



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 1069

Assembly Amendment 1

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2017 ASSEMBLY BILL 1069

Income Tax

The 2018 Supreme Court case, *South Dakota v. Wayfair, Inc.*, 585 U.S. ____ (2018), overruled the longstanding precedent which had required a retailer to have “physical presence” in a state before a state may compel a retailer to collect sales taxes. [See *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).] The Court instead upheld the South Dakota law requiring an out-of-state seller to collect sales tax if the seller delivered more than \$100,000 in goods or services or engaged in 200 or more separate transactions in the state.

The bill clarifies the Department of Revenue’s (DOR) authority to collect state sales and use taxes under the *Wayfair* decision. The bill expands the definition of a “retailer engaged in the business in this state” for the purposes of sales taxation to any retailer that has annual gross sales exceeding \$100,000 or that has 200 or more separate sales transactions into Wisconsin annually. This change will likely result in the collection of additional sales tax in Wisconsin.

In addition, current law requires DOR to determine the amount of additional revenue collected from the state sales and use tax as a result of any federal law that expands the state’s authority to collect sales and use taxes from out-of-state retailers. Following that determination, DOR must then determine how much the individual income tax rates may be reduced in the following taxable year in order to decrease individual income tax revenue by the amount of additional sales and use tax revenue. Finally, DOR must certify its determinations to the secretary of administration, the governor, and the legislature and specify that the new individual income tax rates will take effect in the following year.

The bill provides that the new individual income tax rates based on the determinations will not take effect automatically in the year following DOR’s certification, but, instead, the

Department of Administration (DOA), in consultation with DOR, will determine the new tax rates to take effect for the taxable year ending on December 31, 2019. The bill requires DOR to then report its determinations to the governor, the Joint Committee on Finance (JCF), and the Legislative Audit Bureau (LAB). LAB must then review the determinations and report its findings to JCF and the Joint Legislative Audit Committee. Lastly, if LAB's review results in a redetermination of the rates, JCF will determine which rates apply to the taxable year ending on December 31, 2019, and report its determination to the governor, the secretary of administration, and the secretary of revenue.

Transportation

Use of Federal Funds

The bill requires the Department of Transportation (DOT) to expend federal funds on at least 70 percent of the aggregate project components eligible for federal funding each fiscal year for the following types of projects on which DOT expends federal moneys:

- Southeast Wisconsin freeway megaprojects.
- Major highway development projects.
- State highway rehabilitation projects with a total cost of less than \$10 million.

The bill creates an exception to this requirement that involves a passive review procedure by JCF. Specifically, the bill authorizes DOT to submit a proposed alternate funding plan to JCF if DOT determines that it cannot meet the requirements outlined above or that it can make more effective and efficient use of federal moneys than the use requirements outlined above. The bill allows DOT to expend moneys as proposed in the alternate funding plan if, within 14 working days after submittal of the plan, the JCF cochairpersons do not notify DOT that JCF has scheduled a meeting to review the plan. If, within 14 working days after the plan's submittal, the JCF cochairpersons notify DOT that JCF has scheduled a meeting to review the plan, DOT may only expend moneys as proposed in the plan with JCF's approval. However, the bill authorizes DOT to continue with any projects subject to the bill's funding requirements while JCF conducts its review, including any hearings conducted by JCF.

Local Projects

The bill requires DOT, if disbursing aid to a political subdivision for a project to notify the political subdivision whether the aid includes federal moneys and the project components for which federal moneys must be paid, if any. Under the bill, "project" means the development, construction, repair, or improvement of a local road or a local bridge.¹

¹ The bill defines "local roads" as streets under the authority of cities or villages, county trunk highways, or town roads and defines "local bridge" as a bridge that is not on the state trunk highway system or on marked routes of the state trunk highway system designated as connecting highways.

The bill prohibits DOT from requiring a political subdivision to comply with any portion of DOT's facilities development manual, other than design standards, for any project that meets all of the following criteria:

- The project proposal is reviewed and approved by a professional engineer or by the highway commissioner for the county in which the project will be located.
- The project is conducted by a political subdivision with no expenditure of federal money.

Transfers of State and Federal Moneys

The bill repeals certain provisions created by 2017 Wisconsin Act 59, the 2017-19 Biennial Budget Act. Specifically, the bill eliminates DOT's authority to make transfers of state and federal moneys between the highway program, as well as a related appropriation. The bill also eliminates the requirement that DOT study the effects of consolidating state moneys in the surface transportation program and replacing these funds with federal moneys from the state highway program.

ASSEMBLY AMENDMENT 1

Income Tax

The amendment modifies the determination procedure. Under the amendment, DOR is no longer required to consult with DOA in the determination of the reduction of individual income tax rates as the result of the *Wayfair* decision.

Transportation

The amendment adds two new requirements for local projects, as defined under the bill, funded in whole or in part with state funds.

First, it requires that any local project funded in whole or in part with state funds must be let through competitive bidding and by contract to the lowest responsible bidder, pursuant to certain provisions under current law related to bids. Second, under the amendment, a political subdivision may not use its own workforce or contract with another political subdivision to complete a project funded in whole or in part with state funds.

BILL HISTORY

On December 3, 2018, JCF offered Assembly Amendment 1 on a vote of Ayes, 12; Noes, 4. On December 4, 2018, JCF recommended adoption of Assembly Amendment 1, and passage of Assembly Bill 1069, as amended, on votes of Ayes, 12; Noes, 4.

DWS:AO:ksm