assembly Bill 770, as amended, on a vote of Ayes, 18; Noes, 14.

SG:jal