



## Legislative Fiscal Bureau

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October 4, 2017

TO: Members  
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: 2017 Wisconsin Act 58 (Foxconn/Fiserv)

On September 19, 2017, the Governor signed into law August 2017 Special Session Assembly Bill 1 as 2017 Wisconsin Act 58. The act creates an electronics and information technology manufacturing zone and provides refundable tax credits of up to \$2.85 billion for a business (Foxconn) located in the zone. The act also creates a refundable enterprise zone credit for a financial services technology business (Fiserv).

The attached document provides a summary of the provisions and fiscal effect of 2017 Act 58. The document contains three sections. The first section provides a legislative history of the August 2017 Special Session Assembly Bill 1 (SS AB 1). The second section is a summary of the provisions of the legislation. The final section provides information related to the fiscal effect of 2017 Act 58.

## LEGISLATIVE HISTORY OF 2017 ACT 58

On July 27, 2017, Governor Walker and Mark Hogan, Secretary and CEO of the Wisconsin Economic Development Corporation (WEDC), entered into a memorandum of understanding (MOU) with Terry T. M. Gou, Chairman and CEO of Hon Hai Precision Industry Co., Ltd. (Foxconn) and Louis K. Woo, Special Assistant to Mr. Gou. Under the MOU, Foxconn agreed to invest \$10 billion to construct, over six years, a facility in Wisconsin and create up to 13,000 jobs, with a reported average salary of \$53,875 over a period of up to six years. The state's agreement, under the MOU, among other things, is to provide up to \$3 billion in an economic package which would include refundable tax credits and a construction sales tax exemption for Foxconn.

On July 28, 2017, the Governor issued Executive Order #250, calling for a special session of the Legislature to address legislation relating to the promotion of economic development and job retention. That legislation was introduced on August 1, 2017, by the Committee on Assembly Organization as August 2017 Special Session Assembly Bill 1 and referred to the Assembly Committee on Jobs and the Economy.

The Assembly Committee on Jobs and the Economy held a public hearing on the bill in the State Capitol on August 3. On August 14, that Committee recommended the bill for passage, as amended by Assembly Substitute Amendment 1, on a vote of 8-5.

On August 17, the Assembly adopted ASA 1, as amended by AA 24, and passed the bill on a vote of 59 to 30 with 6 pairs. On August 18, the Senate received the bill and referred it to the Joint Committee on Finance. In addition, the Senate requested a report on the bill from the Joint Survey Committee on Tax Exemptions. The Joint Committee on Finance held a public hearing on the bill at the Gateway Technical College in Sturtevant on August 22.

On August 23, the Joint Survey Committee on Tax Exemptions submitted its report on the bill and by a vote of 6-2, found that the sales tax exemption provision of the legislation "is appropriate public policy."

The Joint Committee on Finance held an executive session on the bill on September 7 and recommended the bill, as amended by Senate Substitute Amendment 1, on a vote of 12-4.

The Senate considered the bill on September 12 and adopted Senate Amendments 1 and 13 to SSA 1 and concurred in the bill, as amended, on a vote of 20-13. The Assembly concurred with the Senate's action by a vote of 64 to 31 with 4 pairs on September 14.

The bill was enrolled and presented to the Governor on September 15. Governor Walker approved Enrolled August 2017 SS AB 1, in part, on September 18 as 2017 Act 58. The Governor indicated in his message to the Legislature that he had exercised his authority to make three partial vetoes to the bill, as passed by the Legislature. 2017 Act 58 was published on September 19, 2017.

## SUMMARY OF THE PROVISIONS OF 2017 ACT 58

### ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE

#### *Designation of Zones and Certification of Businesses for Tax Benefits*

Under the Act, WEDC can designate not more than one electronics and information technology manufacturing (EITM) zone, and the zone cannot include any area outside this state. In determining whether to designate an area as a zone, WEDC must consider: (a) indicators of the area's economic need, which may include data regarding household income, average wages, the condition of property, housing values, population decline, job losses, infrastructure and energy support, the rate of business development, and the existing resources available to the area; and (b) the effect of designation on other initiatives and programs to promote economic and community development in the area, including job retention, job creation, job training, and creating high-paying jobs. To the extent possible, WEDC must give preference to the greatest economic need. A zone designation can remain in effect for no more than 15 years.

In order for WEDC to certify a business as eligible to claim the EITM zone credits (described below), WEDC must contract with a business that begins operations in an EITM zone. It is possible that WEDC may choose to certify more than one business as eligible to receive EITM zone tax credits. However, the aggregate amount of both EITM zone payroll and capital expenditure credits that WEDC may certify are subject to the limits described below. WEDC must revoke a certification if the business does any of the following: (a) supplies false or misleading information to obtain tax benefits; (b) leaves the EITM zone to conduct substantially the same business outside the zone; or (c) ceases operations in the zone and does not renew operation of the business or a similar business in the zone within 12 months.

WEDC can require a business to repay any tax benefits the business claims for a year in which it failed to maintain employment levels or a significant capital investment in property required by an agreement between the business and WEDC. In addition, WEDC may not certify a person to receive EITM zone credits unless it enters into an agreement with the person that requires the person to repay the tax benefits if, within five years after being certified to receive them, the person ceases to conduct the relevant economic activity in this state and commences substantially the same economic activity outside this state.

To the extent possible, WEDC must attempt to include terms in any agreement negotiated between it and a business certified for EITM zone credits that encourage the business's hiring of Wisconsin residents.

WEDC must determine the maximum amount of the tax benefits that a certified business may claim and notify the Department of Revenue (DOR) of this amount. WEDC also must annually verify the information submitted to it regarding the EITM zone tax credits.

### ***EITM Zone Payroll Tax Credit***

Under the Act, "state payroll" means the amount of payroll apportioned to this state, as determined under the old corporate apportionment statutes. "Zone payroll" means the amount of state payroll that is attributable to wages paid by the claimant to full-time employees for services that are performed in the zone or that are performed outside the zone, but within the state, and for the benefit of the operations within the zone, as determined by WEDC. "Zone payroll" does not include the amount of wages paid to any full-time employees that exceeds \$100,000. A "full-time employee" means an individual who is employed in a job for which the annual pay is at least \$30,000 and who is offered retirement, health, and other benefits offered to an individual who is required to work at least 2,080 hours per year.

A claimant can claim as a refundable income or franchise tax credit an amount calculated by multiplying the amount of zone payroll for the taxable year of full-time employees employed by the claimant by 17%. WEDC cannot certify a business as eligible to claim the payroll credits for services performed outside the state. WEDC cannot issue certifications to claim payroll tax credits under these provisions that total more than \$1.50 billion.

### ***Supplemental Credit for Capital Expenditures***

In addition to the payroll tax credit, if WEDC determines that a certified business makes a significant capital expenditure in the EITM zone, it can certify the business to receive additional tax benefits in an amount to be determined by WEDC, but not exceeding 15% of the business's capital expenditures in the EITM zone in the taxable year. WEDC must, in a manner it determines, allocate the tax benefits a business is certified to receive under this provision over a period of seven years. In certifying a person as eligible to receive the capital expenditure credits, WEDC must establish job creation thresholds for a business for each year in the zone, and the claiming of the credits by that business must be tied to those job creation thresholds. WEDC must adopt policies and procedures defining "significant capital expenditure."

WEDC cannot issue certifications to claim capital expenditure tax credits under these provisions that total more than \$1.35 billion.

### ***Other Provisions***

Partnerships, limited liability companies (LLCs), and tax-option corporations cannot claim the credits, but the eligibility for, and the amount of, the credit are based on their payment of amounts described above. A partnership, LLC, or tax-option (S) corporation must compute the amount of credit that each of its partners, members, or shareholders may claim and provide that information to each of them. Partners, members of LLCs, and shareholders of S corporations can claim the credit in proportion to their ownership interests.

No credit may be allowed unless the claimant's return includes a copy of the certification for tax benefits. DOR has full power to administer the credits and take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, and

penalties apply to the new credits. Current law provisions regarding timely claims also apply to the new credits.

[Under 2017 Wisconsin Act 59 (the 2017-19 biennial budget bill) as partially vetoed by the Governor, WEDC is permitted to recover EITM zone credits that have been revoked or that are otherwise invalid from the partnership, LLC, or S corporation, or from the individual partner, member, or shareholder.]

As noted, the new credits are refundable. If the allowable amount of a credit claim exceeds the income or franchise taxes otherwise due on the claimant's income, the amount of the claim that is not used to offset those taxes are certified by DOR to the Department of Administration (DOA) for payment by check, share draft, or other draft drawn from a new GPR sum sufficient appropriation for the credit. No interest is paid on amounts certified for refund.

[Act 58 Sections: 6, 22, 24 thru 28, 30 thru 32, 48s, and 49]

## **LAB EVALUATION OF EITM ZONE CREDITS**

Beginning in 2018, annually for five years, the Legislative Audit Bureau (LAB) must evaluate the process used by WEDC to verify information submitted to it regarding eligibility for EITM zone credits and evaluate whether WEDC appropriately verified, in accordance with statutory and contractual requirements, the amount of EITM zone credits eligible claimants may claim. WEDC must cooperate with LAB for purposes of performing this audit.

[Act 58 Sections: 1m and 49]

## **WEDC POSITION**

The Act requires WEDC's Board of Directors to hire a full-time employee known as the electronics manufacturing small business development director. The director's duties must include coordinating with the economic development liaison in DOA and providing outreach to local economic development organizations. This provision has no effect after December 31, 2022.

[Act 58 Sections: 48m and 61(1c)]

## **SALES TAX EXEMPTION**

The Act creates a state and local sales and use tax exemption for building materials, supplies, and equipment and taxable landscaping and lawn maintenance services sold to (and the storage, use, or other consumption of the same property and services by) owners, lessees, contractors, subcontractors, or builders if that property or service is acquired solely for or used solely in, the construction or development of facilities located in an EITM zone and if the capital expenditures for the construction or development of such facilities may be claimed as an EITM zone credit, as certified by WEDC. The exemption first applies to purchases made after WEDC

enters into a contract with a business to locate in an EITM zone.

[Act 58 Sections: 34 and 62]

## **ENTERPRISE ZONE PROGRAM**

The enterprise zone program provides refundable tax credits that can be claimed against the individual income tax and the corporate income/franchise tax for eligible expenses for increased employment, retaining employees, employee training, capital investment, and purchases from Wisconsin vendors. WEDC is responsible for designating enterprise zones, certifying taxpayers, allocating and verifying tax credits, and performing other general administrative functions related to the enterprise zone program. WEDC is authorized to designate up to 30 areas in this state as enterprise zones and is required to designate as zones at least three areas comprised of political subdivisions with populations of fewer than 5,000, and two areas comprised of political subdivisions with populations between 5,000 and 30,000. The changes to the enterprise zone program under the Act are not related to the Foxconn project.

### ***Permit WEDC to Redesignate Enterprise Zones***

The Act specifies that if WEDC revokes all certifications for tax benefits within a designated enterprise zone, it may cancel the designation of that enterprise zone and then designate a new enterprise zone subject to the statutory limits. In addition, WEDC can designate an additional zone if an existing enterprise zone designation expires.

[Act 58 Sections: 51 thru 53 and 55]

### ***Fiserv, Inc.***

The Act creates a new refundable enterprise zone credit for no more than one financial services technology business that: (a) after completing a competitive corporate relocation process, retains its corporate headquarters in this state and retains at least 93% of its full-time employees in this state who were identified as being full-time employees of the business in the base year, as determined by WEDC; and (b) maintains average zone payroll for the taxable year equal to or greater than the base year.

The credit is equal to the percentage, as determined by WEDC, of the claimant's zone payroll paid in the 12 months prior to the certification date to the claimant's full-time employees in the enterprise zone whose annual wages are greater than the amount determined by multiplying 2,080 by 150% of the federal minimum wage (\$22,620) in a tier I county or municipality or greater than \$30,000 in a tier II county or municipality. The amount that the claimant can claim for a taxable year cannot exceed \$2 million. A claimant can claim the credit for no more than five consecutive taxable years.

The administration indicates that this new credit is intended to allow WEDC to provide assistance to Fiserv, Inc., which is headquartered in Brookfield.

[Act 58 Sections: 23, 29, and 54]

## **DISREGARDED ENTITIES**

Under the Act, with regard to a single-owner entity that is disregarded as a separate entity under the Internal Revenue Code, any notice that DOR sends to the owner or to the entity is considered a notice sent to both, and both are liable for any amounts due as specified in the notice. This provision applies to all laws administered by DOR, and is also referenced in Chapters 180 (business corporations) and 183 (LLCs). This component of the Act is not related to the Foxconn project.

[Act 58 Sections: 33, 37, and 38]

## **PUBLIC SERVICE COMMISSION**

### ***Certificates of Authority and Certificates of Public Convenience and Necessity***

The Act excludes public utility projects primarily to provide service to a new customer within an EITM zone from the requirements to obtain a certificate of authority from the Public Service Commission (PSC), and excludes public utility projects consisting of high-voltage transmission line relocations within an EITM zone from the requirements to obtain a certificate of public convenience and necessity from the PSC.

[Act 58 Sections: 46 and 47]

### ***Market-Based Public Utility Rates***

The Act modifies current law provisions regarding public utility market-based rates to require an electric public utility providing service to an EITM zone to file with the PSC, no later than January 1, 2020, tariffs that include market-based pricing and options that allow a new retail customer within the EITM zone to receive market benefits and take market risks for some or all of the customer's purchases of capacity and energy, provided that the PSC determines that the customer is eligible for an EITM zone credit. Subject to maximum capacity or energy purchase limits established by the PSC, the Act specifies that the tariffs include the following requirements: (a) the customer shall annually nominate the amount of capacity and energy subject to the market-based tariff; (b) the customer shall provide not less than 12 months' notice to terminate service under the market-based tariff; and (c) the term of the market-based tariff may not be less than 10 years. In addition, the Act specifies that the tariff require the customer to pay the difference, if any, between the otherwise applicable retail rate and the market-based tariff if the customer supplies false or misleading information regarding its applicability for the market-based tariff, leaves the EITM zone to conduct substantially the same business outside the zone, or ceases operations in the EITM zone and does not renew operation of the business or a similar business within the zone within 12 months. The PSC is required to approve market-based rates under the preceding provisions and establish maximum capacity or energy purchase limits for purposes of the tariffs, as noted above.

[Act 58 Sections: 39 thru 45]

## **NATURAL RESOURCES**

### ***Environmental Impact Statements***

The Act specifies that any permit or approval issued for a new manufacturing facility within an EITM zone is not considered a major action for the purpose of the environmental impact statement requirement under s. 1.11(2)(c) of the statutes.

Under current law, all state agencies are required to prepare environmental impact statements (EIS) for every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the human environment. Federal government agencies also may conduct environmental reviews, up to and including an EIS, for actions affecting areas of federal jurisdiction, such as interstate navigable waters. The Act does not affect federal requirements.

[Act 58 Section: 49]

### ***Department of Natural Resources Regulatory Authority***

The Act specifies the Department of Natural Resources (DNR) is to ensure conditions of applicable permits, licenses, and approvals under the Department'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 specifically provided otherwise in the Act. The Act also specifies the compliance requirement includes, but is not limited to, licenses, permits, and approvals under several statutory chapters and any associated DNR administrative rules.

[Act 58 Section: 60(2c)]

### ***Water Diversion from Great Lakes Basin***

The Act specifies that, when a person in a straddling community applies to DNR to divert (transfer) water from the Great Lakes basin into a watershed outside the Great Lakes basin, the proposed diversion would be exempt from the requirement to be consistent with an approved water supply service area plan that covers the public water supply system if the proposal is to provide water to a straddling community that includes an EITM zone. The Act does not change other notification, review or water use and return requirements under the Great Lakes Compact that may apply to new or increased diversions of certain volumes.

The Great Lakes Compact was entered into by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the Commonwealth of Pennsylvania, and the Canadian Provinces of Ontario and Quebec to regulate the withdrawal of water from the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec. Currently, a straddling community is any city, village, or town that, based on its boundary existing as of the Compact's effective date, is partly within the Great Lakes basin or partly within the watersheds of two of the Great Lakes and that is wholly within any county that lies partly or completely within the Great Lakes basin. A public water supply is water distributed to the public through a physically connected system of treatment, storage, and distribution facilities, and that serves a group of largely

residential customers, but may also serve industrial, commercial, and other institutional customers. The operator of a public water supply that serves a population of 10,000 or more that withdraws water from the waters of the state is required to have a water supply service area plan approved by DNR by December 31, 2025. The plan is required to include information about: (a) the area served, current sources of water, future demand, and population projections; (b) options for supplying water, including a cost-effectiveness analysis of regional and individual water supply and water conservation alternatives; (c) an assessment the environmental and economic impacts of carrying out the plan; (d) a planning period not to exceed 20 years; and (e) an opportunity for public review and comment on the proposed plan.

[Act 58 Section: 56]

### ***Wetlands Permitting Exemption***

The Act provides an exemption from DNR permitting requirements for discharging dredged or fill material into a wetland in an EITM zone if the discharge is related to the construction, access, or operation of a new manufacturing facility in the EITM zone. In addition, the Act requires, as a condition of the exemption, that the exempted party compensate for adverse impacts to functional values of wetlands, at a ratio of two acres per each acre impacted, in one of the following manners, subject to DNR administrative rules: (a) purchase credits from a wetland mitigation bank located in Wisconsin; (b) participate in the Wisconsin Wetland Conservation Trust (WWCT) in-lieu fee (ILF) program; or (c) complete wetland mitigation in Wisconsin. (The WWCT ILF program sells WWCT credits to permittees, which are then used to fund wetland restoration projects in Wisconsin.) The Act specifies that if the ILF program is used, DNR is required to identify and consider compensatory mitigation that can be conducted within the same watershed, and mitigation may be located outside the watershed only upon agreement of DNR and the person receiving the permitting exemption. (Other current statutes and program procedures require U.S. Army Corps of Engineers approval for ILF mitigation projects outside the local watershed.)

The Act also specifies that DNR waives its water quality certification related to discharges into wetlands described in the previous paragraph. Under federal law, discharges of dredged or fill material into "navigable waters" must receive a permit from the U.S. Army Corps of Engineers, subject to Environmental Protection Agency rules, after a state agency provides water quality certification of a discharge. Under this Act provision, the state waives its water quality certification, but the discharges are still subject to federal approval, as long as they are into federal "navigable waters." Federal law defines "navigable waters" as "waters of the United States," which is generally interpreted by the courts to exclude non-navigable, isolated, intrastate waters (nonfederal wetlands). DNR generally estimates 20% to 30% of Wisconsin's wetlands are considered nonfederal wetlands.

[Act 58 Sections: 57 thru 59]

### ***Navigable Streams***

The Act provides an exemption from DNR permitting requirements for the deposit of material or placement of a structure upon the bed of any navigable stream in an EITM zone beyond where a bulkhead line has been established, or where no bulkhead line has been established, for a

deposit or structure relating to the construction, access, or operation of a new manufacturing facility. The exemption is subject to the requirements that such activities do not interfere with the riparian rights of other riparian owners, and are not located in an area of special natural resource interest (ASNRI). ASNRI are established by s. 30.01(1am) of the statutes and include, among others: (a) state natural areas; (b) trout streams and outstanding or exceptional resource waters; and (c) unique or significant wetlands, including any body of water in a wetland along Lake Michigan or Lake Superior that DNR has determined as an ecologically significant coastal wetland. ASNRI are required to be displayed on a map on DNR's website, and can be viewed with the Department's Surface Water Data Viewer.

Further, DNR may require the person engaged in an otherwise exempt activity to seek a permit if DNR investigates the proposed site and determines, due to site-specific conditions, that restrictions are necessary to prevent environmental pollution or significant or material impacts on public rights or those of riparian owners.

[Act 58 Section: 9]

### ***Bridges and Culverts***

The Act provides an exemption from DNR permitting requirements for construction, placement, or maintenance of bridges or culverts in, on, or over navigable waters if such structures are related to the construction, access, or operation of a new manufacturing facility in the portion of a navigable stream in an EITM zone. However, current statutory provisions authorize DNR to require a person exempt from these permitting requirements to apply for a permit if DNR conducts an investigation and determines that conditions specific to the site require restrictions in order to prevent: (a) significant adverse impacts to the public rights and interest; (b) environmental pollution; or (c) material injury to the riparian rights of any riparian owner.

[Act 58 Sections: 10 and 11]

### ***Enlargement of Waterways and Bank Protection***

The Act provides an exemption from DNR permitting requirements for the following activities that may affect a portion of a navigable stream and that are related to the construction, access, or operation of a new manufacturing facility in an EITM zone: (a) construction, dredging, or enlargement of an artificial water body that connects with an existing navigable stream, or is within 500 feet of the ordinary high-water mark of an existing navigable stream; and (b) grading or removal of topsoil from the bank of a navigable stream where the area exposed exceeds 10,000 square feet.

[Act 58 Section: 12]

### ***Changing of Stream Courses***

The Act provides an exemption from DNR permitting requirements for straightening or changing the course of navigable streams for activities related to the construction, access, or

operation of a new manufacturing facility in an EITM zone.

[Act 58 Sections: 13 and 14]

## **TIF DISTRICT IN AN ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE**

The Act requires that a tax incremental financing (TIF) district that is created within an EITM zone be an industrial site or mixed-use development. The Act specifies that the current law 12% limit finding, which requires that the equalized value of taxable property of that TIF district plus the value increment of all existing TIF districts may not exceed 12% of the total equalized value of taxable property within the city or village, does not apply to a resolution creating an EITM TIF district. Additionally, if the creating city or village creates another TIF district, the Act specifies that only the value increment of the EITM TIF district would not be included in the calculation of the 12% limit.

For TIF districts within an EITM zone, the Act increases the allowable life of a district and the period during which DOR may allocate positive tax increments from 20 years to 30 years. The Act exempts an EITM TIF district from the current law requirement that no expenditure may be made later than five years before the unextended termination date of the TIF district by allowing any expenditure allowed under current law to be made up to 30 years after the district is created. The Act also prohibits a city or village with an EITM TIF district from using that district as a donor district to allocate positive tax increments to another TIF district. All other current law provisions related to TIF districts would continue to apply.

The Act specifies that project costs include expenditures or monetary obligations associated with public works or improvements within TIF districts located within an EITM zone. The Act also amends the current law definition of "project costs" to include payments made by a city or village to a county or other municipality that issues obligations to finance the project costs of a TIF district within an EITM zone. Additionally, the Act specifies that the creating city or village may incur project costs for any of the following, provided that the expenditures benefit the district: (a) territory that is located in the same county as the district; and (b) the cost of constructing or expanding fire stations, purchasing police and fire equipment, and the cost of general government operating expenses related to providing police and fire protection services, provided that the total of such expenditures do not exceed 15% of the total positive tax increments received by the creating city or village over the district's lifetime. The Act requires that before the creating city or village may incur project costs for any territory that is located outside of the EITM TIF district, but that is in the same county as the district, the city or village must obtain certification from DOA specifying that DOA believes the proposed expenditure benefits the district. Further, the Act specifies that any capital expenditures for the construction or expansion of fire stations and for police and fire equipment may only be made for the first 84 months following the district's creation, and any expenditures for constructing or expanding fire stations may be made only for fire stations located within a one-mile radius of the EITM zone.

If the resolution creating a TIF district within an EITM zone is adopted between January 1 and December 1, the Act specifies that the creation date would be either of the following dates, as

specified in the resolution: (a) January 1 of the year in which the resolution is adopted; or (b) January 1 of the following year. The Act specifies that if a resolution is adopted between December 2 and December 31, the creation date will be January 1 of the following year.

The Act specifies that the city or village clerk's submission of the reporting forms required by the Department of Revenue must be complete and submitted either: (a) on or before December 31 of the year the creating resolution is adopted if the resolution is adopted between January 1 and December 1 and the district's creation date is January 1 of the year in which the resolution is adopted; or (b) on or after the following April 1 and before the following December 1 of the year in which the resolution is adopted if the resolution is adopted between January 1 and December 1 and the district's creation date is January 1 of the following year, or the resolution is adopted between December 2 and December 31.

[Act 58 Sections: 19 thru 21]

### **ACQUISITION OF WATER AND SEWER SYSTEMS AND WASTEWATER TREATMENT FACILITIES BIDS ("DESIGN-BUILD CONSTRUCTION")**

The Act specifies that a city or village in which an EITM zone is located may contract for the acquisition of any element of water and sewer systems, or wastewater treatment facilities without submitting the contract for bid to the lowest responsible bidder under the current law competitive bidding requirements for most public works projects if the city or village invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design, and the developers' experience in other similar projects. Under current law, a city or village has a similar exemption from the competitive bidding requirements for public works projects for the acquisition of any element of a recycling or resource recovery facility.

[Act 58 Sections: 15 thru 18]

### **EXPENDITURE RESTRAINT BUDGET TEST**

The Act modifies the budget test under the expenditure restraint program to accommodate expenditures of payments from the grant program created under the Act. That program makes payments for local government expenditures associated with development occurring in an EITM zone. The expenditure restraint program provides state aid payments to municipalities that have a municipal purpose tax rate in excess of five mills (\$5.00 per thousand of full value) and limit the rate of year-to-year growth in their general fund budgets. For purposes of the latter requirement, certain expenditures, such as principal and interest payments on long-term debt, are excluded from municipal budgets. This provision also excludes expenditures made with payments from the grant program created under the Act.

[Act 58 Section: 34m]

## DEPARTMENT OF ADMINISTRATION

### *Grants to Local Governments*

The Act authorizes the Department of Administration (DOA) to make one or more grants to local governmental units for costs associated with development occurring in an EITM zone, including costs related to infrastructure and public safety. Under the Act, DOA may require a local governmental unit to match a grant in whole or in part. The Act creates a continuing GPR appropriation under DOA with funding of \$15,000,000 GPR in 2017-18 for making such grants to local governmental units, effective on the day after publication of the Act or on the second day after publication of the 2017-19 biennial budget act, whichever is later [the date of publication of the budget act was September 22, 2017].

The Secretary of DOA may contract with a local governmental unit to implement grants, any match requirement, and the moral obligation pledge (described below). The Act defines a "local governmental unit" as city, village, town, county, or technical college district that contains any part of an EITM zone designated under the Act for the purposes of the grants to local governments, any match requirement, and the moral obligation pledge for local governmental obligations.

[Act 58 Sections: 2, 3, 5, and 63]

### *Moral Obligation Pledge for Local Governmental Municipal Obligations*

The Act specifies that, recognizing its moral obligation to do so, the Legislature expresses its expectation and aspiration that, if ever called upon to do so, it would make an appropriation to pay no more than 40% of the principal and interest of a local governmental unit's municipal obligations, if all of the following apply: (a) the local governmental unit's municipal obligation is issued to finance costs related to development occurring in or for the benefit of an EITM zone; and (b) the DOA Secretary designates the moral obligation pledge for the local governmental unit's municipal obligation before the municipal obligation is issued, based on a plan that the local governmental unit submits to DOA on a form prescribed by DOA. The Act requires that the proceeds of municipal obligations issued by a local governmental unit under this bill provision be used to finance costs related to development occurring in or for the benefit of such a zone. In addition, the Act authorizes the Secretary of Administration to contract with a local governmental unit to implement the moral obligation pledge.

The Act defines "local governmental unit" to mean a city, village, town, county, or technical college district that contains any part of an EITM zone designated under the bill. In addition, for purposes of a state moral obligation pledge under the bill, the Act defines "municipal obligation" using the current law definition under Chapter 67 of the statutes relating to municipal borrowing and municipal bonds, where municipal obligation includes every lawful promise or engagement in writing by a municipality to pay at a specified future time a specified sum of money.

Finally, the Act creates a legislative determination that the provision of assistance by state agencies to a local governmental unit under the grant and moral obligation provisions, any appropriation of funds to a local governmental unit, and the moral obligation pledge serve a substantial statewide public purpose by assisting the development of such a zone, by encouraging

economic development, by reducing unemployment, and by bringing needed capital into the state for the benefit and welfare of people throughout the state.

[Act 58 Section: 2]

### ***Economic Development Liaison***

The Act provides \$183,500 GPR in 2017-18 and \$177,500 GPR in 2018-19 and 1.0 unclassified GPR project position annually to DOA's supervision and management general program operations appropriation for economic development liaison activities under an agreement with the Wisconsin Economic Development Corporation. The Act specifies that position authority and funding be provided effective on the day after publication of the Act or on the second day after publication of the 2017-19 biennial budget act, whichever is later [the date of publication of the budget act was September 22, 2017]. Under the Act, the project position has an end date of December 31, 2022. Under current law (s. 230.27(1) of the statutes), a project position may not exist for more than four years. The Act specifies that the four-year limit does not apply to this position. In addition, the Act assigns the project position to Executive Salary Group 4, for which the annual salary range specified in the current state compensation plan is \$76,066 to \$125,528. The administration indicates that the position will serve as the state's primary point of contact for any matters regarding Foxconn. The position is appointed by the Secretary of DOA.

[Act 58 Sections: 61(1) and 63]

### ***Municipal Incorporation***

As passed by the Legislature, SS AB 1 would have authorized a town that is adjacent to a city or village that contains an EITM zone to incorporate as a city or village if the town approves an incorporation referendum. SS AB 1 would have specified that no other current law procedures (including hearings, circuit court review, and Incorporation Review Board analysis) would apply to such incorporation of a town adjacent to a city or village that contains an EITM zone. The Governor's partial veto, however, deletes the authority that would have been provided to a town that is adjacent to a city while maintaining such authority for a town that is adjacent to a village. The Governor's veto message indicates the veto is associated with "the potential uncertainty and disruption that this provision may create between a city and a town that are considering a boundary agreement or are engaged in boundary agreement discussions." As a result, the provision only applies to towns adjacent to villages that contain an EITM zone.

[Act 58 Section: 18e]

[Act 58 Vetoed Section: 18e]

Further, as passed by the Legislature, SS AB 1 would have specified that once a petition is filed under s. 66.0203(2)(b) of the statutes for incorporation of territory, no territory within the town may be annexed by any city or village under ss. 66.0217 or 66.0219 of the statutes until 30 days after one of the following occurs: (a) the petition is dismissed by the circuit court or the Incorporation Review Board; (b) all appeals of the petition dismissal are exhausted; or (c) an incorporation referendum is held in the town. The bill, as passed by the Legislature, would have

also specified that once a petition is filed to incorporate a town adjacent to a first class city or a resolution is adopted by a town board of a town contiguous to a third class city or village to provide for a referendum on the question of incorporation as a village, no territory within the town may be annexed by any city or village until 30 days after the referendum is held in the town. The Governor's partial veto deletes these provisions. The veto message indicates that the provisions "may create uncertainty and delay for economic development projects throughout the state as the provisions may create longer periods under which it will be unclear as to which municipality will ultimately contain the parcels intended for development."

[Act 58 Vetoed Sections: 18d, 18g, and 18i]

## **COUNTY SALES TAX REVENUE BONDS**

The Act authorizes a county in which an EITM zone is designated to issue bonds whose principal and interest are paid only through the county sales tax. The Act modifies current law that specifies that the county sales tax may only be imposed for the purpose of reducing the property tax levy to allow for the issuance of such bonds. The Act specifies that if such bonds are issued, the county would be without power to repeal the local sales tax or obstruct the collection of the tax until the principal and interest payments have been made or provided for. In addition, the Act provides that such bonds would be issued under the current law statutes governing municipal revenue obligations (Chapter 66 of the statutes), which allows the bonds to have up to a 40-year maturity.

[Act 58 Sections: 18k and 34e]

## **JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS**

The Act specifies that a current law provision requiring a bill that affects the exemption of any property or person from any state or local taxes or special assessments to be referred to the Joint Survey Committee on Tax Exemptions, and which also requires a report on the proposal, does not apply to the bill. Under current law, upon the introduction of any proposal which affects the exemption of any property or person from any state or local taxes or special assessments, the proposal must be referred to the Joint Survey Committee on Tax Exemptions and may not be considered further by either house until the Committee has submitted a report setting forth an opinion on the legality of the proposal, the fiscal effect upon the state and its subdivisions, and its desirability as a matter of public policy, and the report has been printed as an appendix to the bill and attached in the manner of an amendment.

[Act 58 Section: 60(3m)]

## **HIGHER EDUCATION WORKFORCE DEVELOPMENT STRATEGIES**

The Act requires the Board of Regents of the UW System and the Wisconsin 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. The Act requires the Boards to

submit a joint report to the Joint Committee on Finance and the appropriate standing committees generally responsible for higher education and workforce development legislation that includes recommendations to address long-term workforce development issues no later than December 1, 2017.

[Act 58 Section: 60(2d)]

## **I-94 NORTH-SOUTH CORRIDOR PROJECT**

The Act authorizes \$252,400,000 in general fund-supported, general obligation bonds, which may be used for the I-94 North-South corridor project in the southeast Wisconsin freeway megaprojects program. The Act creates a general fund-supported, sum sufficient appropriation that would pay any debt service associated with the issuance of these bonds and specifies that the Department of Transportation (DOT) may not expend the proceeds from the bonds authorized under this provision unless the state receives an award of federal moneys for the I-94 North-South corridor project.

As passed, SS AB 1 would have required the Department to receive Joint Committee on Finance approval in order to expend the proceeds of the \$252.4 million in bonds. In order to receive this approval, DOT would have been required to submit a request for the expenditure of the bond proceeds under a passive review process to the Committee. If, within 14 days of receiving the request, the Committee had received an objection to the request, the Committee would have been required to vote to approve or deny the request within 30 days following the date on the objection. The bill would have also specified that if the Committee did not object to the request or vote to deny the request, the request would have been approved.

The Governor's partial veto eliminates the Joint Committee on Finance passive review requirement. As a result, the Department's expenditure of the bond proceeds would only be contingent upon the state's receipt of an award of federal moneys for the I-94 North-South corridor project.

Although the administration indicates that these bonds could be used as the state match for a potential federal "FASTLANE" ("INFRA") grant that would fund remaining work on the I-94 North-South corridor project, any award of federal moneys for this project, in the 2017-19 biennium or beyond, could provide DOT with the authority to use these bond proceeds. For instance, if the state did not receive a "FASTLANE" grant, but instead received some amount of federal redistribution aid for this project, it is possible that the receipt of the additional aid could be interpreted as satisfying the criteria required to expend the bond proceeds.

[Act 58 Sections: 4, 7, 35, 36, and 60(1c)]

[Act 58 Vetoed Section: 60(1c)]

## **WORKFORCE DEVELOPMENT**

The Act creates a continuing GPR appropriation under the Department of Workforce Development (DWD) for a worker training and employment program. Under the Act, of the

amounts appropriated in the 2019-21 biennium, DWD must allocate \$20,000,000 to provide funding, through grants or other means, to facilitate worker training and employment in the state. The Act provides no funding for the program in the 2017-19 biennium.

Under the Act, DWD is required to consult with the Wisconsin Technical College System Board and the Wisconsin Economic Development Corporation in implementing the worker training and employment program. Prior to expending any appropriated funds, DWD is required to submit to the Joint Committee on Finance a plan for implementing the program. The Department may not expend any funds appropriated for the program except in accordance with the plan as approved by the Joint Committee on Finance. DWD has all other powers necessary to implement a worker training and employment program, including the power to audit and inspect the records of grant recipients. The Department is required to submit, annually, by December 31, a report to the Governor and the co-chairs of the Joint Committee on Finance providing an account of DWD's activities and expenditures for the worker training and employment program during the preceding fiscal year.

The Act specifies that institutions of higher education, as defined in s. 106.57 (1)(c), are eligible to apply for and receive worker training and employment program grants made by DWD. Under s. 106.57, an institution of higher education includes campuses in the UW System, colleges within the Technical College System, and private, nonprofit institutions that are members of the Wisconsin Association of Independent Colleges and Universities.

[Act 58 Sections: 3, 4m, and 36m]

## **APPEAL OF DECISIONS RELATING TO ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE**

The Act establishes a specific appeals process through the Court of Appeals which must be initiated within 30 days after the date of a judgement or order. Under the Act, the following provisions apply:

a. The revised appeals process related to a judgment or order 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 supersedes all inconsistent provisions under current law addressing appeals and writs of error.

b. An appeal to the Court of Appeals from a judgment or order of the trial 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 may be taken to as a matter of right and is governed by the process created under the Act.

c. A party may initiate an appeal by filing a notice of appeal with the clerk of the trial court in which the order or judgment appealed from was entered and must specify in the notice of appeal the order or judgment appealed from, and pay the filing fee with the notice of appeal. The Clerk of the Circuit Court must transmit to the Court of Appeals, within three days of the filing of the notice of appeal, a copy of the notice of appeal, the filing fee, and a copy of the Circuit Court

record of the case. The Clerk of the Court of Appeals must then file the appeal upon receipt of the above items.

d. The appealing party is required to request a copy of the transcript of the reporter's notes of the proceedings for each of the parties to the appeal and must make arrangements to pay for the transcript and copies within five days after the filing of the notice of appeal.

e. The appealing party, within five days after the filing of the notice of appeal in the Circuit Court, is required to: (1) file a statement on transcript with the Clerk of the Court of Appeals; (2) file a copy of the statement on transcript with the Clerk of the Circuit Court; and (3) and serve a copy of the statement on transcript on the other parties to the appeal. The statement on transcript must either designate the portions of the transcript that have been requested by the appealing party or contain a statement by the appellant that a transcript is not necessary for the appeal. If a transcript is necessary for the appeal, the statement on transcript must also contain a statement by the court reporter stating the following: (1) the appealing party has requested copies of the transcript or designated portions for each of the other parties and has made arrangements to pay for the original transcript and for all copies for the other parties; (2) the date on which the appealing party requested the transcript and made arrangements to pay for it; and (3) the date on which the transcript is required to be served on the parties.

f. The court reporter must serve copies of the transcript on the parties indicated in the statement on transcript within five days after the date the appealing party requested copies of the transcript.

g. Appeals are generally be governed by the procedures for civil appeals and the current statutory procedures under Chapter 809, Subchapter VI (Rules of Appellate Procedure, Appellate Procedure in the Supreme Court), except as follows:

1. The appealing party must file a brief within 15 days after the filing of the record on appeal.

2. The respondent must file a brief within 10 days after the service of the appealing party's brief.

3. The appealing party must file within 10 days after the service of the respondent's brief a reply brief or statement that a reply brief will not be filed.

4. Within three days of receipt of the appealing party's reply brief or statement that a reply brief will not be filed, the Court of Appeals must certify the appeal to the Wisconsin Supreme Court.

5. The Wisconsin Supreme Court is required to give preference to a certification from the Court of Appeals. If the Supreme Court refuses to take jurisdiction of the appeal, the appeal continues in the Court of Appeals as though the certification had not been made.

h. Any judgment or 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 must be stayed automatically upon the filing of an appeal. Further, any party to the proceeding may apply to the Appellate Court in which the case is pending at the time to request that the stay be modified or vacated.

Under current law, an appeal to the Court of Appeals may be taken as of right or as a discretionary review. There are two methods of taking an appeal as of right. First, for civil cases, an appeal is started by filing a notice of appeal within 45 days after the filing of the judgment or order if a final decision has been entered, or within 90 days after filing if no final decision has been entered. Second, for criminal cases, and involuntary mental health commitments, juvenile dispositions and sexually violent person commitments, (but not for termination-of-parental-rights cases) an appeal is started by filing a notice of intent to pursue postconviction or postdisposition relief within 20 days after imposition of sentence or the final adjudication in a noncriminal case.

Discretionary appeals take two main forms. The Court of Appeals can accept or reject petitions for appeal from nonfinal judgments or orders. The other component of the Court of Appeals' discretionary jurisdiction is the court's power to order an individual or a lower court to do something they are legally obligated to perform or cease performing an action which they are performing.

Once the Court of Appeals takes appellate jurisdiction by a party's filing of a notice of appeal or by the court's granting of a petition for leave to appeal, the first step is to order a transcript and file a statement on transcript within 14 days after the filing of the notice of appeal. After the record is filed, the appellant's brief must be filed within 40 days. The respondent's brief is due 30 days after the latest one of the following: (a) service of the appellant's brief; (b) the date the court accepts the appellant's brief for filing; or (c) the filing of the record in the court of appeals. A reply brief may be filed within 15 days after service of the respondent's brief.

It should be noted that under current law, the Court of Appeals has adopted expedited appeal procedure for cases involving some issues. This fast-tracking procedure involves simplified briefing rules, immediate submission, and disposition by order rather than opinion. Other methods of expediting disposition include providing partial relief before the end of the case and summary disposition. In addition, statutes require certain types of appeals to be given preference.

Under current law, relief pending appeal is not usually automatic and should first be asked for in the Circuit Court.

Under current law, Supreme Court review is a matter of judicial discretion, not of right, and is granted only when special and important reasons are presented. Statutes specify that the "following, while neither controlling nor fully measuring the court's discretion, indicate criteria that will be considered:" (a) a real and significant question of federal or state constitutional law is presented; (b) the petition for review demonstrates a need for the Supreme Court to consider establishing, implementing or changing a policy within its authority; (c) a decision by the Supreme Court will help develop, clarify or harmonize the law, and 1. the case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation, or 2. the question presented is a novel one, the resolution of which will have statewide impact, or 3. the question presented is not factual in nature but rather is a question of law of the type that is

likely to recur unless resolved by the Supreme Court; (d) the Court of Appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the Wisconsin Supreme Court or other Court of Appeals' decisions; or (e) the Court of Appeals' decision is in accord with opinions of the Supreme Court or the Court of Appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.

It should be noted that under current law, the Supreme Court may take jurisdiction of an appeal or any other proceeding pending in the Court of Appeals if: "(a) it grants direct review upon a petition to bypass filed by a party; (b) it grants direct review upon certification from the court of appeals prior to the court of appeals hearing and deciding the matter; or (c) it, on its own motion, decides to review the matter directly.

[Act 58 Sections: 59s and 59t]

## FISCAL EFFECT OF 2017 ACT 58

The following section of the paper examines the fiscal effect of the legislation and the Foxconn project. It begins with an analysis of the estimated state impact and concludes with a discussion of the potential impact on local governments.

### REFUNDABLE TAX CREDITS

The Act has three components related to refundable tax credits that are estimated to have state fiscal effects beginning in 2018-19. Two of the components are the new EITM zone credits related to the Foxconn incentive package. The third component is the expansion of the enterprise zone credit program to provide financial assistance to Fiserv, Inc.

#### *EITM Zone Tax Credits*

The Act creates two refundable tax credits related to the Foxconn incentive package--a credit based on 17% of the company's EITM zone payroll, and a credit of up to 15% of the company's capital expenditures in the zone. The payroll credit can be paid over 15 years and the capital expenditure credit must be paid over seven years. Aggregate payments of the payroll credit cannot exceed \$1.50 billion, and aggregate payments of the capital expenditure credit cannot exceed \$1.35 billion. Because the credits are refundable, they are paid from a sum sufficient GPR appropriation created under the Act. The company receives the full amount of the credit, even if it has little or no Wisconsin income or franchise tax liability.

Based on our understanding of the proposed facility, it is believed that Foxconn will be able to claim the 7.5% manufacturing and agriculture credit (MAC) on income derived from its Wisconsin operations. Because of the MAC and the state's sales-based apportionment rules, it appears likely that most of the tax benefits will be refunded to Foxconn and not used to offset its state tax liability.

Staff at the Department of Administration developed an estimated timeline for payments of the proposed tax credits using information provided by Foxconn and WEDC, and an economic impact analysis prepared by the consulting firm EY (formerly Ernst and Young). The estimated payments are shown in the following table.

**TABLE 1****Estimated Payments of Refundable EITM Zone Credits  
(Millions)**

<u>State Fiscal Year</u>	<u>EITM Zone Cap. Exp. Credit</u>	<u>EITM Zone Payroll Credit</u>	<u>Total</u>
2018-19	\$0.00	\$2.35	\$2.35
2019-20	192.86	23.81	216.67
2020-21	192.86	59.53	252.39
2021-22	192.86	95.25	288.11
2022-23	192.86	119.06	311.92
2023-24	192.86	119.06	311.92
2024-25	192.86	119.06	311.92
2025-26	192.86	119.06	311.92
2026-27	0.00	119.06	119.06
2027-28	0.00	119.06	119.06
2028-29	0.00	119.06	119.06
2029-30	0.00	119.06	119.06
2030-31	0.00	119.06	119.06
2031-32	0.00	119.06	119.06
2032-33	0.00	119.06	119.06
2033-34	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total	\$1,350.00	\$1,490.65	\$2,840.65

As shown in Table 1, it is estimated that payments of the capital expenditure credit will total \$192.9 million GPR annually in fiscal years 2019-20 through 2025-26. Aggregate payments are estimated at \$1.35 billion.

Payments of the payroll tax credit are estimated to range from \$2.4 million GPR in 2018-19 to \$119.1 million annually in fiscal years 2022-23 through 2032-33. The 15-year total is estimated to be \$1.49 billion.

These estimates assume that Foxconn's zone employment will increase from 1,040 positions in the latter part of calendar year 2017 to 13,000 positions by 2021, and then remain at that level. The average annual salary for these positions is estimated at \$53,875.

***Expanded Enterprise Zone Credits for Fiserv***

DOA estimates payments of the expanded enterprise zone tax credit at \$2 million GPR annually in fiscal years 2019-20 through 2023-24, for a total of \$10 million. It is also anticipated that Fiserv will receive an additional \$500,000 annually over this period in capital investment credits under the current enterprise zone program.

***Total Refundable Tax Credits under the Bill***

Table 2 shows the total estimated payments of all of these tax credits for fiscal years 2018-19 through 2032-33. The aggregate 15-year total is \$2.9 billion.

**TABLE 2**

**Total Refundable Tax Credits Under the Act  
(Millions)**

<u>State Fiscal Year</u>	<u>EITM Zone Cap. Exp. Credit</u>	<u>EITM Zone Payroll Credit</u>	<u>Fiserv EZ Credits</u>	<u>Total</u>
2018-19	\$0.00	\$2.35	\$0.00	\$2.35
2019-20	192.86	23.81	2.00	218.67
2020-21	192.86	59.53	2.00	254.39
2021-22	192.86	95.25	2.00	290.11
2022-23	192.86	119.06	2.00	313.92
2023-24	192.86	119.06	2.00	313.92
2024-25	192.86	119.06	0.00	311.92
2025-26	192.86	119.06	0.00	311.92
2026-27	0.00	119.06	0.00	119.06
2027-28	0.00	119.06	0.00	119.06
2028-29	0.00	119.06	0.00	119.06
2029-30	0.00	119.06	0.00	119.06
2030-31	0.00	119.06	0.00	119.06
2031-32	0.00	119.06	0.00	119.06
2032-33	0.00	119.06	0.00	119.06
2033-34	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total	\$1,350.00	\$ 1,490.65	\$10.00	\$2,850.65

**SALES AND USE TAX EXEMPTION**

The Act creates a sales and use tax exemption for tangible personal property and landscaping and lawn maintenance services acquired solely for use in the construction or development of facilities located in an EITM zone if the capital expenditures for the construction or development of such facilities may be claimed as an EITM zone capital expenditure credit, as certified by WEDC. The Foxconn MOU indicates that the company will invest up to \$10 billion to construct fabrication facilities in Wisconsin. Based on estimated capital expenditures of \$10 billion for the Foxconn facility, the Department of Revenue estimates that the sales and use tax exemption will result in state tax savings of \$139 million for Foxconn and its contractors during the life of the EITM zone. However, since it is highly unlikely that Foxconn would locate in the state without the incentives provided under the Act, this amount should not be viewed as a state revenue loss.

## POTENTIAL INCREASED STATE TAXES ASSOCIATED WITH FOXCONN

DOA staff have also prepared estimates of the additional employment, wages, and tax collections that might occur in Wisconsin as a result of the Foxconn project. As with the timeline for credit payments outlined above, these figures are based on information provided by Foxconn, WEDC, and the EY study. Although DOA's projections must be considered speculative, this office has reviewed them carefully, and based on the available information and underlying assumptions, they appear to represent a reasonable approximation of the potential state benefits of the project. However, as described below, the use of alternative assumptions, particularly regarding the number of new jobs that would be filled by Wisconsin residents, would significantly affect the outcome of the analysis.

The estimates assume that the project will require an average annual employment of approximately 10,200 construction workers and equipment suppliers earning an average total compensation of approximately \$59,600 (including benefits) per year during the four-year construction period (from 2018 through 2021). Total income for these individuals is estimated at \$2.4 billion. In addition, it is assumed that nearly 6,000 indirect and induced jobs will be created during the construction period, with an average total compensation of \$48,900.

It is estimated that the additional construction-period jobs will generate increased state tax revenues (primarily income and sales taxes) equal to approximately 6.3% of the additional gross wages. The total increased state taxes associated with the construction period are estimated at \$186.9 million.

As noted, permanent staff at the Foxconn facility are estimated to increase from about 1,000 in the second half of 2017 to 13,000 beginning in calendar year 2021. The average annual wage for these employees is estimated at \$53,875, based on a headcount distribution, by job type, provided to EY by Foxconn and median wages for each occupation from the Economic Research Institute. Total ongoing payroll at the company is projected to be \$13.8 million for the remainder of this year and increase to approximately \$700 million annually beginning in 2021. State tax revenues associated with the additional employees and wages are estimated to increase from about \$900,000 this year to \$44 million annually beginning in 2021.

Indirect and induced jobs associated with the project are estimated to total 22,000 beginning in 2021, based on a multiplier of 2.7. Average annual wages for these individuals are estimated at approximately \$51,000. Total ongoing wages are estimated at \$1.12 billion, annually, and related state taxes are estimated at \$71 million per year. Smaller impacts are estimated in calendar years 2017 through 2020 as the project ramps up.

Based on these figures, DOA projected that the cost of the refundable state tax credits and \$10 million provided for grants to local governments for costs associated with development occurring in an EITM zone would exceed the potential increased tax revenues until the last EITM zone payroll credit is paid in fiscal year 2032-33. The Legislature increased the amount provided for grants to local governments by an additional \$5 million. As of the end of 2032-33, the cumulative net cost of the incentive package is estimated at \$1.04 billion. Beginning in 2033-34, payments to the company would cease and increased state tax collections are estimated at \$115

million per year. DOA estimates that the project's break-even point would occur during the 2042-43 fiscal year. DOA's analysis for fiscal years 2017-18 through 2044-45, modified to include the increased funding provided by the Legislature, is shown in Table 3.

**TABLE 3**

**Break-Even Analysis for Foxconn Project (Millions)**

<u>Fiscal Year</u>	<u>State Payments*</u>	<u>Increased Taxes</u>	<u>Net Benefit (Cost)</u>	<u>Cumulative</u>
2017-18	-\$15.00	\$ 11.83	-\$3.17	-\$3.17
2018-19	-2.35	71.32	68.97	65.80
2019-20	-216.67	190.39	-26.28	39.52
2020-21	-252.39	156.44	-95.95	-56.43
2021-22	-288.11	118.84	-169.27	-225.70
2022-23	-311.92	115.04	-196.88	-422.58
2023-24	-311.92	115.00	-196.92	-619.50
2024-25	-311.92	115.00	-196.92	-816.42
2025-26	-311.92	115.00	-196.92	-1,013.34
2026-27	-119.06	115.00	-4.06	-1,017.40
2027-28	-119.06	115.00	-4.06	-1,021.46
2028-29	-119.06	115.00	-4.06	-1,025.52
2029-30	-119.06	115.00	-4.06	-1,029.58
2030-31	-119.06	115.00	-4.06	-1,033.64
2031-32	-119.06	115.00	-4.06	-1,037.70
2032-33	-119.06	115.00	-4.06	-1,041.76
2033-34	0.00	115.00	115.00	-926.76
2034-35	0.00	115.00	115.00	-811.76
2035-36	0.00	115.00	115.00	-696.76
2036-37	0.00	115.00	115.00	-581.76
2037-38	0.00	115.00	115.00	-466.76
2038-39	0.00	115.00	115.00	-351.76
2039-40	0.00	115.00	115.00	-236.76
2040-41	0.00	115.00	115.00	-121.76
2041-42	0.00	115.00	115.00	-6.76
2042-43	0.00	115.00	115.00	108.24
2043-44	0.00	115.00	115.00	223.24
2044-45	0.00	115.00	115.00	338.24

\*State payments include the refundable EITM credits shown in Table 1 plus an estimated \$15 million in grants to local governments paid by DOA in 2017-18.

Source: Department of Administration

Several points should be noted regarding DOA's analysis. First, the figures in Table 3 should be viewed as an approximate timeline of cash flows associated with the Foxconn project, assuming the project proceeds in accordance with the above assumptions. They should not be viewed as the precise state fiscal effects of the Act. To this point, under the DOA analysis, it is assumed that the state will receive additional tax collections of \$83.15 million for the current biennium. Preliminary actual tax collections for 2016-17 were reported on September 8, 2017, and on October 15, 2017, DOA will release the state's annual fiscal report for 2016-17. In January, 2018, the Legislative Fiscal Bureau will inform the Legislature of any necessary revisions to 2017-19 tax collections estimates based upon actual data for 2016-17, collections for the first six months of 2017-18, and a review of national economic forecasts. Although the \$83.15 million may accrue due to the Foxconn project, it would be premature to increase 2017-19 figures by the \$83.15 million without a thorough review of all factors that might suggest a modification to current projections.

Second, any cash-flow analysis that covers a period of nearly 30 years must be considered highly speculative, especially for a manufacturing facility and equipment that may have a limited useful life. Technological advances and changes in Foxconn's market share, operating procedures, or product mix could significantly affect employment and wages at the proposed facility over time. Also, state law changes could affect the estimated amount of tax collections received from the additional economic activity, and any future state assistance that may be provided to Foxconn would affect the analysis.

In addition, investment analyses typically use a discounted cash flow methodology to account for the cost of capital. The DOA analysis expresses all amounts in current dollars and does not utilize a discount rate for future cash flows. Depending upon what discount rate is used, accounting for the cost of capital could push the break-even point for the project further into the future. On the other hand, the analysis did not assume any wage inflation, which would result in greater future cash flows to the state and a shorter break-even period.

DOA's analysis also assumed that all of the construction-period and ongoing jobs associated with the project would be filled by Wisconsin residents. However, the EY study notes that the job estimates for the project described above represent positions that would be located in this state but could be filled by residents or nonresidents. Since the facility is anticipated to be located in the Southeastern part of the state, it is likely that some of the new positions would be filled by Illinois residents. Because Wisconsin has an income tax reciprocity agreement with Illinois, the wage income of Illinois residents who work in this state is taxed only by Illinois and not by Wisconsin. However, Wisconsin would likely receive some sales tax revenue from Illinois residents who commute to the facility on a regular basis. The basis of Wisconsin's annual payment to Illinois under the reciprocity agreement is a benchmark study of 1998 tax returns conducted by the University of Michigan. Absent a new benchmark study, if it is assumed that 10% of the projected new jobs would be filled by Illinois residents, the estimated pay-back period would be delayed by two years to 2044-45.

WEDC has retained the accounting and consulting firm of Baker Tilly Virchow Krause, LLP (Baker Tilly) to assist with the underwriting process and contract negotiations with Foxconn. Baker Tilly conducted an assessment of the assumptions and methodology used in a preliminary version of an EY analysis, and indicated that 40% to 50% of the construction-period and ongoing

jobs associated with the project potentially could be filled by nonresidents. If it is assumed that the increased tax revenue amounts shown in Table 4 would be 40% lower to reflect this possibility, the break-even point would be delayed well beyond 2044-45. However, EY and the administration believe that the 40% to 50% figure significantly overstates the number of nonresidents who would be working at the facility, both during the construction phase and as permanent employees. They cite U.S. Census data showing that 95% of the jobs in Racine County and 88% of the jobs in Kenosha County are filled by Wisconsin residents, and also point out that individuals tend to reside near their jobs. On balance, it appears that the 10% adjustment mentioned above is more appropriate. Baker Tilly subsequently revised its analysis to assume 100% of the direct jobs and associated tax revenues would accrue to Wisconsin, based on feedback from the administration and EY.

There have been press accounts suggesting that employment at the proposed facility would be closer to 3,000 instead of 13,000 permanent positions. If this were the case, using the other assumptions outlined above, payments of the EITM zone payroll tax credit would be reduced from just under \$1.5 billion to approximately \$345 million over the 15-year life of the EITM zone, but the capital expenditure credit would still be estimated at \$1.35 billion. The estimated ongoing tax benefits from the project would decrease from \$115 million to \$27 million per year, and the break-even point would be well past 2044-45.

The above analysis was limited to the Foxconn project and does not include the impact of the Act's provision to provide financial assistance to Fiserv, Inc. As noted above, this provision would result in estimated state expenditures totaling \$10 million over the five-year period from 2019-20 through 2023-24.

Finally, the analysis is based on a number of estimates and assumptions regarding the scope of the project and future employment levels at Foxconn and other impacted businesses that cannot be confirmed at this time. The EY study, from which many of these estimates and assumptions are drawn, acknowledges that, "The analyses conducted in this report constitute neither an examination nor a compilation of prospective financial statements nor the application of agreed-upon procedures thereto in accordance with the attestation standards established by the American Institute of CPAs (AICPA). Accordingly, EY does not express an opinion on or offer any other assurances as to whether the analyses are presented in conformity with AICPA presentation guidelines or as to whether the underlying assumptions provide a reasonable basis for the analysis."

It should be noted that the analysis focuses only on the impacts of the Foxconn project on the state treasury, but does not account for other benefits to the state's economy and residents. For example, based on the assumptions outlined above, the capital expenditure credit and sales tax exemption are estimated to have a value of approximately \$1.5 billion, but would induce private investment of \$10 billion from Foxconn alone, for a leverage ratio of \$6.70 of private investment for each \$1.00 of public outlay. Likewise, the 17% payroll credit implies a leverage ratio of 5.9 to 1, just considering Foxconn's payroll. The leverage ratios are even higher if the indirect and induced jobs associated with the project are considered. Most state expenditures do not result in private investments of this nature. The project is expected to provide greater employment opportunities for the state's present and future workforce, and add a new sector to the state's manufacturing economy.

## **WEDC ADMINISTRATION**

The Act provides additional expenditure authority in WEDC's economic development fund; operations and programs SEG appropriation of \$110,000 annually for the electronics manufacturing small business development director position. Under current law, WEDC is provided a sum certain, continuing SEG appropriation from the economic development fund equal to the amounts identified in the appropriation schedule (\$21,776,000 annually), which funds its operations and economic development programs. The revenue source for the economic development fund is the economic development surcharge imposed on C corporations and S corporations.

[Under 2017 Wisconsin Act 59 (the 2017-19 biennial budget bill), WEDC's economic development fund; operations and programs SEG appropriation was converted to an all moneys received appropriation equal to deposits of economic development surcharge revenues, interest, and penalties collected in the economic development fund after deducting amounts appropriated to DOR for administration of the surcharge. The amounts shown in the appropriation schedule for WEDC's SEG appropriation in 2017-18 and 2018-19 are estimates for the amount of revenues available in the economic development fund. As a result of the Act 59 change, this provision no longer has a fiscal effect.]

## **PUBLIC SERVICE COMMISSION**

The review and approval of the proposed market-based public utility rates will cause the PSC to incur additional administrative expenses, but the PSC indicates that those expenses will be absorbed within existing budget authority. Further, due to the proposed exclusions of EITM zone projects from requirements to receive certificates of authority or certificates of public convenience and necessity, the PSC will not incur additional expenses related to the relocation of public utility property under those provisions.

## **NATURAL RESOURCES**

### ***Environmental Impact Statement***

The Act specifies that any permit or approval issued for a new manufacturing facility within an EITM zone is not considered a major action for the purpose of the environmental impact statement (EIS) requirement under s. 1.11 (2)(c) of the statutes. Under current law, if DNR determines an EIS is required for a project or proposal that is seeking a license or permit, DNR under s. 23.40 of the statutes must provide the applicant an estimate of the cost of preparing the EIS. EIS fees are to equal the full cost to the Department of preparing the document, including authorized costs of any consultants hired for the evaluation. DNR may determine the process for payment of fees, and amounts received for EIS preparation are deposited to a program revenue (PR) continuing appropriation. (Under DNR administrative rules, persons with an action subject to an EIS, a consultant, other government agencies, or DNR may author an EIS in whole or in part. However, the Department is responsible for verifying the content of the document and detailing all relevant sources of information.)

Under the EIS drafting process, DNR, consultants, or permit applicants would incur costs if an EIS would be prepared. It cannot be determined what costs related to preparation of an EIS would be foregone under the Act.

### *Wetlands Permit Exemptions*

DNR is to issue general or individual permits for discharges of dredged or fill material to wetlands in the state. General permits for discharges to wetlands mostly are limited to activities affecting not more than either two acres or 10,000 square feet (about 0.23 acre), depending on the nature of the activity. All other activities requiring a permit are subject to individual permits. The statutes specify an application fee of \$500 for most wetlands general permits, while individual permit applicants must pay an application fee of \$800.

Activities under a general permit relating to development for industrial activity, among other purposes, and not affecting more than 10,000 square feet of wetlands, must pay a restoration surcharge at the time of application. The surcharge is to be established annually by DNR and is to be no more than 50% of the market price of purchasing equivalent credits from a mitigation bank. DNR has established restoration surcharges for general permits for industrial, commercial or residential development at \$200 for activities affecting no more than 0.1 acre of wetlands (\$700 total, including permit application fees) or \$300 for activities affecting more than 0.1 acre but not more than 10,000 square feet of wetlands (\$800 total). The revenues of the surcharge are deposited to a continuing appropriation receiving other compensatory mitigation payments under the state in-lieu fee mitigation program for the purpose of restoring or creating wetlands in the state.

Further, activities requiring an individual permit must mitigate the impacts of the activity by restoring, enhancing, or creating other wetland areas to compensate for the impacts under the permitted activity. Mitigation is to be completed at no less than 1.2 acres of restored, enhanced or created wetlands for every acre affected by a discharge. As of the most recent (2015-16) annual report for the Wisconsin Wetland Conservation Trust (WWCT), DNR reports mitigation credits are often purchased at a ratio of 1.45:1.

The Act exempts discharges in an EITM zone from wetlands general or individual permit requirements if the discharge is related to the construction, access or operation of a new manufacturing facility in the zone. Although the state foregoes permit revenues under the Act relative to typical practice, the amount of revenues DNR would otherwise receive cannot be estimated without further information regarding the characteristics of EITM zone sites and any new manufacturing facility therein. Under the Act, it is presumed DNR does not need to allocate staff to conduct the sort of reviews normally undertaken for evaluating a wetlands permit; as indicated in DNR's fiscal note, any estimate of such avoided staffing costs is indeterminate. However, some level of DNR staff review is necessary to verify the wetlands areas subject to the Act's compensatory mitigation requirements, as discussed in the following paragraph. As of October 1, 2017, DNR reports it has begun reviewing wetland delineation activities at prospective sites in southeast Wisconsin in conjunction with the Army Corps of Engineers. However, no preliminary estimates are immediately available that would indicate staffing costs attributable to such site reviews.

The wetlands permit exemptions under the Act would require the manufacturing facility owner to complete wetland compensatory mitigation at a ratio of two acres of compensation or credits per acre of wetlands adversely impacted. DNR reports it is in the process of evaluating prospective sites and cannot immediately estimate how many wetland acres will be impacted by the EITM zone manufacturing facility, nor can it provide an estimate of how many compensatory acres or credits are required under the Act. If mitigation were to occur through DNR, credits would be purchased through the WWCT, which cost approximately \$60,000 per credit in major watersheds in southeast Wisconsin in 2016 and 2017. This means each acre of wetlands impacts in an EITM zone compensated through the WWCT is estimated to generate approximately \$120,000 for the WWCT to fund wetlands restoration projects.

### ***Waterway Permit Exemptions***

The Act creates exemptions from the following activities affecting navigable streams for activities related to the construction, operation or access of a new manufacturing facility in an EITM zone: (a) the deposit of material or placement of a structure upon the bed of any navigable stream beyond where a bulkhead line has been established, or where no bulkhead line has been established; (b) construction, placement, or maintenance of bridges or culverts in, on, or over navigable streams; (c) construction, dredging, or enlargement of an artificial water body that connects with an existing navigable stream, or is within 500 feet of the ordinary high-water mark of an existing navigable stream; (d) grading or removal of topsoil from the bank of a navigable stream where the area exposed would exceed 10,000 square feet; and (e) straightening or changing the course of navigable streams.

Typically, the activities above require a general or individual waterway permit, costing \$303 and \$603, respectively. Assuming the state foregoes certain permit revenues under the Act, the amount of revenues DNR would otherwise receive cannot be estimated without further information regarding characteristics of the EITM zone and any manufacturing facility therein. Although the number of permits that otherwise may be required for an EITM zone manufacturing facility is indeterminate, DNR is presumed to avoid allocating staffing time and costs toward permit review related to the EITM zone. However, certain permits also may be required if DNR determines, due to conditions specific to a proposed site, that restrictions on certain activities are necessary to prevent environmental pollution or significant impacts or injuries to riparian or public rights.

### ***Other DNR Permitting and Reviews***

Multiple provisions in current law regarding various environmental permits, licenses or other reviews would continue to apply to activities in the EITM zone, and the Act contains a nonstatutory provision stating as much. It cannot be determined at this time what revenues would be realized by DNR from fees to which a facility in an EITM zone would remain subject. It also cannot be determined what costs DNR may incur in conducting required permitting or reviews. Any such activities would be funded from the agency's existing budget authority or any applicable fees the agency would collect from the applicant.

## **TIF DISTRICT IN AN ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE**

The Act creates a number of exceptions to current law for a TIF district within an EITM zone that would have a fiscal effect on the TIF district and its overlying taxing jurisdictions. However, the local fiscal estimate regarding the EITM TIF district is indeterminate. According to DOR, the average tax increment value by municipality in 2017 is \$47 million, while TIF districts terminating in 2017 had an average life of 18 years. DOR estimates the TIF district within an EITM zone could have a multi-billion dollar increment value once fully developed.

Under current law, a city or village can only create a new TIF district if there is a finding that the equalized value of the proposed district plus the value increment of all existing districts does not exceed 12% of the total equalized value of property within the city or village. Under the Act, the findings requirement related to the 12% limit does not apply to a resolution creating a TIF district in an EITM zone. If the project site is located in a city or village that is currently near the 12% limit, this provision would allow the TIF district to be created and the project to proceed. The Act also excludes the incremental value of the TIF district within an EITM zone from the calculation of a city or village's 12% limit for the purpose of that city or village creating a separate TIF district. As a result, the creation of a TIF district within an EITM zone would not prevent that city or village from creating other TIF districts in the city or village at a later date.

The Act specifies that a TIF district within an EITM zone must be an industrial site or mixed-use development. Under current law, a TIF district must be terminated 20 years after the district is created for districts created on or after October 1, 2004, that are established on the finding that 50% or more, by area, of the real property within the district is suitable for industrial sites or mixed-use development. The Act extends the allowable life of a TIF district within an EITM zone and the period during which DOR may allocate positive tax increments from 20 years to 30 years. Additionally, the Act exempts an EITM TIF district from the current law requirement that no expenditure may be made later than five years before the unextended termination date of the TIF district by allowing any expenditure allowed under current law to be made up to 30 years after the district is created. Extending the life of the district could result in 10 additional years of tax increments that could be applied to project costs. However, doing so would also extend the period during which the overlying taxing jurisdictions would forego the levy of taxes on the incremental value within the district for their general government purposes.

Current law requires that public expenditures related to costs for projects located in a TIF district occur within the boundaries of the district or an area within one-half mile of the district's boundaries and within the city or village that created the district. The Act allows a city or village creating a TIF district within an EITM zone to incur project costs for any territory that is located in the same county as the district if the expenditure benefits the district. This exception allows project costs to be incurred that result from improvements benefitting the project that are some distance from the project site, but still within the same county. As an example, this exception could help fund improvements to water systems or wastewater treatment facilities located outside of the TIF district, but within the same county.

Under current law, eligible project costs do not include the cost of constructing or expanding

police and fire facilities and general government operating expenses. The Act allows for tax increment expenditures to include the cost of constructing or expanding fire stations, purchasing police and fire equipment, and the cost of general government operating expenses related to providing police and fire protection services, provided that the total of such expenditures do not exceed 15% of the total positive tax increments received by the creating city or village over the district's lifetime. This provision could allow the city or village creating the EITM TIF district to use tax increments from the district to cover the costs (listed above) incurred outside of the district that result from development that takes place within the district. Without this provision, the taxes imposed to fund such services would be shifted to other property within that local government's jurisdiction, but outside the TIF district.

The Act also expands the current law definition of "project costs" to include payments made by a city or village to a county or other municipality that issues obligations to finance the project costs of a TIF district within an EITM zone. This provision would help repay obligations incurred by surrounding municipalities and the county that are related to the development within the EITM TIF district. Under this provision, a municipality could use tax increments generated within the district to make such payments.

Finally, the Act creates flexibility when determining the creation date for a TIF district within an EITM zone. This flexibility allows the city or village to select a creation date of January 1 of the year in which the resolution authorizing creation of the district is adopted, or January 1 of the following year, if a resolution is adopted between January 1 and December 1. (The Act specifies that if a resolution is adopted between December 2 and December 31, the creation date would be January 1 of the following year.) Selection of either creation date could benefit the district, depending on the progress of the project at the time the resolution is adopted. For example, establishing a creation date of January 1, 2017, could result in additional tax increments from any value increment that occurred within the district throughout 2017. Conversely, establishing a creation date of January 1, 2018, could be beneficial if the project is delayed.

For TIF districts created after October 1, 2004, cash grants made by the city or village to owners, lessees, or developers of land that is located within the TIF district can be considered eligible costs if the grant recipient has signed a development agreement with the city or village. A development agreement typically defines the responsibilities of both parties, sets the standards and conditions for the development, and includes provisions related to guarantees made by the developer to repay the city or village for costs incurred by the city or village if the development does not occur. According to DOA, it is not currently known whether a city or village would make a cash grant to Foxconn. Furthermore, the bill would not require the establishment of a development agreement between the city or village creating the TIF district and Foxconn. However, DOA has indicated that to better define the obligations of both parties, a development agreement between the city or village and Foxconn could occur regardless of whether a cash grant is made.

## DEPARTMENT OF ADMINISTRATION

### *Grants to Local Governments*

The Act creates a continuing GPR appropriation under DOA with funding of \$15.0 million GPR in 2017-18 for making one or more grants to local governmental units for costs associated with development occurring in an EITM zone, including cost related to infrastructure and public safety. The amount of grants that would be provided in 2017-18 is unknown at this time. However, under a continuing appropriation, the unencumbered balance of the appropriation that remains at the end of a fiscal year is retained and available to be expended from the appropriation in the following fiscal year. As such, if grants from the newly created appropriation totaled less than \$15.0 million GPR in 2017-18, remaining expenditure authority would be available for grants in 2018-19 and later years.

### *Moral Obligation Pledge For Local Governmental Municipal Obligations*

The Act specifies that, recognizing its moral obligation to do so, the Legislature expresses its expectation and aspiration that, if ever called upon to do so, it would make an appropriation to pay no more than 40% of the principal and interest of a local governmental unit's municipal obligations, if all of the following apply: (a) the local governmental unit's municipal obligation is issued to finance costs related to development occurring in or for the benefit of an EITM zone; and (b) the DOA Secretary designates the moral obligation pledge for the local governmental unit's municipal obligation before the municipal obligation is issued, based on a plan that the local governmental unit submitted to DOA. The Act also permits the DOA Secretary to contract with a local governmental unit to implement the moral obligation pledge.

A state moral obligation pledge for local governmental municipal obligations can be viewed as a credit enhancement mechanism that could assist in the marketability of debt issued by a local governmental unit. Because of this pledge, debt not previously issued by a local governmental unit, or issued in larger amounts than before, may be issued at a lower interest rate due to the Legislature's moral obligation pledge to repay a portion of the outstanding principal and interest if the local governmental unit is unable to make such payments. The moral obligation pledge is not legally binding. Rather, it is a statement made by the current Legislature that it expects a future Legislature to, if called upon to do so, make an appropriation to assist in the repayment of outstanding debt issued by a local governmental unit.

The size of debt that could be issued by any local governmental units to finance costs related to development occurring in or for the benefit of an EITM zone is not currently known. Therefore, the potential state fiscal impact of the moral obligation pledge cannot currently be determined, and would depend on what obligations the DOA Secretary designates for the pledge. As an example, if the total amount of debt issued by a local governmental unit covered by the pledge would be \$100 million, assuming an interest rate of 5% and a flat, 20-year repayment schedule, total principal and interest payments would equal \$160.5 million. Assuming that no revenues from the underlying project are available to service 40% of the debt, then the Legislature could be called on to appropriate up to \$64.2 million for the repayment of 40% of principal and interest costs under the moral obligation pledge.

### ***Economic Development Liaison***

The Act provides \$183,500 GPR in 2017-18 and \$177,500 GPR in 2018-19 and 1.0 unclassified GPR project position annually to DOA's supervision and management general program operations appropriation for economic development liaison activities. The administration indicates that the appropriation increase is based on the following budgeted expenses: \$120,000 annually for position salary; \$47,500 annually for fringe benefits; \$10,000 annually for routine supplies and services; and \$6,000 in 2017-18 for one-time supplies and services. According to DOA, one-time expenses would include costs associated with purchase of a computer, cell phone, and furniture, in addition to any reconfiguration of space that the administration determines would be required for the position.

### **COUNTY SALES TAX REVENUE BONDS**

Under current law, counties have the authority to impose a 0.5% county sales and use tax for the purpose of reducing the property tax levy or costs that could otherwise be paid from the property tax levy. The Act allows a county containing an EITM zone to use the revenues from a 0.5% county sales and use taxes to repay bonds issued by the county.

### **I-94 NORTH-SOUTH CORRIDOR PROJECT**

It is expected that, if partially issued in May, 2018, estimated debt service on the \$252.400,000 in contingent GPR-supported bonds that would be provided under Act would increase by \$2,942,000 GPR in 2018-19. If fully issued, estimated general fund-supported debt service payments on these bonds would increase to \$8.91 million GPR in 2019-20, \$15.67 million GPR in 2020-21, and \$19.5 million in 2021-22, before plateauing at \$20.3 million in 2022-23 through 2037-38. Debt service on these bonds would begin to decline in 2038-39 and would be fully repaid by 2042. Total estimated debt service during this period would be equal to \$408.3 million. These estimates and the repayment schedule assume a 5% interest rate and 20-year bond maturities.

### **WORKFORCE DEVELOPMENT**

The Act creates a continuing GPR appropriation under DWD for a worker training and employment, and directs DWD to allocate \$20,000,000 from the appropriation in the 2019-21 biennium to provide funding, through grants or other means, to facilitate worker training and employment in the state. The Act provides no funding for the program in the 2017-19 biennium. Therefore, funding would have to be appropriated in the 2019-21 biennium to implement this provision.

### **ESTIMATED GPR EXPENDITURES -- 2017-19 and 2019-21**

Table 4 displays the projected general purpose revenue (GPR) expenditures under provisions

of the bill for the 2017-19 and 2019-21 biennia.

**TABLE 4**  
**Estimated 2017-19 and 2019-21 GPR Expenditures under Act 58**  
**(in Millions)**

	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>
EITM Zone Capital Expenditures Tax Credit	\$0.00	0.00	\$192.86	\$192.86
EITM Zone Payroll Tax Credit	0.00	2.35	23.81	59.53
Fiserv Enterprise Zone Tax Credits	0.00	0.00	2.00	2.00
Grants to Local Governments	15.00	0.00	0.00	0.00
Debt Service on I-94 North-South Corridor Project	0.00	2.94	8.91	15.67
Economic Development Liaison	0.18	0.18	0.18	0.18
DWD Worker Training and Employment	<u>0.00</u>	<u>0.00</u>	<u>20.00</u>	<u>00.00</u>
<b>Total</b>	<b>\$15.18</b>	<b>\$5.47</b>	<b>\$247.76</b>	<b>\$270.24</b>
 2017-19 and 2019-20 Total	 \$20.65		 \$518.00	

As shown above, it is projected that general fund expenditures under the Act would be \$20.65 million in 2017-19 and \$518.00 million in the 2019-21 biennium.

The administration's analysis shown in Table 3 estimates additional general fund tax collections of \$346.83 million for 2019-21 (\$190.39 million in 2019-20 and \$156.44 million in 2020-21).

## **DISCUSSION OF THE IMPACT ON LOCAL GOVERNMENTS**

### ***Counties, Municipalities, Technical Colleges, and School Districts***

Local governments (counties, municipalities, school districts, technical college districts, and special purpose districts) incur costs for operations and for capital. Operations include those costs that recur on a regular basis, while capital costs involve infrastructure and equipment with a multi-year life. Taxes, fees, and intergovernmental revenue are the primary funding sources for Wisconsin local governments' operations. While these funding sources can also be used for capital costs, local governments often borrow for those costs. General obligation bonds and notes are repaid through tax levies and are backed by the local government's "full faith and credit." The Wisconsin Constitution limits the amount of general obligation debt that each local government may incur to 5% of that local government's property tax base and specifies that the debt be retired within 20 years. Fees and other revenue sources can be used to support other debt, such as revenue bonds.

The Foxconn development will impose additional operating and capital costs on Wisconsin local governments. Some of these costs will result from providing public services directly to the

Foxconn facility in the EITM zone, and some costs will be indirect, resulting from providing services to people and property outside, but resulting from, the development. Foxconn will be subject to any fees charged by the municipality or other local governments for services, such as for utilities. However, public service costs funded through property taxes will not be recouped from Foxconn, since the taxes on property located inside the TIF district will be dedicated to repaying the TIF district's project costs. To the extent property in the TIF district causes those public service costs to increase, the taxes imposed to fund the services will be shifted to other property within that local government's jurisdiction, but outside the TIF district. However, by allowing tax increment expenditures to include the cost of constructing or expanding fire stations, purchasing police and fire equipment, and the cost of general government operating expenses related to providing police and fire protection services, the Act will allow the municipality creating the EITM TIF district to use tax increments from the district to cover such costs incurred outside of the district, which could help mitigate any potential tax increases on properties outside of the district.

Indirect costs will result from other development related to the Foxconn project. That development will include business suppliers to Foxconn, housing for Foxconn employees, and businesses serving those employees, and the development will occur within the local governments hosting the EITM zone and in adjacent municipalities, counties, and states. The incremental public costs related to development may be small initially, but they can increase in dramatic steps as local governments are required to increase capacity, either by adding employees or infrastructure, such as roads, schools, and other buildings.

In Wisconsin, the property tax is the largest component of own-source revenue raised by local governments and will be used as the primary source for funding the costs described above. Counties, municipalities, technical college districts, and school districts are subject to fiscal controls designed to limit the annual change in property taxes.

For counties and municipalities, the control is a levy limitation that limits the year-to-year increase in the tax levy to the percentage increase in tax base due to new construction within the county or municipality. The percentage is calculated without regard to TIF district boundaries, so new construction occurring in TIF districts increases the allowable levy authority of the county and municipality containing the TIF district, even though the county and municipality are not imposing a tax on the TIF district's incremental value. As noted above, any increase in the county or municipal levy related to this additional levy authority will be borne by property outside the TIF district. Also, for development in the host community outside the TIF district and in adjacent municipalities, the levy limit will increase by the amount of this new construction, which will allow affected counties and municipalities the ability to fund costs related to that development. The levy limitation allows adjustments and exclusions for certain purposes to the allowable levy of each county or municipality. For example, the levy for debt service on long-term general obligation debt is excluded from the control. Finally, counties and municipalities may increase their levies beyond the level allowed under the levy limitation if the increase is approved at referendum.

For Wisconsin technical college districts, there is a revenue limit that applies to the sum of the tax levy and state property tax relief aid. No district can increase its revenue in any year by a percentage greater than its valuation factor. The valuation factor is the greater of zero, or the percentage change in the district's equalized value due to new construction, less improvements

removed. For purposes of the revenue limit, tax levy excludes taxes levied for principal and interest on valid bonds and notes, other than noncapital notes. Districts may exceed their revenue limit if the increase is approved at referendum.

For school districts, revenue limits cover the sum of state general aid and the local levy, with certain exceptions. Each district's limit is calculated using a three-year rolling average of pupil enrollment. If additional pupils attend local school districts because of employment and housing growth attributable to the project, the three-year rolling average under revenue limits will increase as well. If school districts need to build new schools, a bonding referendum will need to be passed in order for the debt levy on the bonds to be outside of revenue limits. The effect of any increase in revenue limits on a school district's levy would depend in part on the district's aid characteristics (pupil membership, aidable costs, and equalized value) as well as the changes in those factors compared to other districts in the state.

### *County and District Sales Tax*

The Foxconn development would also impact local sales and use tax collections. Initially, during construction, the sale of building materials, supplies and equipment used solely in the construction of the Foxconn facility would be exempt from local sales and use taxes. However, local governments would likely realize increased sales and use tax revenues from the local economy during construction associated with the construction employment and over time associated with sale of additional taxable items resulting from the ancillary development of housing and other businesses indirectly related to the Foxconn development. The impact on local government sales and use taxes would vary depending on where the construction of the facility takes place. Racine County does not impose the 0.5% county sales and use taxes, but the County is included in the Brewers stadium district, which imposes a 0.1% sales tax (expected to sunset by 2020 at the latest). Therefore, Foxconn could receive estimated tax savings of \$2.78 million associated with exemption of the Foxconn facility construction from the Brewers stadium tax. The stadium district could also benefit from any potential growth in local sales tax revenue while the tax is in place associated with any ancillary development related to the Foxconn facility. Kenosha County currently imposes the 0.5% county sales and use taxes, and would likely receive some benefit associated with ancillary development.