



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2011 ASSEMBLY BILL 376**

February 22, 2012 - Offered by Representative KNILANS.

- 1 **AN ACT** *to create* 238.137 of the statutes; **relating to:** authorizing the transfer
2 of tax credits earned in connection with economic development in this state.

Analysis by the Legislative Reference Bureau

Under current law, a tax credit awarded by the Wisconsin Economic Development Corporation (corporation) may normally only be claimed by the person certified by the corporation to claim that credit; the credit may not be transferred to another person.

This substitute amendment directs the corporation to create a program for the transfer of tax credits awarded by the corporation. Under the substitute amendment, the corporation may authorize the transfer of a portion of a tax credit if the corporation determines that the person meets at least one of the following additional conditions:

1. The person is headquartered in, and employs at least 51 percent of its employees in, Wisconsin.
2. The person intends to relocate its headquarters to, and employ at least 51 percent of its employees in, Wisconsin.
3. The person intends to expand its operations in Wisconsin, and that expansion will increase the number of full-time employees employed by the person in Wisconsin by a number that is at least 10 percent of the person's full-time employees.

4. The person intends to expand its operations in Wisconsin, and the person will make a significant capital investment in property in Wisconsin as a result of that expansion.

Once the corporation authorizes a person to transfer a tax credit, that person may transfer up to 85 percent of the tax credit to another person who has Wisconsin tax liability, except that no tax credit may be transferred under the substitute amendment in exchange for money. The person transferring the credit must notify the corporation and the Department of Revenue of that transfer. The person to whom a credit is transferred may carry forward any unused amount of the transferred value of that credit for up to 15 years until fully claimed. Also, the corporation may prevent that transferee from claiming the tax credit for up to three years after the credit is transferred.

The substitute amendment also authorizes the corporation to waive or modify a requirement of a certification for a tax credit issued by the corporation if a person who may transfer the tax credit applies to the corporation for that waiver or modification and the corporation determines that the requested waiver or modification will support economic development in Wisconsin. The substitute amendment does not otherwise relieve any person of the person's responsibilities in connection with a tax credit certification. If the corporation revokes a person's certification for a tax credit and that person has already transferred a portion of the tax credit, that person, not the person to whom the credit was transferred, must repay the full amount of the tax credit to the state.

Under the substitute amendment, the corporation may authorize the transfer of up to \$10,000,000 in partial tax credits over five years. However, if after reaching that 5-year limit, the corporation determines that an extension of the program will support significant economic development in Wisconsin, the corporation may continue the program for up to an additional five years and authorize transfer of up to an additional \$10,000,000 in partial tax credits. However, any such extension of the program is subject to passive review by the Joint Committee on Finance.

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

1 **SECTION 1.** 238.137 of the statutes is created to read:
2 **238.137 Pilot program for the transfer of tax credits earned for**
3 **economic development in this state. (1) APPLICATION AND CORPORATION**
4 **AUTHORIZATION.** (a) A person who the corporation certifies or otherwise authorizes
5 to claim a tax credit may apply to the corporation on a form prescribed by the
6 corporation for authorization to transfer that tax credit under this section. The

1 corporation shall notify the person of the corporation's determination within 10
2 business days after the corporation receives the application.

3 (b) The corporation shall authorize the transfer of a tax credit if a person
4 applies for an authorization under par. (a) and the corporation finds that the person
5 meets at least one of the following conditions:

6 1. The person is headquartered and employs at least 51 percent of its employees
7 in this state.

8 2. The person intends to relocate its headquarters to this state and employ at
9 least 51 percent of its employees in this state.

10 3. The person intends to expand its operations in this state, and that expansion
11 will result in an increase in the number of full-time employees employed by the
12 person in an amount equal to at least 10 percent of the person's full-time workforce
13 at the time of application.

14 4. The person intends to expand its operations in this state, and that expansion
15 will result in the person making a significant capital investment in property located
16 in this state, as determined by the corporation.

17 (c) 1. Subject to subd. 2. and sub. (2), a person may transfer a tax credit to
18 another person who is subject to taxation under ch. 71 if the corporation authorizes
19 that transfer and if the person who is certified to claim the credit notifies the
20 department of revenue and the corporation of the transfer in the manner prescribed
21 by the corporation. The person to whom a tax credit is transferred may carry forward
22 any unused amount of the transferred value of that credit as provided under the
23 appropriate provision in ch. 71.

24 2. A tax credit may not be transferred under this paragraph in exchange for
25 money.

1 (d) The corporation may, as a condition of an authorization under this
2 subsection, prohibit a person to whom the tax credit is transferred from claiming that
3 credit for a period not to exceed 3 years after the date on which the credit is
4 transferred.

5 **(2) LIMITATIONS ON THE TRANSFER OF TAX CREDITS.** A person may not transfer
6 more than 85 percent of the total value of a tax credit. Once a portion of a tax credit
7 is transferred under this section, the remaining portion of that credit may not be
8 transferred and may not be claimed against tax liability by any person.

9 **(3) CORPORATION WAIVER OF CERTIFICATION REQUIREMENTS.** Notwithstanding s.
10 238.303 (2) or any other provision of this chapter or of ch. 71, the corporation may
11 modify or waive any requirement of a certification or other authorization to claim a
12 tax credit that was issued by the corporation if all of the following conditions are met:

13 (a) The person subject to the requirement applies to the corporation for a
14 modification or waiver of that requirement in the manner prescribed by the
15 corporation.

16 (b) The corporation authorizes the person to transfer the tax credit under this
17 section, and the person does transfer the credit, as authorized.

18 (c) The corporation determines that the requested modification or waiver will
19 support economic development in this state.

20 **(4) REPAYMENT.** (a) If the corporation revokes a person's certification or other
21 authorization to claim a tax credit issued by the corporation and at the time of
22 revocation that person has transferred a portion of that credit under this section,
23 that person shall repay the full amount of the credit to the corporation
24 notwithstanding that transfer.

1 (b) The corporation shall pay any amounts it receives under par. (a) to the
2 secretary of administration for deposit in the general fund.

3 **(5) PROGRAM LIMITS AND TERMINATION.** (a) Except as provided in par. (b), the
4 corporation may not authorize the transfer of portions of tax credits under this
5 section that total more than \$10,000,000, and the corporation may not authorize the
6 transfer of a tax credit after 60 months after the effective date of this paragraph
7 [LRB inserts date].

8 (b) Upon expiration of the 60-month period under par. (a), the corporation may
9 continue to authorize the transfer of tax credits under this section for up to an
10 additional 60 months, and the corporation may authorize the transfer of up to an
11 additional \$10,000,000 in partial tax credits, if the corporation determines that a
12 continuation of the program under this section will promote significant economic
13 development in this state. Before the corporation authorizes the transfer of a tax
14 credit under this paragraph, the chief executive officer of the corporation shall notify
15 the joint committee on finance in writing that the corporation intends to continue
16 authorizing the transfer of tax credits under this section. That notice shall state the
17 reasons supporting the corporation's determination that the transfer of additional
18 tax credits will promote significant economic development in this state. If, within
19 14 working days after the date of that notice, the cochairpersons of the committee do
20 not notify the corporation that the committee has scheduled a meeting to review the
21 corporation's proposed continuation of the program, the corporation may proceed to
22 authorize the transfer of additional tax credits under this section. If, within 14
23 working days after the date of that notice, the cochairpersons of the committee notify
24 the corporation that the committee has scheduled a meeting to review the proposed

1 continuation of the program, the corporation may proceed to authorize the transfer
2 of partial tax credits only upon approval of the committee.

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to a certification or other authorization to claim a tax
5 credit issued by the Wisconsin Economic Development Corporation on January 1,
6 2012.

7 (END)