



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1007/PB  
MES:jlh:hh

SOON

RMR

DOA:.....Wong - Environmental remediation tax incremental financing  
FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

do not gen

- 1 AN ACT ...; relating to: modifying the environmental remediation tax
- 2 incremental financing program.

*Analysis by the Legislative Reference Bureau*

**LOCAL GOVERNMENT**

**OTHER LOCAL GOVERNMENT**

Under current law, a city, village, town or county (political subdivision) may create an environmental remediation tax incremental district (ERTID) to defray the costs of remediating contaminated property that is owned by the political subdivision. The mechanism for financing costs that are eligible for remediation is very similar to the mechanism under the tax incremental financing (TIF) program. If the remediated property is transferred to another person and is then subject to property taxation, environmental remediation (ER) tax incremental financing may be used to allocate some of the property taxes that are levied on the property to the political subdivision to pay for the costs of remediation.

Before the political subdivision may use ER tax incremental financing, however, it must create a joint review board that is similar to the current law tax incremental district (TID) joint review board, or a city or village may use an existing TID joint review board, to review the political subdivision's proposal to remediate environmental pollution. If the joint review board approves the proposal, the political subdivision may proceed with its plan. An ERTID joint review board is made up of one representative chosen by the school district that has power to levy

taxes on the property that is remediated, one representative chosen by the technical college district that has power to levy taxes on the property, one representative chosen by the county that has power to levy taxes on the property that is remediated, one representative chosen by the political subdivision and one public member.

A political subdivision that has incurred "eligible costs" to remediate environmental pollution on a parcel of property may apply to the department of revenue (DOR) to certify the "environmental remediation tax incremental base" (ERTIB) of the parcel. DOR is required to certify the ERTIB if the political subdivision submits to DOR all of the following: 1) a statement that the political subdivision has incurred eligible costs, detailing the purpose and amount of the expenditures, and including certification of the department of natural resources (DNR) that the ER has been completed; 2) a statement that all taxing jurisdictions with authority to levy general property taxes on the parcel of property have been notified that the political subdivision intends to recover its ER costs by using an "ER tax increment"; and 3) a statement that the political subdivision has attempted to recover its ER costs from the responsible party.

Under the bill, the environmental remediation does not need to be completed before a political subdivision may ask DOR to certify the ERTIB. The political subdivision is required, under the bill, to submit to DOR a statement that the political subdivision has incurred some eligible costs and includes with the statement a detailed proposed remedial action plan that contains cost estimates for anticipated eligible costs. The political subdivision is also required to include certification from DNR that the department has approved the site investigation report that relates to the parcel.

"Eligible costs" are capital costs, financing costs and administrative and professional service costs for the removal, containment or monitoring of, or the restoration of soil or groundwater affected by, environmental pollution. Eligible costs are reduced by any amounts received from persons who are responsible for the discharge of a hazardous substance on the property to pay remediation costs and by the amount of net gain on the sale of the property by the political subdivision. The "ERTIB" of the property is the property's equalized value on the January 1 preceding the date on which DNR certifies that the property has been properly remediated.

The bill changes the definition of eligible costs to include demolition costs including asbestos removal, and removing and disposing of certain abandoned containers.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 66.462 (1) (c) of the statutes is amended to read:

NO # The bill also requires <sup>that</sup> an ERTIB be created on  
= contiguous ~~adjacent~~ parcels of property.

1           66.462 (1) (c) "Eligible costs" means capital costs, financing costs and  
2 administrative and professional service costs for the investigation, removal,  
3 containment or monitoring of, or the restoration of soil or groundwater affected by,  
4 environmental pollution, including monitoring costs incurred within 2 years after  
5 the date on which the department of natural resources certifies that environmental  
6 pollution on the property has been remediated, demolition costs including asbestos  
7 removal, and removing and disposing of abandoned containers, as defined in s.  
8 292.41 (1), except that for any parcel of land "eligible costs" shall be reduced by any  
9 amounts received from persons responsible for the discharge, as defined in s. 292.01  
10 (3), of a hazardous substance on the property to pay for the costs of remediating  
11 environmental pollution on the property and the amount of net gain from the sale  
12 of the property by the political subdivision.

13           SECTION 2. 66.462 (4) (a) of the statutes is amended to read:

14           66.462 (4) (a) The political subdivision submits a statement that it has incurred  
15 some eligible costs, and includes with the statement a detailed proposed remedial  
16 action plan that contains cost estimates for anticipated eligible costs, with respect  
17 to the parcel of property and the statement details the purpose and amount of the  
18 expenditures already made and includes a dated certificate issued by the  
19 department of natural resources that certifies that ~~environmental pollution on the~~  
20 ~~parcel of property has been remediated~~ the department of natural resources has  
21 approved the site investigation report that relates to the parcel in accordance with  
22 rules promulgated by the department of natural resources.

23           **SECTION 9358. Initial applicability; other.**

24           (1) ENVIRONMENTAL REMEDIATION TAX INCREMENTAL FINANCING. The treatment of  
25 section 66.462 (1) (c) <sup>(2)</sup> and (4) (a) of the statutes first applies to an environmental

INS.  
3-12

1 remediation tax incremental financing district, the written remediation proposal for  
2 which is approved by the political subdivision's governing body on the effective date  
3 of this subsection.

4 (END)

INS. 3-12

Section #. 66.462 (2) of the statutes is amended to read:

66.462 (2) USE OF ENVIRONMENTAL REMEDIATION TAX INCREMENTS. A political subdivision that develops, and whose governing body approves, a written proposal to remediate environmental pollution on property owned by the political subdivision may use an environmental remediation tax increment to pay the eligible costs of remediating environmental pollution on <sup>contiguous parcels of</sup> property that ~~is~~ <sup>are</sup> not <sup>are</sup> part of a tax incremental district created under s. 66.46 and that ~~is~~ <sup>are</sup> owned by the political subdivision at the time of the remediation and then transferred to another person after the property is remediated, as provided in this section. No political subdivision may submit an application to the department under sub. (4) until the joint review board approves the political subdivision's written proposal under sub. (3).

History: 1997 a. 27.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1007/P4<sup>5</sup>

MES:jlg/jtq

RMR

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- 1 AN ACT <sup>do not gen</sup> ...; relating to: modifying the environmental remediation tax  
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**LOCAL GOVERNMENT**

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Under current law, a city, village, town or county (political subdivision) may create an environmental remediation tax incremental district (ERTID) to defray the costs of remediating contaminated property that is owned by the political subdivision. The mechanism for financing costs that are eligible for remediation is very similar to the mechanism under the tax incremental financing (TIF) program. If the remediated property is transferred to another person and is then subject to property taxation, environmental remediation (ER) tax incremental financing may be used to allocate some of the property taxes that are levied on the property to the political subdivision to pay for the costs of remediation.

Before the political subdivision may use ER tax incremental financing, however, it must create a joint review board that is similar to the current law tax incremental district (TID) joint review board, or a city or village may use an existing TID joint review board, to review the political subdivision's proposal to remediate environmental pollution. If the joint review board approves the proposal, the political subdivision may proceed with its plan. An ERTID joint review board is made up of one representative chosen by the school district that has power to levy

*ANS* The bill reduces eligible costs by the amount of any grant or other funds received by a political subdivision to remediate environmental pollution on the property.

taxes on the property that is remediated, one representative chosen by the technical college district that has power to levy taxes on the property, one representative chosen by the county that has power to levy taxes on the property that is remediated, one representative chosen by the political subdivision and one public member.

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Under the bill, the environmental remediation does not need to be completed before a political subdivision may ask DOR to certify the ERTIB. The political subdivision is required, under the bill, to submit to DOR a statement that the political subdivision has incurred some eligible costs and includes with the statement a detailed proposed remedial action plan that contains cost estimates for anticipated eligible costs. The political subdivision is also required to include certification from DNR that the department has approved the site investigation report that relates to the parcel.

"Eligible costs" are capital costs, financing costs and administrative and professional service costs for the removal, containment or monitoring of, or the restoration of soil or groundwater affected by environmental pollution. Eligible costs are reduced by any amounts received from persons who are responsible for the discharge of a hazardous substance on the property to pay remediation costs and by the amount of net gain on the sale of the property by the political subdivision. The "ERTIB" of the property is the property's equalized value on the January 1 preceding the date on which DNR certifies that the property has been properly remediated.

The bill changes the definition of eligible costs to include demolition costs including asbestos removal, and removing and disposing of certain abandoned containers. The bill also requires that an ERTID be created on contiguous parcels of property.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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SECTION 1. 66.462 (1) (c) of the statutes is amended to read:

1           66.462 (1) (c) "Eligible costs" means capital costs, financing costs and  
2 administrative and professional service costs for the investigation, removal,  
3 containment or monitoring of, or the restoration of soil or groundwater affected by,  
4 environmental pollution, including monitoring costs incurred within 2 years after  
5 the date on which the department of natural resources certifies that environmental  
6 pollution on the property has been remediated, demolition costs including asbestos  
7 removal, and removing and disposing of abandoned containers, as defined in s.  
8 292.41 (1), except that for any parcel of land "eligible costs" shall be reduced by any  
9 amounts received from persons responsible for the discharge, as defined in s. 292.01  
10 (3), of a hazardous substance on the property to pay for the costs of remediating  
11 environmental pollution on the property, <sup>by</sup> and the amount of net gain from the sale  
12 of the property by the political subdivision, by the amount of any grant or  
other funding received by the political  
subdivision to remediate environmental pollution  
on the property.

13           SECTION 2. 66.462 (2) of the statutes is amended to read:

14           66.462 (2) USE OF ENVIRONMENTAL REMEDIATION TAX INCREMENTS. A political  
15 subdivision that develops, and whose governing body approves, a written proposal  
16 to remediate environmental pollution on property owned by the political subdivision  
17 may use an environmental remediation tax increment to pay the eligible costs of  
18 remediating environmental pollution on contiguous parcels of property that is are  
19 not part of a tax incremental district created under s. 66.46 and that is are owned by  
20 the political subdivision at the time of the remediation and then transferred to  
21 another person after the property is remediated, as provided in this section. No  
22 political subdivision may submit an application to the department under sub. (4)  
23 until the joint review board approves the political subdivision's written proposal  
24 under sub. (3).

25           SECTION 3. 66.462 (4) (a) of the statutes is amended to read:





## Shovers, Marc

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**From:** Wong, Manyee  
**Sent:** Sunday, January 24, 1999 7:27 PM  
**To:** Shovers, Marc  
**Subject:** FW: LRB Draft: 99-1007/P5

Hi Marc,

Please change LRB draft 1007/P5 to reflect Paul Ziegler's comment below (i.e. DOR had more comprehensive language regarding avoiding the recovery of ERTIF eligible costs twice....etc.). Thanks!

Manyee

-----Original Message-----

**From:** Schmiedicke, David  
**Sent:** Friday, January 22, 1999 6:12 PM  
**To:** Wong, Manyee  
**Subject:** RE: LRB Draft: 99-1007/P5

yes

*David P. Schmiedicke*  
*Wisconsin Department of Administration*  
Voice -- (608) 266-1040  
FAX -- (608) 267-0372  
E-Mail -- david.schmiedicke@doa.state.wi.us

-----Original Message-----

**From:** Wong, Manyee  
**Sent:** Friday, January 22, 1999 4:09 PM  
**To:** Ziegler, Paul  
**Cc:** Schmiedicke, David  
**Subject:** RE: LRB Draft: 99-1007/P5

Sure. DOR's language is fine. I will email Marc Shovers for the change. Is this ok with you, Dave?

-----Original Message-----

**From:** Ziegler, Paul  
**Sent:** Friday, January 22, 1999 4:03 PM  
**To:** Wong, Manyee  
**Subject:** RE: LRB Draft: 99-1007/P5

DOR had more comprehensive language regarding avoiding the recovery of ERTIF eligible costs twice -- once by tax increment and again by grant. DOR's request read as follows --- Reduce eligible costs by "any amounts received, or reasonably expected by the political subdivision to be received, from a local, state or federal program for the remediation of contamination in the district that do not require reimbursement or repayment."  
The quote above is straight from LRB draft 0771/p1 which I had done prior to seeing the same change incorporated in your draft. If you desire, Marc Shovers could be asked to include the above language from my draft 0771.

-----Original Message-----

**From:** Wong, Manyee  
**Sent:** Monday, January 11, 1999 11:29 AM  
**To:** Ziegler, Paul  
**Subject:** FW: LRB Draft: 99-1007/P5

Hi Paul,

Here's the latest draft on an ER TIF issue proposed by the Brownfields Study Group. Since it crosses your area, could you take a look at it to see if everything is alright? Thanks.

-----Original Message-----

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**From:** Frantzen, Jean [SMTP:Jean.Frantzen@legis.state.wi.us]  
**Sent:** Thursday, January 07, 1999 11:37 AM  
**To:** 'manyee.wong@doa.state.wi.us'  
**Cc:** 'david.schmiedicke@doa.state.wi.us'; 'vicky.labelle@doa.state.wi.us'; Hubli, Scott; Haugen, Caroline  
**Subject:** LRB Draft: 99-1007/P5

Following is the PDF version of draft 99-1007/P5.

<< File: 99-1007/P5 >>



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1007/P  
MES:jlg

SOON

RMB

DOA:.....Wong - Environmental remediation tax incremental financing  
FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

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taxes on the property that is remediated, one representative chosen by the technical college district that has power to levy taxes on the property, one representative chosen by the county that has power to levy taxes on the property that is remediated, one representative chosen by the political subdivision and one public member.

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Under the bill, the environmental remediation does not need to be completed before a political subdivision may ask DOR to certify the ERTIB. The political subdivision is required, under the bill, to submit to DOR a statement that the political subdivision has incurred some eligible costs and includes with the statement a detailed proposed remedial action plan that contains cost estimates for anticipated eligible costs. The political subdivision is also required to include certification from DNR that the department has approved the site investigation report that relates to the parcel.

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The bill changes the definition of eligible costs to include demolition costs including asbestos removal, and removing and disposing of certain abandoned containers. The bill reduces eligible costs by ~~the amount of any grant or other funds received by a political subdivision to remediate environmental pollution on the property.~~ The bill also requires that an ERTID be created on contiguous parcels of property.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

*any amounts received, or reasonably expected by the political subdivision to be received, from a local, state or federal program for the remediation of contamination in the district that do not require reimbursement or repayment.*

1 SECTION 1. 66.462 (1) (c) of the statutes is amended to read:

2 66.462 (1) (c) "Eligible costs" means capital costs, financing costs and  
 3 administrative and professional service costs for the investigation, removal,  
 4 containment or monitoring of, or the restoration of soil or groundwater affected by,  
 5 environmental pollution, including monitoring costs incurred within 2 years after  
 6 the date on which the department of natural resources certifies that environmental  
 7 pollution on the property has been remediated, demolition costs including asbestos  
 8 removal, and removing and disposing of abandoned containers, as defined in s.  
 9 292.41 (1), except that for any parcel of land "eligible costs" shall be reduced by any  
 10 amounts received from persons responsible for the discharge, as defined in s. 292.01  
 11 (3), of a hazardous substance on the property to pay for the costs of remediating  
 12 environmental pollution on the property, by ~~the amount of~~ <sup>Amounts received, or</sup> any grant or other funding  
 13 ~~received by the political subdivision to remediate environmental pollution on the~~  
 14 ~~property~~ <sup>reimbursement or repayment</sup> and by the amount of net gain from the sale of the property by the political  
 15 subdivision. reasonably expected by the political  
subdivision to be received, from a local, state or  
federal program

16 SECTION 2. 66.462 (2) of the statutes is amended to read:

17 66.462 (2) USE OF ENVIRONMENTAL REMEDIATION TAX INCREMENTS. A political  
 18 subdivision that develops, and whose governing body approves, a written proposal  
 19 to remediate environmental pollution on property owned by the political subdivision  
 20 may use an environmental remediation tax increment to pay the eligible costs of  
 21 remediating environmental pollution on contiguous parcels of property that is are  
 22 not part of a tax incremental district created under s. 66.46 and that is are owned by  
 23 the political subdivision at the time of the remediation and then transferred to  
 24 another person after the property is remediated, as provided in this section. No  
 25 political subdivision may submit an application to the department under sub. (4)

1 until the joint review board approves the political subdivision's written proposal  
2 under sub. (3).

3 **SECTION 3.** 66.462 (4) (a) of the statutes is amended to read:

4 66.462 (4) (a) The political subdivision submits a statement that it has incurred  
5 some eligible costs, and includes with the statement a detailed proposed remedial  
6 action plan that contains cost estimates for anticipated eligible costs, with respect  
7 to the parcel of property and the statement details the purpose and amount of the  
8 expenditures already made and includes a dated certificate issued by the  
9 department of natural resources that certifies that environmental pollution on the  
10 parcel of property has been remediated the department of natural resources has  
11 approved the site investigation report that relates to the parcel in accordance with  
12 rules promulgated by the department of natural resources.

13 **SECTION 9358. Initial applicability; other.**

14 (1) ENVIRONMENTAL REMEDIATION TAX INCREMENTAL FINANCING. The treatment of  
15 section 66.462 (1) (c), (2) and (4) (a) of the statutes first applies to an environmental  
16 remediation tax incremental financing district, the written remediation proposal for  
17 which is approved by the political subdivision's governing body on the effective date  
18 of this subsection.

19 (END)

**CORRESPONDENCE/MEMORANDUM**

**State of Wisconsin**

**DATE:** January 27, 1999

**TO:** Brian Dranzick, MB/S  
Monyee Wong, DOA

**FROM:** Darsi Foss, RR/3

Post-it <sup>®</sup> Fax Note	7671	Date		# of pages	4
To	Marc Shovers	From	Monyee Wong		
Co./Dept.		Co.			
Phone #	266-0129	Phone #	266-7597		
Fax #	264-8522	Fax #			

**SUBJECT: LRB Draft 1007/P6 – Environmental Remediation TIF**

Thank you for the opportunity to comment on this draft. We believe that this is a very important tool for local governments in their efforts to revitalize contaminated properties. In addition, we believe that the Brownfields Study Group had a number of excellent proposals to further enhance the ER TIF as a cleanup and redevelopment tool. We would like to provide you with the following comments, and in some cases concerns, particularly regarding the omission of a number of the recommendations of the Brownfields Study Group.

**1. Eligible Costs**

The eligible costs definition in s. 66.462, Stats., contains some of the eligible costs recommended by the Brownfields Study Group, but not all. There are three "eligible costs" proposed by the Brownfields Study Group that we would like to express our continued support for their inclusion: (1) cancellation of delinquent taxes; (2) acquisition costs; and (3) environmental media covered.

Based on my 5 years of experience in brownfields, the issue of the cancellation of delinquent taxes has been a significant impediment to redeveloping some of the more "indigent" properties. For many urban properties, this issue has been the reason for a cleanup/redevelopment deal not moving forward. Communities, such as Milwaukee, are still not canceling delinquent taxes because they view any money "forgiven" as a non-reimbursable expenditure. While we provided these communities with the tools to forgive delinquent taxes, many counties and the City of Milwaukee continue to be reluctant to do so because there is no way to be reimbursed for that expenditure.

*NO*

At the Try Chem brownfields property in Milwaukee, there is a delinquent tax bill of \$500,000. No one is going to redevelop this property unless the taxes are canceled. While we understand and have great respect for our colleagues' opinions at the Department of Revenue, we feel that making the costs associated with canceling delinquent taxes eligible for the ER TIF is critical to removing one of the more significant "brownfields impediments. I also empathize with DOR's concern over the County or the City of Milwaukee raising tax levies to pay for delinquent taxes – the fear of double reimbursement. However, in the long run, this State is better off if it gets these properties back on the tax rolls and producing jobs, rather than worrying over the short-term concerns of whether the local government is being reimbursed twice: once through increased levies and the second through the ER TIF. As you can tell, we





concur with the Brownfields Study group recommendation that this should be a ER TIF-eligible expense. It is an issue that we deal with weekly at the DNR and believe that this tool is much needed.

OK We also believe that the cost of acquiring the property should be an ER TIF-eligible expense. The State has already, in its Brownfields Grant program, recognized "acquisition" costs as a legitimate, eligible and important expense for revitalizing brownfields properties. The Brownfields Study Group believes that any cost eligible under the Brownfields Grant Program at Commerce, should also be an eligible ER TIF expense. Thus, political subdivisions should have the same opportunity to have their "brownfields costs" - i.e., acquisition, remediation and redevelopment of existing structures - equally eligible for reimbursement under the ER TIF as they would be eligible for funding under Commerce's Brownfields Grants.

OK The Brownfields Study Group recommended that the existing ER TIF language be expanded to include not only the costs of the restoration of soil and groundwater, but also air, surface water, sediments and other media impacted by environmental pollution. Many of these brownfields properties are located adjacent to public water bodies, such as lakes and rivers, due to the historic reliance on water for manufacturing. Oftentimes, cleanups of these properties involve the cleanup of surface water or sediments, which should be eligible for reimbursement under the ER TIF. Many communities in Wisconsin, as part of their revitalization of their lakefronts or riverfronts, are involved with dredging activities that may include the removal and disposal of contaminated sediments. We believe such activities are integral to brownfields redevelopment and the ER TIF should be expanded to deal with these situations.

## 2. Ownership of Property

NO LRB draft 1007/P6 continues to require the political subdivision to "own" the property while they incur remediation costs in order for the property and those eligible costs to be TIF eligible. Once again, we concur with the recommendations of the Brownfields Study Report, which would allow any "eligible cost" incurred by the political subdivision to be eligible for reimbursement using the ER TIF, regardless of whether the political subdivision owned the property at the time the cost was incurred.

Our support of the BF Study Group's proposal is based on our experience with problems incurred at actual brownfields redevelopments. For example, many communities, such as West Allis, take great risks to acquire and remediate brownfields properties. West Allis, and others, usually acquire the property, conduct the necessary investigation and receive DNR approval of the remediation plan. Oftentimes those plans involve long-term groundwater monitoring and a soil remedy involving some soil removal and then placement of a barrier between the contaminated soil and the surface. That soil barrier is often the development itself: the office building and parking structure. Once that community gets the remedy approved, they look for a purchaser to implement the remedy/redevelopment. A private party will often agree to implement/build the remedy, with the local government retaining the groundwater responsibilities after the property is sold.

Under the scenario in the previous paragraph, would the language in LRB draft 1007/P6 allow this political subdivision to recoup any of its costs using an ER TIF if it sold the property prior to the DNR "certifying" the cleanup? For example, would the acquisition costs, investigation and remediation action plan development costs be ER TIF eligible if they are incurred while the political subdivision owned it, but the property is sold prior to DNR "certifying" a cleanup? In addition, it is my understanding that if the political subdivision, as illustrated in the previous paragraph, retains the groundwater cleanup responsibilities after the sale of the property, it is clear that those groundwater costs would not be ER TIF eligible. Is this correct? So, based on this "real world" example of a common way communities deal with brownfields, would any of these costs be ER TIF eligible? ✓

Overall, we have significant concerns that the minor modifications to the ER TIF statute in this LRB draft do not address the "real world" problems that Brownfields Study Group identified and has proposed solutions to. The current language will cost local governments, the State and private developer's money, in that local governments will be forced to retain ownership of the property through the completion of the cleanup. In doing so, the property will not return as quickly to the property tax base, as was proposed by the Brownfields Study Group. As provided in the case example above, costs will increase at these brownfields because the political subdivision will have to remedy the property (i.e., soil barrier) to be eligible for the ER TIF. In addition, once they sell it, the purchaser will likely remove parts of the soil barrier and put in their redevelopment (i.e., the building and parking structure), thus "over-remediating" the property, increasing costs, and potentially causing some of these brownfields deals to not to go through. Some may find it easier and far cheaper to develop a greenfields property.

### 3. Use of ER TIF for Sustainable Urban Development Zone (SUDZ) Program

We believe that an integral component of the success of the Sustainable Urban Development Zone program - created to promote the cleanup and redevelopment of area-wide brownfields properties - is the ability of a political subdivision to create an ER TIF across multiple properties within the SUDZ. We believe that the Department of Revenue was supportive of this application, with some agreed-upon technical limitations (e.g., ER TIF could not cross taxing jurisdictions). The Brownfields Study Group also agreed not to create a new TIF, at the request of DOR, but to modify the existing ER TIF to allow it to be used in the SUDZ.

However, from our reading of LRB 1007/P6, the language appears to prohibit the use of the ER TIF by a political subdivision if they do not own the property (i.e., in this case the groundwater), but incur eligible expenses. This is a concern because one of the underlying premises of the SUDZ is that the local unit of government could take on the long-term responsibilities for the groundwater in a SUDZ (i.e., brownfields) area, even though the local unit of government did not cause the groundwater contamination or own the source property. In order to give the local unit of government some financial assurance about taking on this multi-property problem, the use of the ER TIF across multiple properties was proposed. However, the local unit of government would not likely own all of these properties, so it is unlikely based on this bill draft that the ER TIF would be a viable financial incentive for the SUDZ. Without the use of the ER TIF in these situations, the value of the SUDZ is

significantly diminished. Based on our concerns in Issues 2 and 3, we believe that the "ownership" issue with respect to the ER TIF needs to be modified in accordance with the recommendations in the Brownfields Study Report.

#### 4. DNR Certification

In the proposed s. 66.462(4)(a), we believe lines 11 and 12 should be modified in the following manner (see italics type face):

Parcel of property has been remediated the department of natural resources has approved the site investigation report and the remedial action options plan that relates to the parcel in accordance with

OK  
In addition, because the requirements for the certification by the Department of Revenue have been amended by this bill, we suggest that the "Period of Certification" definition be changed. The revised language included for s. 66.262 (4) (a), Stats., would likely move up the time when a local government would seek certification for a property. With this revision, local governments can create a ER-TIF before the cleanup has began. Because remedial actions can take several years, the "period of certification" should be extended from 16 years to 23 years. This will give local governments enough time to complete any necessary remedial action at the property and to recover the tax increment from the property redevelopment. The language under s. 66.462 (1) (i), Stats., should be revised accordingly.

OK  
In addition, if the ER TIF is to be a tool used in a Sustainable Urban Development Zone, there needs to be a different trigger on when the ER TIF can be created, than what is used for a single-property ER TIF. The difficulty arises in that there will likely be multiple investigation and remedial action plan reports submitted to the DNR within the SUDZ. Which one triggers the creation of the ER TIF for the SUDZ? Because of this, we recommend that the requirements for the certification of an ER TIF, with respect to the SUDZ, be revised such that once the SUDZ is created, DOR has the authority to certify the ER TIF.

Thank you for your time and consideration of our comments. If you have any questions, please feel free to call me at 267 - 6713.

Cc:  
Bill Ramsey, RR/3  
Judy Ohm, LS/5



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1007/P6

MES:jlg

*(Handwritten initials: RMR)*

DOA:.....Wong - Environmental remediation tax incremental financing  
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

*1/2 King*

*(Handwritten note: P-note)*

*(Handwritten note: Wong)*

- 1 AN ACT relating to: modifying the environmental remediation tax
- 2 incremental financing program.

*Analysis by the Legislative Reference Bureau*

**LOCAL GOVERNMENT**

**OTHER LOCAL GOVERNMENT**

Under current law, a city, village, town or county (political subdivision) may create an environmental remediation tax incremental district (ERTID) to defray the costs of remediating contaminated property that is owned by the political subdivision. The mechanism for financing costs that are eligible for remediation is very similar to the mechanism under the tax incremental financing (TIF) program. If the remediated property is transferred to another person and is then subject to property taxation, environmental remediation (ER) tax incremental financing may be used to allocate some of the property taxes that are levied on the property to the political subdivision to pay for the costs of remediation.

Before the political subdivision may use ER tax incremental financing, however, it must create a joint review board that is similar to the current law tax incremental district (TID) joint review board, or a city or village may use an existing TID joint review board, to review the political subdivision's proposal to remediate environmental pollution. If the joint review board approves the proposal, the political subdivision may proceed with its plan. An ERTID joint review board is made up of one representative chosen by the school district that has power to levy

*property acquisition costs, costs associated with the restoration of air, surface water and sediments affected by environmental pollution,*

taxes on the property that is remediated, one representative chosen by the technical college district that has power to levy taxes on the property, one representative chosen by the county that has power to levy taxes on the property that is remediated, one representative chosen by the political subdivision and one public member.

A political subdivision that has incurred "eligible costs" to remediate environmental pollution on a parcel of property may apply to the department of revenue (DOR) to certify the "environmental remediation tax incremental base" (ERTIB) of the parcel. DOR is required to certify the ERTIB if the political subdivision submits to DOR all of the following: 1) a statement that the political subdivision has incurred eligible costs, detailing the purpose and amount of the expenditures, and including certification of the department of natural resources (DNR) that the ER has been completed; 2) a statement that all taxing jurisdictions with authority to levy general property taxes on the parcel of property have been notified that the political subdivision intends to recover its ER costs by using an "ER tax increment"; and 3) a statement that the political subdivision has attempted to recover its ER costs from the responsible party.

Under the bill, the environmental remediation does not need to be completed before a political subdivision may ask DOR to certify the ERTIB. The political subdivision is required, under the bill, to submit to DOR a statement that the political subdivision has incurred some eligible costs and includes with the statement a detailed proposed remedial action plan that contains cost estimates for anticipated eligible costs. The political subdivision is also required to include certification from DNR that the department has approved the site investigation report that relates to the parcel.

"Eligible costs" are capital costs, financing costs and administrative and professional service costs for the removal, containment or monitoring of, or the restoration of soil or groundwater affected by, environmental pollution. Eligible costs are reduced by any amounts received from persons who are responsible for the discharge of a hazardous substance on the property to pay remediation costs and by the amount of net gain on the sale of the property by the political subdivision. The "ERTIB" of the property is the property's equalized value on the January 1 preceding the date on which DNR certifies that the property has been properly remediated.

The bill changes the definition of eligible costs to include demolition costs including asbestos removal, and removing and disposing of certain abandoned containers. The bill reduces eligible costs by any amounts received, or reasonably expected by the political subdivision to be received, from a local, state or federal program for the remediation of contamination in the district that do not require reimbursement or repayment. The bill also requires that an ERTID be created on contiguous parcels of property.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

INS  
ANL

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

1 SECTION 1. 66.462 (1) (c) of the statutes is amended to read:

2 66.462 (1) (c) "Eligible costs" means capital costs, financing costs and  
 3 administrative and professional service costs for the investigation, removal,  
 4 containment or monitoring of, or the restoration of soil <sup>air, surface water, sediments</sup> or groundwater affected by,  
 5 environmental pollution, including monitoring costs incurred within 2 years after  
 6 the date on which the department of natural resources certifies that environmental  
 7 pollution on the property has been remediated, <sup>property acquisition costs,</sup> demolition costs including asbestos  
 8 removal, and removing and disposing of abandoned containers, as defined in s.  
 9 292.41 (1), except that for any parcel of land "eligible costs" shall be reduced by any  
 10 amounts received from persons responsible for the discharge, as defined in s. 292.01  
 11 (3), of a hazardous substance on the property to pay for the costs of remediating  
 12 environmental pollution on the property, by any amounts received, or reasonably  
 13 expected by the political subdivision to be received, from a local, state or federal  
 14 program for the remediation of contamination in <sup>the</sup> district that do not require  
 15 reimbursement or repayment and by the amount of net gain from the sale of the  
 16 property by the political subdivision.

INS 3-16

17 SECTION 2. 66.462 (2) of the statutes is amended to read:

18 66.462 (2) USE OF ENVIRONMENTAL REMEDIATION TAX INCREMENTS. A political  
 19 subdivision that develops, and whose governing body approves, a written proposal  
 20 to remediate environmental pollution on property owned by the political subdivision  
 21 may use an environmental remediation tax increment to pay the eligible costs of  
 22 remediating environmental pollution on contiguous parcels of property that is are  
 23 not part of a tax incremental district created under s. 66.46 and that is are owned by  
 24 the political subdivision at the time of the remediation and then transferred to  
 25 another person after the property is remediated, as provided in this section. No

INS 3-25

1 political subdivision may submit an application to the department under sub. (4)  
2 until the joint review board approves the political subdivision's written proposal  
3 under sub. (3).

4 **SECTION 3.** 66.462 (4) (a) of the statutes is amended to read:

5 66.462 (4) (a) The political subdivision submits a statement that it has incurred  
6 some eligible costs, and includes with the statement a detailed proposed remedial  
7 action plan that contains cost estimates for anticipated eligible costs, with respect  
8 to the parcel of property and the statement details the purpose and amount of the  
9 expenditures already made and includes a dated certificate issued by the  
10 department of natural resources that certifies that environmental pollution on the  
11 parcel of property has been remediated the department of natural resources has  
12 approved the site investigation report that relates to the parcel in accordance with  
13 rules promulgated by the department of natural resources.

14 **SECTION 9358. Initial applicability; other.**

15 (1) ENVIRONMENTAL REMEDIATION TAX INCREMENTAL FINANCING. The treatment of  
16 section 66.462 (1) (c) <sup>and (1)</sup> (2) and (4) (a) of the statutes first applies to an environmental  
17 remediation tax incremental financing district, the written remediation proposal for  
18 which is approved by the political subdivision's governing body on the effective date  
19 of this subsection.

20

(END)

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1007/P7ins  
MES:jlg:lp

Ins- ANL

NO#

The bill expands from 16 to 23 years the period of certification which is the maximum number of years that DOR may certify the ERTIB and eligible costs may be paid. Under the bill, a political subdivisions<sup>s</sup> is authorized to use an ER tax increment to pay the cost of remediating environmental pollution of groundwater without regard to whether the property above the groundwater is owned by the political subdivision.

INS 3-25

except that a political subdivision may use an environmental remediation tax increment to pay the cost of remediating environmental pollution of groundwater without regard to whether the property above the groundwater is owned by the political subdivision



FMS 3-16 ✓

Section #. 66.462 (1) (i) of the statutes is amended to read:

66.462 (1) (i) "Period of certification" means a period of not more than ~~16~~<sup>23</sup> years beginning after the department certifies the environmental remediation tax incremental base of a parcel of property under sub. (4) or a period before all eligible costs have been paid, whichever occurs first.

History: 1997 a. 27.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1007/P7dn

MES:jlg:lp

*1  
2  
1*

*budget  
a request to draft it  
ever made*

I did not expand the definition of "eligible costs" to include "other media impacted by environmental pollution." First of all, I have no idea what this means, and second of all, what else could possibly be affected by environmental pollution besides soil, air, surface water, ground water and sediments?

Also, I did not execute the instruction relating to SUDZ. I have no idea what a SUDZ is or how to refer to it. I consulted with Rebecca Tradewell and she doesn't believe a SUDZ exists under current law, nor was ~~it created for the budget~~. In addition, it's not clear to me what the study group wants to do with regard to a SUDZ that it can't do now. As amended, s. 66.462 (2) allows ER tax increments to pay for remediating contiguous parcels, and this ability seems to be the study group's concern.

I did add authority to allow a political subdivision to use ER tax increments to pay for remediating groundwater without regard to whether the property above the groundwater is owned by the political subdivision.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: Marc.Shovers@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1007/P7dn  
MES:jlg&kmg:ijs

January 30, 1999

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Also, I did not execute the instruction relating to SUDZ. I have no idea what a SUDZ is or how to refer to it. I consulted with Rebecca Tradewell and she doesn't believe a SUDZ exists under current law, nor was a budget request to draft it ever made. In addition, it's not clear to me what the study group wants to do with regard to a SUDZ that it can't do now. As amended, s. 66.462 (2) allows ER tax increments to pay for remediating contiguous parcels, and this ability seems to be the study group's concern.

I did add authority to allow a political subdivision to use ER tax increments to pay for remediating groundwater without regard to whether the property above the groundwater is owned by the political subdivision.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: Marc.Shovers@legis.state.wi.us

concur with the Brownfields Study group recommendation that this should be a ER TIF-eligible expense. It is an issue that we deal with weekly at the DNR and believe that this tool is much needed.

We also believe that the cost of acquiring the property should be an ER TIF-eligible expense. The State has already, in its Brownfields Grant program, recognized "acquisition" costs as a legitimate, eligible and important expense for revitalizing brownfields properties. The Brownfields Study Group believes that any cost eligible under the Brownfields Grant Program at Commerce, should also be an eligible ER TIF expense. Thus, political subdivisions should have the same opportunity to have their "brownfields costs" - i.e., acquisition, remediation and redevelopment of existing structures - equally eligible for reimbursement under the ER TIF as they would be eligible for funding under Commerce's Brownfields Grants.

OK

The Brownfields Study Group recommended that the existing ER TIF language be expanded to include not only the costs of the restoration of soil and groundwater, but also air, surface water, sediments and other media impacted by environmental pollution. Many of these brownfields properties are located adjacent to public water bodies, such as lakes and rivers, due to the historic reliance on water for manufacturing. Oftentimes, cleanups of these properties involve the cleanup of surface water or sediments, which should be eligible for reimbursement under the ER TIF. Many communities in Wisconsin, as part of their revitalization of their lakefronts or riverfronts, are involved with dredging activities that may include the removal and disposal of contaminated sediments. We believe such activities are integral to brownfields redevelopment and the ER TIF should be expanded to deal with these situations.

OK

2. Ownership of Property

For P6, execute this instruction.

LRB draft 1007/P6 continues to require the political subdivision to "own" the property while they incur remediation costs in order for the property and those eligible costs to be TIF eligible. Once again, we concur with the recommendations of the Brownfields Study Report, which would allow any "eligible cost" incurred by the political subdivision to be eligible for reimbursement using the ER TIF, regardless of whether the political subdivision owned the property at the time the cost was incurred.

No

Our support of the BF Study Group's proposal is based on our experience with problems incurred at actual brownfields redevelopments. For example, many communities, such as West Allis, take great risks to acquire and remediate brownfields properties. West Allis, and others, usually acquire the property, conduct the necessary investigation and receive DNR approval of the remediation plan. Oftentimes those plans involve long-term groundwater monitoring and a soil remedy involving some soil removal and then placement of a barrier between the contaminated soil and the surface. That soil barrier is often the development itself: the office building and parking structure. Once that community gets the remedy approved, they look for a purchaser to implement the remedy/redevelopment. A private party will often agree to implement/build the remedy, with the local government retaining the groundwater responsibilities after the property is sold.

This is



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1007/P  
MES:jlg&kmg:ij

Stays  
RMR

DOA:.....Wong - Environmental remediation tax incremental financing  
FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

P-note

do not gen

1 AN ACT ..., relating to: modifying the environmental remediation tax  
2 incremental financing program.

*Analysis by the Legislative Reference Bureau*

**LOCAL GOVERNMENT**

**OTHER LOCAL GOVERNMENT**

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Before the political subdivision may use ER tax incremental financing, however, it must create a joint review board that is similar to the current law tax incremental district (TID) joint review board, or a city or village may use an existing TID joint review board, to review the political subdivision's proposal to remediate environmental pollution. If the joint review board approves the proposal, the political subdivision may proceed with its plan. An ERTID joint review board is made up of one representative chosen by the school district that has power to levy

Under this bill, ER tax incremental financing may be used to defray the costs of remediating contaminated property that is owned by private persons.

taxes on the property that is remediated, one representative chosen by the technical college district that has power to levy taxes on the property, one representative chosen by the county that has power to levy taxes on the property that is remediated, one representative chosen by the political subdivision and one public member.

A political subdivision that has incurred "eligible costs" to remediate environmental pollution on a parcel of property may apply to the department of revenue (DOR) to certify the "environmental remediation tax incremental base" (ERTIB) of the parcel. DOR is required to certify the ERTIB if the political subdivision submits to DOR all of the following: 1) a statement that the political subdivision has incurred eligible costs, detailing the purpose and amount of the expenditures, and including certification of the department of natural resources (DNR) that the ER has been completed; 2) a statement that all taxing jurisdictions with authority to levy general property taxes on the parcel of property have been notified that the political subdivision intends to recover its ER costs by using an "ER tax increment"; and 3) a statement that the political subdivision has attempted to recover its ER costs from the responsible party.

Under the bill, the environmental remediation does not need to be completed before a political subdivision may ask DOR to certify the ERTIB. The political subdivision is required, under the bill, to submit to DOR a statement that the political subdivision has incurred some eligible costs and includes with the statement a detailed proposed remedial action plan that contains cost estimates for anticipated eligible costs. The political subdivision is also required to include certification from DNR that the department has approved the site investigation report that relates to the parcel.

"Eligible costs" are capital costs, financing costs and administrative and professional service costs for the removal, containment or monitoring of, or the restoration of soil or groundwater affected by, environmental pollution. Eligible costs are reduced by any amounts received from persons who are responsible for the discharge of a hazardous substance on the property to pay remediation costs and by the amount of net gain on the sale of the property by the political subdivision. The "ERTIB" of the property is the property's equalized value on the January 1 preceding the date on which DNR certifies that the property has been properly remediated.

The bill changes the definition of eligible costs to include property acquisition costs, costs associated with the restoration of air, surface water and sediments affected by environmental pollution, demolition costs including asbestos removal, and removing and disposing of certain abandoned containers. The bill reduces eligible costs by any amounts received, or reasonably expected by the political subdivision to be received, from a local, state or federal program for the remediation of contamination in the district that do not require reimbursement or repayment. The bill also requires that an ERTID be created on contiguous parcels of property. The bill expands from 16 to 23 years the period of certification which is the maximum number of years that DOR may certify the ERTIB and eligible costs may be paid. Under the bill, a political subdivision is authorized to use an ER tax increment to pay the cost of remediating environmental pollution of groundwater without regard to whether the property above the groundwater is owned by the political subdivision.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 66.462 (1) (c) of the statutes is amended to read:

2           66.462 (1) (c) “Eligible costs” means capital costs, financing costs and  
3 administrative and professional service costs for the investigation, removal,  
4 containment or monitoring of, or the restoration of soil, air, surface water, sediments  
5 or groundwater affected by, environmental pollution, including monitoring costs  
6 incurred within 2 years after the date on which the department of natural resources  
7 certifies that environmental pollution on the property has been remediated, property  
8 acquisition costs, demolition costs including asbestos removal, and removing and  
9 disposing of abandoned containers, as defined in s. 292.41 (1), except that for any  
10 parcel of land “eligible costs” shall be reduced by any amounts received from persons  
11 responsible for the discharge, as defined in s. 292.01 (3), of a hazardous substance  
12 on the property to pay for the costs of remediating environmental pollution on the  
13 property, by any amounts received, or reasonably expected by the political  
14 subdivision to be received, from a local, state or federal program for the remediation  
15 of contamination in the district that do not require reimbursement or repayment and  
16 by the amount of net gain from the sale of the property by the political subdivision.

17           **SECTION 2.** 66.462 (1) (i) of the statutes is amended to read:

18           66.462 (1) (i) “Period of certification” means a period of not more than 16 23  
19 years beginning after the department certifies the environmental remediation tax  
20 incremental base of a parcel of property under sub. (4) or a period before all eligible  
21 costs have been paid, whichever occurs first.

1 SECTION 3. 66.462 (2) of the statutes is amended to read:

2 66.462 (2) USE OF ENVIRONMENTAL REMEDIATION TAX INCREMENTS. A political  
3 subdivision that develops, and whose governing body approves, a written proposal  
4 to remediate environmental pollution ~~on property owned by the political subdivision~~  
5 may use an environmental remediation tax increment to pay the eligible costs of  
6 remediating environmental pollution on contiguous parcels of property that is are  
7 not part of a tax incremental district created under s. 66.46 and that is are owned by  
8 ~~the political subdivision at the time of the remediation and then transferred to~~  
9 ~~another person after the property is remediated,~~ as provided in this section, except  
10 that a political subdivision may use an environmental remediation tax increment to  
11 pay the cost of remediating environmental pollution of groundwater without regard  
12 to whether the property above the groundwater is owned by the political subdivision.  
13 No political subdivision may submit an application to the department under sub. (4)  
14 until the joint review board approves the political subdivision's written proposal  
15 under sub. (3).

16 SECTION 4. 66.462 (4) (a) of the statutes is amended to read:

17 66.462 (4) (a) The political subdivision submits a statement that it has incurred  
18 some eligible costs, and includes with the statement a detailed proposed remedial  
19 action plan that contains cost estimates for anticipated eligible costs, with respect  
20 to the parcel of property and the statement details the purpose and amount of the  
21 expenditures already made and includes a dated certificate issued by the  
22 department of natural resources that certifies that ~~environmental pollution on the~~  
23 ~~parcel of property has been remediated~~ the department of natural resources has  
24 approved the site investigation report that relates to the parcel in accordance with  
25 rules promulgated by the department of natural resources.





DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1007/P  
MES:jlgtjs

November 30, 1998

This version of the bill restores provisions from the / P1 version of the bill that essentially ~~allow~~ authorize the creation of an ERTIF on private property. As I discussed in a previous drafter's note,

Please review this bill carefully to ensure that it meets your intent. I have a number of concerns regarding your proposals, and I did not execute a number of them for reasons I will explain in this drafter's note.

Your first proposal is to expand the definition of "eligible costs" in s. 66.462 (1) (c). I have followed your instructions for the most part, but I did not include "Phase I and Phase II environmental assessments." It seems to me that this concept is already covered in the definition under "... costs for the investigation, removal, containment or monitoring ..." of environmental pollution. I also substituted "removing and disposing of abandoned containers, as defined in s. 292.41 (1)" for your requested language "emergency or interim actions." Finally, I have some concerns over the inclusion of "cancellation of delinquent taxes, penalties or special assessments and charges." This inclusion ignores other current law procedures for recovering delinquent taxes and could result in taxpayers paying for the delinquent taxes twice — once through the county levy and then again as a TIF cost. Is this your intent?

Your second proposal is to modify "period of certification" in s. 66.462 (1) (i). I increased the period from 16 to 23 years, but I don't know what you mean by "[giving] the political subdivision the ability to estimate the 'present value of operation and maintenance costs' as an eligible cost, if those costs will be incurred beyond the 23-year certification period."

I did not execute your fifth proposal, to create new authority for ERTIF in "DNR-approved 'economic revitalization zones.'" The instructions seem incomplete (there is no description of these "zones"), and I don't really understand the purpose of this new authority. Under current law, political subdivisions may create ERTIFs wherever they want to, as long as they follow the statutory procedures. A political subdivision does not need new authority to create an ERTIF in an "economic revitalization zone."

Finally, it seems to me that there is a possibility that this bill, as drafted, could be challenged as a violation of the public purpose doctrine. Your third proposal is to "allow a political subdivision to create a TIF on private property." In general, expenditures of state funds must be for a public purpose of a statewide concern. It could be argued that allowing a political subdivision to spend public funds to remediate contaminated private property violates section 4, article IV, of the U.S. Constitution, which prohibits the raising of taxes for anything but a public purpose. See *Heimerl v. Ozaukee County*,

256 Wis. 151, 158 (1949). It could also be argued that such a use of public funds *is* for a public purpose because the remediation addresses a public health concern. To avoid a public purpose doctrine challenge, you may wish to consider additional safeguards to prevent public funds from being spent for costs that should be borne by the private parties who are responsible for the environmental contamination.

Marc E. Shovers  
Senior Legislative Attorney  
266-0129

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1007/P8dn  
MES:jlg&kmg:km

January 31, 1999

This version of the bill restores provisions from the /P1 version of the bill that essentially authorize the creation of an ERIF on private property. As I discussed in a previous drafter's note, there is a possibility that this bill, as drafted, could be challenged as a violation of the public purpose doctrine. In general, expenditures of state funds must be for a public purpose of a statewide concern. It could be argued that allowing a political subdivision to spend public funds to remediate contaminated private property violates section 4, article IV, of the U.S. Constitution, which prohibits the raising of taxes for anything but a public purpose. See *Heimerl v. Ozaukee County*, 256 Wis. 151, 158 (1949). It could also be argued that such a use of public funds *is* for a public purpose because the remediation addresses a public health concern. To avoid a public purpose doctrine challenge, you may wish to consider additional safeguards to prevent public funds from being spent for costs that should be borne by the private parties who are responsible for the environmental contamination.

Marc E. Shovers  
Senior Legislative Attorney  
266-0129

*(FMR)*

DOA:.....Wong – Environmental remediation tax incremental financing

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

*(do not gen)*

1 AN ACT ~~...~~ relating to: modifying the environmental remediation tax  
2 incremental financing program.

---

*Analysis by the Legislative Reference Bureau*

**LOCAL GOVERNMENT**

**OTHER LOCAL GOVERNMENT**

Under current law, a city, village, town or county (political subdivision) may create an environmental remediation tax incremental district (ERTID) to defray the costs of remediating contaminated property that is owned by the political subdivision. The mechanism for financing costs that are eligible for remediation is very similar to the mechanism under the tax incremental financing (TIF) program. If the remediated property is transferred to another person and is then subject to property taxation, environmental remediation (ER) tax incremental financing may be used to allocate some of the property taxes that are levied on the property to the political subdivision to pay for the costs of remediation.

Under this bill, ER tax incremental financing may be used to defray the costs of remediating contaminated property that is owned by private persons.

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State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1007/P9  
MES:jl&kmg:km

DOA:.....Wong – Environmental remediation tax incremental financing  
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: modifying the environmental remediation tax  
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*Analysis by the Legislative Reference Bureau*

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10

(END)

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**NOTE TO DRAFTING FILE for LRB-1007:**

Per the drafter, this draft has been redrafted to a “/1” as no problems remain in the draft that require resolution before introduction of the budget bill. There are no changes between the “/PX” and the “/1.”

DOA:.....Wong - Environmental remediation tax incremental financing  
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