WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2017 Senate Bill 388	Senate Substitute Amendment 1
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2017 SENATE BILL 388

2017 Senate Bill 388 makes changes to state law relating to vested rights, tax incremental financing (TIF), impact fees, the forestry mill tax, easements, the electrical wiring code, highway weight limitations, housing impact reports for bills and rules, and permits for placement of riprap.

SENATE SUBSTITUTE AMENDMENT 1

Generally, compared to 2017 Senate Bill 388, Senate Substitute Amendment 1 removes provisions of the bill relating to the forestry mill tax and riprap, for which duplicative provisions were enacted in the 2017 Biennial Budget Act. The substitute amendment also adds new provisions relating to: (1) authority to challenge a tax assessment; and (2) shoreland zoning. Key provisions of the substitute amendment are summarized below.

Freezing of Political Subdivision Requirements Upon Initial Application

Under **current law**, as affected by 2013 Wisconsin Act 74, if a project requires more than one approval[1] from more than one political subdivision (city, village, county, or town), the requirements that applied in those political subdivisions at the time the first application for an approval is filed apply to all subsequent approvals for the project, if the applicant identifies the

[1] In this context, "approval" means a permit or authorization before building, zoning, driveway, stormwater, or other activity related to a project. [s. 66.10015 (1) (a), Stats.]

full scope of the project at the time it files the first application, and unless the applicant and a political subdivision agree otherwise. [s. 66.10015 (2) (b), Stats.]

The **substitute amendment** similarly "freezes" regulations in place at the time of an initial filing if multiple approvals are required by the same jurisdiction.

Tax Incremental Financing for Workforce Housing Developments

Under **current law**, TIF is a tool that allows cities, villages, towns, and certain counties to pay for public improvements within a designated portion of the political subdivision, called a tax incremental district (TID), using the future taxes collected on the TID's increased property value to repay the cost of the improvements.

The **substitute amendment** authorizes municipalities to create workforce housing TIDs. Under the substitute amendment, a workforce housing TID must contain only newly platted residential uses, 100% of which must be "workforce housing." The substitute amendment defines "workforce housing" to mean housing for which both of the following factors apply:

- The housing costs a household no more than 30% of the household's gross median income.
- The construction cost per housing unit, including rental housing, is no more than 80% of the median price for new residential construction in the county.

A workforce housing TID created under the substitute amendment would generally be subject to the same requirements as apply to other TIDs, with the following significant differences:

- The life span of a workforce housing TID would be 15 years, rather than 23 years or more for other TIDs.
- The creation of a workforce housing TID requires a unanimous vote of the Joint Review Board, rather than a majority vote for other TIDs.[2]

Authorization of Reduced Impact Fees for Workforce Housing

Current law generally authorizes cities, villages, and towns to enact ordinances that impose impact fees on developers to offset the cost of infrastructure improvements required to accommodate new land developments. However, an impact fee ordinance may provide an exemption from, or reduction in the amount of, impact fees on land development that provides low-income housing, if costs are not shifted to other land developments. [s. 66.0617 (2) and (7), Stats.]

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[2] The Joint Review Board includes five representatives, one each from the school district, technical college district, county, and city or village where a proposed TID is located, along with one public member selected by a majority of the other board members before the planning commission holds the public hearing or hearings. [s. 66.1105 (4m) (a), Stats.]

The **substitute amendment** similarly authorizes cities, villages, and towns to provide exemptions from or reductions of impact fees for land developments that provide "workforce housing," as defined for purposes of the TIF law, above.

Recording of Easements for Sewer Maintenance

Current law generally requires a document submitted for recording by a county register of deeds to include a full legal description of the property to which the document relates, if the document is intended to relate to a particular parcel of land. However, the requirement to include a full legal description does not apply to descriptions of easements for the construction, operation, or maintenance of electric, gas, railroad, water, telecommunications, or telephone lines or facilities. [s. 706.05 (2m) (a) and (b) 1., Stats.]

The **substitute amendment** provides a similar exception from the requirement to provide a full legal description for recording descriptions of easements for the construction, operation, or maintenance of sewers.

Periodic Review of Certain Provisions of the Electrical Wiring Code

Current law requires the Department of Safety and Professional Services (DSPS) to promulgate, by rule, a state electrical wiring code that establishes standards for installing, repairing, and maintaining electrical wiring. [s. 101.82 (1), Stats.]

The **substitute amendment** requires DSPS to review certain portions of the electrical wiring code every six years. Specifically, DSPS must review the portions of the code that apply to buildings that contain one or two dwelling units. In its review, DSPS must consult with the Uniform Dwelling Code Council and any council or committee created by the Secretary of DSPS to advise the department regarding the electrical wiring code.

Exemption from Highway Weight Limitations for Certain Vehicles Transporting Propane

With some exceptions, **current law** provides weight limitations applicable to vehicles on class "B" highways.[3] Current law also authorizes the state, county highway committees, and municipal highway officers to impose special weight limitations on the highways they maintain when needed to prevent serious damage or destruction to a highway. [ss. 348.16 (2) and 349.16 (1) (a), Stats.]

[3] Class "B" highways include portions of county trunk highways, town highways, and city and village streets that have been designated as class "B" highways by the relevant local authorities. [s. 348.16 (1), Stats.]

The **substitute amendment** exempts certain motor vehicles that are being operated to deliver propane for heating purposes from the vehicle weight limitations described above. Specifically, such vehicles are exempt from the above weight limitations if both of the following criteria apply:

- The gross weight imposed on the highway by the vehicle does not exceed 30,000 pounds, for a vehicle with a single rear axle, or 40,000 pounds for a vehicle with tandem rear axles.
- If the motor vehicle is a tank vehicle, the tank is loaded to no more than 50% of the capacity of the tank.

The substitute amendment also requires a tank vehicle operating under the exceptions to be equipped with a gauge on the tank that shows the amount of propane in the tank as a percent of the tank's capacity and to carry documentation of the tank's capacity either on the cargo tank or in the cab of the vehicle.

Housing Impact Analyses for Proposed Legislation and Administrative Rules

Under **current law**, the Department of Administration (DOA) must prepare a report on any introduced bill or proposed administrative rule that directly or substantially affects the development, construction, cost, or availability of housing in this state. Those reports must contain specified findings. [ss. 13.099 (2) and (3) and 227.115 (2) (a) and (3), Stats.]

The **substitute amendment** terms such reports "housing impact analyses" and expands the scope of their application. Specifically, under the substitute amendment, DOA must prepare a housing impact analysis for any introduced bill that may increase or decrease, either directly or indirectly, the cost of the development construction, financing, purchasing, sale, ownership, or availability of housing in this state. The substitute amendment requires an agency promulgating a rule, rather than DOA, to prepare a housing impact analysis for a proposed rule promulgation, if those same criteria apply.

The substitute amendment also makes several modifications to the findings required to be contained in a housing impact analysis. Specifically, the substitute amendment adds a new finding regarding the density, location, setback, size, or height of development on a lot, parcel, land division, or subdivision, and it modifies a finding regarding purchase price to specify that an analysis must contain a finding regarding the purchase price of new homes or the fair market value of existing homes. The substitute amendment also specifies that a housing impact analysis must provide reasonable estimates in dollar figures (or a statement setting forth the reasons why such estimates are not possible) and include descriptions of both immediate and long-term effects, if ascertainable. In addition, the substitute amendment specifies that a housing impact analysis must be prepared on the basis of a median-priced single-family residence but may

include estimates for larger developments as an analysis of the long-term effect or the bill or rule.

Challenging Tax Assessments

Under **current law**, an assessor may not enter upon a person's real property to conduct an assessment more than once a year, unless the owner consents. Additionally, the statute specifies that a property owner may deny entry to the assessor if the owner has given prior notice that the assessor may not enter the property without the owner's permission. However, state statutes also specify that the review and appeal procedures before the board of review and circuit court relating to property assessment are not available to a property owner if that owner has denied the assessor entry to the property. [ss. 70.47 (7) (aa) and 74.37 (4) (a), Stats.]

In *Milewski v. Town of Dover*, 2017 WI 79, the Wisconsin Supreme Court considered the question of whether a property owner's constitutional rights under the Fourth and Fourteenth Amendments of the U.S. Constitution were violated when state statutes relating to the property tax assessment process deny the property owner the ability to appear before the board of review and subsequently seek other judicial review of an assessment following the owner's refusal to allow the assessor to inspect the interior of the property owner's residence. In separate opinions, a majority of the justices concluded that the statutory prohibition on appearance before the board of review violated the constitutional rights of the property owner.

The **substitute amendment** repeals the prohibition on appearing before the board of review to object to an assessment when a property owner has refused to allow the assessor to enter the interior of the owner's residence. Because appearing before the board of review is a condition precedent for judicial review, the substitute amendment also has the effect of permitting a taxpayer to file a claim for excessive assessment in circuit court in those circumstances. For residential property owners, the substitute amendment specifies that an assessor must provide written notice to the property owner of the owner's rights regarding the inspection of the interior of the owner's residence.

The substitute amendment also specifies that an assessor may not increase a property's valuation based solely on an owner's refusal to allow entry to the assessor, and specifies that an assessor may enter property to conduct an exterior view of the real or personal property being assessed.

Shoreland Zoning Exemption

Current law generally requires county shoreland zoning ordinances to establish a setback of 75 feet from the ordinary highwater mark. However, if a structure[4] within the shoreland

[4] For purposes of shoreland zoning, "structure" means a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch, or fire pit. [s. 59.692 (1) (e), Stats.]

setback area is nonconforming (i.e., if it was constructed before the setback requirement took effect), or if it was placed pursuant to a variance granted before July 13, 2015, then a county (and the state) generally cannot prohibit the landowner from maintaining, repairing, replacing, restoring, rebuilding, or remodeling the structure under its shoreland zoning ordinance, if the activity does not expand the structure's original footprint. [s. 59.692 (1n) (am) and (1k) (a) 2., Stats.]

The **substitute amendment** also prohibits state and county regulation of the maintenance, repair, replacement, restoration, rebuilding, or remodeling of structures for which the county and state did not bring an enforcement action for at least 10 years after the structure was constructed.

BILL HISTORY

Senator Tiffany offered Senate Substitute Amendment 1 on October 19, 2017. On October 20, 2017, the Senate Committee on Insurance, Housing, and Trade voted unanimously by paper ballot to recommend adoption of the substitute amendment and passage of the bill, as amended.

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