WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2017 Assembly Bill 179	Assembly Amendment 2
Memo published: **November 8, 2017**	*Contact*: **Anna Henning, Senior Staff Attorney**

2017 ASSEMBLY BILL 179

2017 Assembly Bill 179 makes various changes to current law relating to municipal remediation of brownfields.[1] All of the changes in the bill relate to recommendations made by the Brownfields Study Group[2] in its 2015 report, *Investing in Wisconsin: Reducing Risk, Maximizing Return*. Key changes include: modifications to tax incremental financing (TIF) requirements for environmental remediation; expansion of the property-assessed clean energy (PACE) financing option to include brownfield revitalization projects; clarification regarding the effect of certain property ownership changes with respect to participation in the voluntary party liability exception (VPLE) program; expansion of an exemption from liability for certain contamination from an off-site sources to include vapors; creation of a pilot program to freeze requirements in air permits for certain minor sources; boundary changes for neighborhood improvement and business improvement districts; authorization for county assignment of certain tax deeds; and the treatment of loans made by the Board of Commissioners of Public Lands.

ASSEMBLY AMENDMENT 2

Assembly Amendment 2 modifies provisions of the bill relating to TIF and the VPLE program.

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[1] A "brownfield" is an abandoned, idle, or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination. [s. 238.13 (1) (a), Stats.]

[2] The Brownfields Study Group was created in a nonstatutory provision of 1997 Wisconsin Act 27, the 1997 Biennial Budget Bill.

One East Main Street, Suite 401 • Madison, WI 53703-3382
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.wisconsin.gov
http://www.legis.wisconsin.gov/lc

Tax Incremental Financing

Current law provides a special TIF option for environmental remediation projects undertaken by cities, villages, towns, or counties. [s. 66.1106, Stats.] A tax incremental district (TID) created for purposes of environmental remediation ("ERTID") differs from a general TID in several respects. For example, the creation of an ERTID requires a detailed proposed remedial action plan approved by the Department of Natural Resources (DNR), which is not required for other TIDs; when reviewing a proposed ERTID, the Joint Review Board must base its decision on criteria specific to remediation; ERTIDs are exempt from a general requirement that all TIDs in a municipality comprise no more than 12% of the municipality's equalized value; eligible project costs for an ERTID are limited to costs associated with the investigation, removal, containment, monitoring, or restoration of soil air, surface water, sediments, or groundwater affected by environmental pollution, and must be approved by the DNR in a site investigation report; and eligible costs must be reduced by any amounts received from a party responsible for contamination. [s. 66.1106, Stats.]

The bill sunsets the special provisions governing ERTIDs as of the effective date of the bill, but the bill authorizes the creation of an ERTID under the general TIF statute, with some special conditions and requirements. Specifically, an ERTID authorized under the bill would differ from other TIDs in the following ways:

- The ERTID would be exempt from the 12% equalized value limitation.
- A municipality would be required to obtain a certified site investigation report from the DNR before creating an ERTID.
- The tax incremental base of the ERTID would be $1 when the ERTID is created.

Assembly Amendment 2 makes the following changes relating to an ERTID created under the bill:

- Specifies that the exception from the 12% equalized value limitation applies to only one ERTID in a municipality at a time.
- Prohibits an ERTID from serving as a "donor TID."[3]
- Requires a municipality to provide one of the following items to the Department of Revenue before designating an ERTID:
    - A certification that the project plan specifies that the municipality expects all project costs to be paid within 90% of the ERTID's remaining life.

[3] Under current law, unaffected by the bill, if a TID pays all project costs before it reaches the end of its maximum life span, a municipality may amend the TID's project plan to allow the TID to serve as a "donor TID." A donor TID's positive tax increments may be used to pay project costs of another TID located in the same municipality. [s. 66.1105 (6) (e) and (f), Stats.]

- A certification that the project plan specifies that the expenditures may be made only within the first half of the ERTID's remaining life, except that the limitation does not apply to expenditures made to address significant environmental pollution that was not identified in the original certified site investigation report.

Voluntary Party Liability Exemption

Generally, under **current law**, a property owner is responsible for the remediation of contamination, whether or not the owner caused the contamination. However, an owner may obtain an exemption from certain remediation requirements through the VPLE program, if certain criteria are satisfied. One such criterion is that the owner has received a certificate of completion from the DNR, stating that the owner has restored the environment to the extent practicable and that the harmful effects of discharges have been minimized. [s. 292.15, Stats.]

The bill provides that certain changes in property ownership do not affect the status of an exemption under the VPLE program. Specifically, the bill specifies that none of the following actions affect a voluntary party's eligibility for the liability exemption, if the action occurs after all requirements for the exemptions under the program have been satisfied:

- The subdivision or transfer of a property.
- The combination of a property with another property.
- Any other similar change to the legal boundaries of the property.

In this context, the bill defines "property" to mean the area of real property that is included in an application to obtain an exemption under the VPLE program, made up of a parcel or contiguous parcels, the legal description of which is contained in one or more deeds.

Assembly Amendment 2 replaces the provisions of the bill relating to the VPLE program with a new process whereby an applicant may seek DNR approval for exemptions affecting modified property. Specifically, if a property owner participating in the VPLE program proposes to modify a property subject to an exemption because of a subdivision, transfer, or other change to parcels affecting the property, the amendment authorizes the owner to submit a revised application or applications under the VPLE program. If the DNR approves an owner's proposed modification, then each parcel within the modified property must meet all of the program requirements under current law to be eligible for the exemption. If an owner does not submit such an application, the amendment specifies that the included property remains the same.

The amendment also modifies the definition of "property" under the bill to specify that the contiguous parcels must be legally identifiable.

BILL HISTORY

Representative Jacque offered Assembly Amendment 2 on October 26, 2017. On November 1, 2017, the Assembly Committee on Environment and Forestry voted to recommend adoption of the amendment and the bill, as amended, on votes of Ayes, 10; Noes, 1.

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