WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2017 Assembly Bill 771	Assembly Substitute Amendment 2 and Assembly Amendment 2 to Assembly Substitute Amendment 2
Memo published: **March 15, 2018**	*Contact*: **Scott Grosz, Principal Attorney**

2017 Assembly Bill 771 makes numerous changes relating to rental housing, landlord-tenant law, court records, and local government authority.

This amendment memo summarizes Assembly Substitute Amendment 2 ("the substitute amendment") to 2017 Assembly Bill 771 ("the bill"). The amendment memo also provides an overview of key differences between the substitute amendment and the bill, and describes Assembly Amendment 2 to the substitute amendment.

THE SUBSTITUTE AMENDMENT

The substitute amendment makes various changes, described below, to current law, relating to rental housing, landlord-tenant law, court records, and local government authority.

Inspection of Rental Property

As affected by 2015 Wisconsin Act 176, **current law** generally prohibits cities, villages, towns, and counties from enacting ordinances that require a rental property or rental unit to be inspected. However, current law provides certain exceptions to that general prohibition. Specifically, a city, village, town, or county may require an inspection in any of the following circumstances:

- The inspection is conducted upon a complaint by any person.
- The inspection is conducted as part of a program of regularly scheduled inspections conducted in compliance with special inspection warrant procedures, as applicable.
- The inspection is required under state or federal law.

[s. 66.0104 (2) (e) 1., Stats.]

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

Current law requires fees charged for the inspection of residential rental property to be uniform and charged at the time the inspection is actually performed. [s. 66.0104 (2) (e) 2. a. and b., Stats.]

The substitute amendment removes the general authority to conduct inspections as part of a "program of regularly scheduled inspections." However, the substitute amendment authorizes a city, village, town, or county to establish a rental property inspection program in designated districts in which there is evidence of blight, high rates of building code complaints or violations, deteriorating property values, or increases in single-family home conversions to rental units. No inspection of a unit may be conducted under the program if the occupant of that unit does not consent to allow access, unless the inspection is under a special inspection warrant.

Under such a rental property inspection, if no "habitability violation" is discovered during an inspection, or if such a violation is corrected within a period designated by the municipality (but generally not less than 30 days), then the city, village, town, or county may not inspect the same property again for at least five years. The substitute amendment defines "habitability violation" to mean any of the following conditions:

- The rental property or rental unit lacks hot or cold running water.
- Heating facilities serving the rental property or rental unit are not in safe operating condition or are not capable of maintaining a temperature, in all living areas of the property or unit, of at least 67 degrees Fahrenheit during all seasons of the year in which the property or unit may be occupied.
- The rental property or rental unit is not served by electricity, or the electrical wiring, outlets, fixtures, or other components of the electrical system are not in safe operating condition.
- Any structural or other conditions in the rental property or rental unit that constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the property or unit other than negligent use or abuse of the property or unit by the tenant.
- The rental property or rental unit is not served by plumbing facilities in good operating condition.
- The rental property or rental unit is not served by sewage disposal facilities in good operating condition.
- The rental property or rental unit lacks working smoke detectors or carbon monoxide detectors.
- The rental property or rental unit is infested with rodents or insects.
- The rental property or rental unit contains excessive mold.

A city, village, town, or county may designate a period of less than 30 days to correct a violation if the violation exposes a tenant to imminent danger. A city, village, town, or county

must also extend the designated period upon a showing of good cause. If a habitability violation is discovered and is not corrected within the designated period, then the municipality may conduct annual inspections of the property. However, if no habitability violation is discovered during two consecutive annual inspections, then the city, village, town, or county may not perform a program inspection of the property for at least five years.

A city, village, town, or county is prohibited from inspecting rental property that is less than eight years old as part of that inspection program.

In addition, the substitute amendment generally limits the amount of a fee charged under the inspection program described above to $75 for an inspection of a vacant unit or an inspection of exterior or common areas, $90 for any other initial inspection, and $150 for a second or subsequent inspection with an allowance for a 2% annual increase to those amounts. However, the substitute amendment prohibits a city, village, town, or county from imposing any fee in either of the following circumstances:

- An owner voluntarily allows access for an inspection of exterior and common areas, and no habitability violation is discovered during the inspection, or, if a violation is discovered, the violation is corrected within a designated period.
- No habitability violation is discovered during the inspection, or, if a violation is discovered, the violation is corrected within the designated period.
- The inspection does not occur because an occupant does not allow access to the property.

For inspections conducted pursuant to a special inspection warrant, the substitute amendment limits the amount of the fee to $150, subject to an allowance for a 2% annual increase, except that if no habitability violation is discovered, then no fee may be charged. If a habitability violation is discovered and not corrected within a designated period, then the fee may not exceed $300.

Finally, the substitute amendment also requires cities, villages, towns, and counties to maintain records regarding inspections performed upon a complaint from an employee or official. The records must include the name of the person making the complaint, the nature of the complaint, and any inspection conducted upon the complaint.

Preemption of Certain Local Regulations Relating to Rental Property

The substitute amendment preempts cities, villages, towns, and counties from taking any of the following actions:

- Requiring that a residential rental property owner register or obtain a certification or license related to owning or managing the residential rental property.
- Charging a fee for registration of a rental property, except for a one-time registration fee that reflects the actual costs of operating a registration program and does not exceed $10 per building, and a fee for the registration of a change of ownership or

management of a building or change of contact information that reflects the actual and direct costs of registration and does not exceed $10 per building.[1]

- Enacting or enforcing an ordinance, or otherwise imposing a requirement that includes "aesthetic considerations," defined to mean considerations relating to color, texture, and design that do not relate to health or safety, for purposes of inspection criteria for the interior of certain residential structures.

Landlord-Tenant Law

The substitute amendment makes several changes relating to landlord-tenant law.

Notices Terminating Tenancies for Failure to Pay Rent

Current law requires a landlord to provide a notice to a tenant before terminating a tenancy for failure to pay rent. [s. 704.17, Stats.]

The substitute amendment specifies that the amount of past due rent stated in a notice to terminate a lease may include both past due rent and late fees. The substitute amendment also provides that a statement of the amount due is valid unless either of the following situations applies:

- The landlord's statement of the amount due is intentionally incorrect.
- The tenant paid or tendered payment of the amount the tenant believes to be due.

Defense to Eviction Action

Under **current law**, a court may not dismiss an eviction action because the landlord accepts past due rent or any other payment from a tenant after serving notice of default or after commencing the action. [s. 799.40 (1m), Stats.] Current law does not prohibit the dismissal of an eviction action based on a landlord's or tenant's waiver of a violation or breach of a rental agreement.

Under **the substitute amendment**, a landlord or tenant's previous waiver of a violation or breach of any term of a rental agreement does not constitute a defense to an action of eviction or a claim for damages.

Stay of Eviction Proceedings Pending an Application for Emergency Assistance

Generally, under **current law**, a court must temporarily stay eviction proceedings if a tenant applies for the emergency assistance program, which provides limited assistance to qualifying families in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. The stay remains in effect until the tenant's eligibility for the

[1] However, the bill authorizes first-class cities to impose registration fees that are not subject to the $10 limitation.

program is determined, and, if the person is eligible, until the person receives the assistance. [s. 799.40 (4), Stats.]

Emergency assistance payments are one-time payments; an eligible person may receive assistance through the program no more than once in any 12-month period. Eligibility determinations and payments are typically administered by W-2 ("Wisconsin Works") agencies, which are entities that contract with the Department of Children and Families (DCF) to administer W-2 benefits in a given county. [s. 49.138, Stats.] Current administrative rules require program eligibility decisions (and any resulting payments) to be made within five working days of a person's application for the program. [s. DCF 120.08 (1), Wis. Adm. Code.]

Under **the substitute amendment**, a court may not grant a stay based on an emergency assistance application after a writ of restitution has been issued. In addition, the substitute amendment provides that such a stay may not remain in effect for more than 10 working days.

Other Changes

The substitute amendment makes the following other changes relating to landlord-tenant law:

- Increases by $5 the amount that a landlord may charge a prospective tenant for a consumer credit report.
- Specifies that a landlord may charge a prospective tenant who is not a Wisconsin resident up to $25 for conducting a background check.
- Specifies that "reasonable costs" charged by a landlord for remediation, repair, or redecoration include materials, labor, and time.
- Authorizes a landlord and tenant to agree in a rental agreement that the landlord may provide certain documents electronically.

Provision of Utility Service to Rental Units

Current law sets forth certain procedures governing a property owner's responsibility for service to a rental dwelling unit.

The substitute amendment retains those provisions but provides certain additional requirements in the event that a tenant's utility payments are in arrears or service is to be disconnected. Specifically, if requested by the owner of a rental dwelling unit and authorized by the tenant residing in the unit, the substitute amendment requires a public utility to notify the owner in the same manner as the tenant of any pending disconnection of service to the unit that is due to nonpayment of past due charges, and may provide information about the status of the disconnection to the owner by telephone.

In addition, the substitute amendment prohibits a public utility from requiring the owner of a rental dwelling unit to provide proof of eviction or other evidence that a tenant has vacated

a rental unit as a condition for providing or resuming service to the unit, if the service is placed and maintained solely in the owner's name.

Finally, the substitute amendment makes a certain process for enforcing utility bill arrears by placing liens on property unavailable to a municipal utility that does not comply with a requirement under current law to send bills for water or electric service to a tenant in the tenant's own name.

Amount of Levy Limit Reduction for Covered Services

Under **current law**, if a city, village, town, or county receives revenues designated to pay for a covered service[2] that was funded in 2013 by the political subdivision's levy, the political subdivision must reduce its levy limit in the current year by an amount equal to the estimated amount of fee revenue collected, or payments in lieu of taxes received, for providing the covered service, less any previous reductions made under this provision. [s. 66.0602 (2m) (b), Stats.]

The substitute amendment limits the amount by which a city, village, town, or county must reduce its levy to the amount expended in 2013 for providing the covered service.

Requirements for Certain Municipal Fees

Current law requires fees imposed by cities, villages, towns, and counties to bear a reasonable relationship to the service for which the fee is imposed. [s. 66.0628 (2), Stats.] Current law generally does not require notification before a fee may be imposed.

The substitute amendment prohibits a city, village, town, or county from imposing a fee or charge relating to noxious weeds, electronic waste, or other building or property maintenance standards, unless the city, village, town, or county first provides a notification of that charge by specified means. The substitute amendment also prohibits a city, village, town, or county from establishing any sewerage service charge that is not related to providing sewerage service.

Availability of Certain Court Records

Current law authorizes the Director of State Courts to implement an automated information system – referred to as the Consolidated Court Automation Program (CCAP) case management system – for circuit court records. The statutes do not address the timeline regarding the availability of information through that system. Generally, under Wisconsin Supreme Court rules, civil court records are maintained for 20 years. [s. 758.19 (4), Stats.; SCR 72.01.]

The substitute amendment prohibits the Director of State Courts from removing case management information from CCAP's Internet access site for a civil case that is not a closed, confidential, or sealed case for the following time periods:

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[2] "Covered service" means garbage collection, fire protection, snow plowing, street sweeping, or storm water management. [s. 66.0602 (2m) (b) 1., Stats.]

- If a writ of restitution has been granted in an eviction action, a period of at least 10 years.
- If an eviction action has been dismissed and no money judgment has been docketed, a period of at least two years.

Refund of Certain Fees After a Municipal Order is Withdrawn or Overturned

Current law provides a process by which a person whose rights, duties, or privileges are adversely affected by a determination of a municipality may request a review of the relevant municipal decision. [ch. 68, Stats.]

The substitute amendment requires a municipal authority to refund any fee paid as a condition of appealing an order that is withdrawn or overturned under that review process.

Historic Preservation

Generally, **current law** authorizes cities, villages, towns, and counties, as part of the exercise of their zoning and police power authority, to regulate places, structures, and objects with a special character, historic interest, aesthetic interest or other significant value, for the purpose of preserving the place, structure, or object and its significant characteristics. [ss. 59.69 (4m), 60.64 (1), and 62.23 (7) (em) 1., Stats.]

The substitute amendment requires cities, villages, towns, and counties to allow owners of property that is designated as a historic landmark or included within a historic district or neighborhood conservation district, when repairing or replacing such property, to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

Orders Under Eliminated Energy Assistance Program

The 2017 Biennial Budget Act eliminated a rental unit energy efficiency program.

The substitute amendment specifies that stipulations, waivers, and Department of Safety and Professional Services (DSPS) orders under a rental unit energy efficiency program that was eliminated in the 2017-19 Biennial Budget Act are void and unenforceable. The substitute amendment also prohibits DSPS from taking any enforcement action with respect to the eliminated program.

Emotional Support Animals

The federal Fair Housing Act (FHA) generally prohibits housing discrimination based on having an assistance animal that provides emotional support. Guidance issued by the U.S. Department of Housing and Urban Development (HUD) on April 25, 2013 generally requires a housing provider to provide an exception to a "no pets" policy for a person with a disability who has a disability-related need for an assistance animal. However, the 2013 HUD guidance allows a housing provider to ask individuals seeking an exception for an emotional support animal to provide documentation from a physician, social worker, or other mental health professional. In addition, the HUD guidance allows a housing provider to deny a request for an

exception if allowing the animal would impose an undue financial and administrative burden or would fundamentally alter the nature of the provider's services. A housing provider may also deny a request based on certain safety or property-related concerns specific to the animal in question.

Current state law does not address the open housing law's application to emotional support animals. Current law states that, "[i]f an individual's vision, hearing or mobility is impaired, it is discrimination for a person to refuse to rent or sell housing to the individual, cause the eviction of the individual from housing, require extra compensation from an individual as a condition of continued residence in housing or engage in the harassment of the individual because he or she keeps an animal that is specially trained to lead or assist the individual with impaired vision, hearing or mobility," if certain conditions apply. [s. 106.50 (2r) (bm) 1., Stats.] Thus, current state law does not generally appear to require housing providers to make exceptions for emotional support animals, as is required in some circumstances, under the FHA.

The substitute amendment expands the scope of the state's open housing law to prohibit discrimination against individuals with disability-related needs for emotional support animals and replaces provisions of current law relating to specially trained animals to conform with HUD guidance. Specifically, the substitute amendment defines "emotional support animal" to mean an animal that provides emotional support, well-being, comfort, or companionship for an individual, but that is not trained to perform tasks for the benefit of an individual with a disability. With respect to emotional support animals, the substitute amendment adopts an approach similar to the approach set forth under the 2013 HUD guidance, including authorizing a housing provider to request documentation of a disability-related need for an emotional support animal from a physician, psychologist, social worker, or other health professional, and incorporating certain other limitations. However, it specifies that the health professional must be licensed in Wisconsin and acting within the scope of his or her license.

With respect to animals that are specially trained to do work or perform tasks for an individual, the substitute amendment generally adopts the approach in the 2013 HUD guidance. With respect to documentation for specially trained animals, the substitute amendment requires "reliable documentation" rather than documentation from a health professional licensed in Wisconsin.

OVERVIEW OF DIFFERENCES BETWEEN THE SUBSTITUTE AMENDMENT AND THE BILL

The substitute amendment modifies the bill as summarized below.

Historic Preservation

The bill requires cities, villages, towns, and counties to allow owners of property that is designated as a historic landmark or included within a historic district or neighborhood conservation district, when repairing or replacing such property, to use materials that an ordinary observer would perceive, when viewed from the centerline of an adjacent highway, as having a substantially similar appearance to the original material.

In such circumstances, **the substitute amendment** instead requires cities, villages, towns, and counties to allow the use of materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

Rental Property Inspection

The bill removes authority under current law for conducting regularly scheduled inspections of rental property. **The substitute amendment** retains the removal of that general authority but authorizes cities, villages, towns, and counties to establish a rental property inspection program, subject to certain limitations, described above.

In addition, the substitute amendment provides new limitations, described above, regarding fees that a city, village, town, or county may impose for conducting inspections of residential rental property.

Finally, the substitute amendment modifies the definition of "aesthetic considerations" to "mean" rather than "include" specified considerations relating to color, texture, and design.

Fees for Registering Residential Rental Property

With the exception of first class cities, **the bill** prohibits cities, villages, towns, and counties from charging a fee for the certification, registration, or licensing of rental property or rental units.

The substitute amendment authorizes such fees, but limits their amount to $10 per building and requires that the fees must reflect the actual costs of operating a registration program or registering a change in building ownership or contact information.

Levy Limits

The bill eliminates a limited exception for a levy limit requirement applicable to a municipality that owned and operated a landfill on January 1, 2013. **The substitute amendment** restores that exception.

Termination of a Tenancy for Failure to Pay Rent

The bill provides that a notice for failure to pay rent or any other amount due under a rental agreement is a valid notice for purposes of terminating a tenancy, unless the tenant has paid or tendered payment of the amount the tenant admits is actually due.

The substitute amendment modifies that provision to specify that such a notice is valid unless either of the following situations applies:

- The landlord's statement of the amount due is intentionally incorrect.
- The tenant paid or tendered payment of the amount the tenant believes to be due.

Defense of Eviction Action

The bill provides that it shall not be a defense to an action of eviction or a claim for damages that the landlord had previously waived any violation or breach of the terms of the rental agreement by the tenant.

The substitute amendment specifies that it is not a defense to an action of eviction or a claim for damages that the landlord or tenant had previously waived any violation or breach of the terms of the rental agreement.

Stay of Eviction Proceedings Based on an Application for Emergency Assistance

The bill provides that a stay of an eviction proceeding based on a tenant's application for emergency assistance may not remain in effect for more than five working days.

The substitute amendment increases the maximum duration of such stays to 10 working days.

Notification of Certain Charges Relating to Property Maintenance

The bill prohibits a city, village, town, or county from imposing a fee or charge relating to the enforcement of an ordinance related to noxious weeds, electronic waste, or other building or property maintenance standards, unless the city, village, town, or county first provides notification of the fee or charge by first class mail, or, if a person has provided an electronic mail address or information necessary to receive communications by other electronic means, by electronic mail or other electronic means.

The substitute amendment provides an exception to that prohibition for a fee or charge related to the clearing of snow or ice from a sidewalk or for an ordinance violation that creates an immediate danger to public health, safety, or welfare. In addition, if a property owner has provided a city, village, town, or county with an electronic mail address, the substitute amendment requires the city, village, town, or county to provide the required notice by electronic mail.

Information Required to be Provided by Electric Utilities to Building Owners

The bill requires an electric utility to notify the owner of a rental dwelling unit no later than five days before disconnecting service based on the tenant's nonpayment of past due charges.

The substitute amendment replaces that requirement with a requirement that a public utility must provide certain information, described above, to an owner if requested by the owner and authorized by the tenant.

Resumption of Electric Utility Service

The bill prohibits an electric utility from requiring an owner of a rental dwelling unit to provide proof of eviction or certain other evidence as a condition for providing or resuming service to the unit.

Under **the substitute amendment**, that prohibition applies only if the service is placed and maintained solely in the owner's name.

Court Records

The bill prohibits the Director of State Courts from removing case management information from the CCAP case management system for any civil case that is not closed, confidential, or sealed for a period of at least 10 years after the date of the final judgment in the case.

The substitute amendment narrows the scope of that prohibition to require such information to be available on CCAP for at least 10 years if a writ of restitution has been granted in an eviction action or, if an eviction action has been dismissed and no money judgment has been docketed in a second or subsequent eviction action, a period of at least two years.

ASSEMBLY AMENDMENT 2 TO THE SUBSTITUTE AMENDMENT

With respect to the provisions of the substitute amendment relating to inspection of rental property, Assembly Amendment 2 further clarifies that no fee may be charged for a reinspection that occurs after a habitability violation has been corrected.

BILL HISTORY

On January 17, 2018, the Assembly Committee on Housing and Real Estate recommended adoption of Assembly Amendment 2 to Assembly Substitute Amendment 2, and adoption of Assembly Substitute Amendment 2 on votes of Ayes, 9; Noes, 0; and recommended passage of Assembly Bill 771, as amended, on a vote of Ayes, 6; Noes, 3.

SG:jal