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TO: Members of the Senate Committee on Government Operations, Technology & Consumer Protection
FROM: Rep. André Jacque
DATE: Oct. 10, 2017
RE: Senate Bill 173

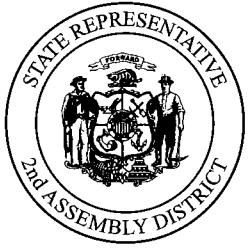
Chairman Stroebel and committee members:

Thank you for holding this hearing on Senate Bill 173, which Sen. Cowles and I have brought forward to eliminate a number of barriers to the redevelopment of underutilized or abandoned brownfield sites. These commonsense reforms were identified as consensus recommendations of the Wisconsin Brownfields Study Group, an external advisory group to the DNR comprised of professionals in economic development, environmental remediation, and county and municipal government and including such varied stakeholders as Wisconsin Manufacturers and Commerce and 1,000 Friends of Wisconsin.

Brownfield sites can be brought back to life with policies and practices that minimize risk and maximize returns, generating a remarkable range of public and private benefits. Brownfield redevelopment often spurs revitalization throughout surrounding properties, bringing increased property values, new job creation, and environmental restoration.

Using those recommendations, SB 173 does the following:

- Authorizes counties that take tax deeds through an administrative process to assign their interest in a brownfield property to a third party before the deed is executed. Even with the statutory local government liability exemption in place, many counties presently find the perceived liability issues associated with entering into the chain of title too difficult to overcome and thus do not foreclose on tax delinquent brownfield properties- placing them in legal limbo and significantly hindering progress on their redevelopment and restoration to pad tax base. This proposal will allow a person to acquire a deed that vests fee simple ownership of a brownfield property as long as a Phase I and II environmental assessment has been conducted and the person enters into a written agreement with the DNR to further investigate and remediate the property. I am aware of a particular former gas station site in downtown Two Rivers which could have already been taken for back taxes by the county several years ago. The property tax bill remains unpaid, and this provision would very likely lead to the site finally being transferred and redeveloped.
- Permit a political subdivision to make a Property Assessed Clean Energy (PACE) loan to the owner or lessee of a site for a brownfield revitalization project, giving local governments another important financial tool to assist private parties interested in reclaiming and redeveloping brownfield properties. The political subdivision may collect the loan repayment as a special charge against the improved real property that may be collected in installments and placed on the tax roll.



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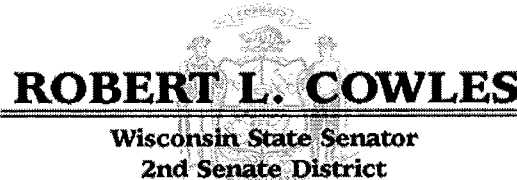
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- Allow environmental remediation tax incremental financing districts to be operated more like regular tax incremental financing districts, subject to a number of conditions.
- Implement a pilot program to reduce costs associated with air emission permits for environmentally-responsible manufacturers that redevelop and operate on brownfield properties.
- Improve and ease the administration of some Business Improvement Districts (BIDs) and Neighborhood Improvement Districts (NIDs) by allowing territory to be annexed to a BID or NID using essentially the same procedure as creating a BID or NID, rather than requiring dissolution and recreation.
- Clarify that off-site property owners who are impacted by chemical vapors coming from a source on another parcel cannot be held responsible for carrying out the state's remediation requirements. Property owners would also be exempt if they did not cause the discharge.
- Define the term "property" in relation to a person being exempt from liability for other investigation and remediation costs if they undertake certain corrective steps on the contaminated land that are approved by the state Department of Natural Resources.
- Consistent with the standards already adopted by the legislature for the Brownfields Revolving Loan Fund *Ready for Reuse* Program, ensure that state trust fund loans for brownfield projects issued by the Board of Commissioners of Public Lands do not count toward a municipality's debt ceiling if full repayment is made with 15 years.

Brownfields projects are often among the more difficult community or redevelopment projects you will find across Wisconsin, but they are well worth the investment. In my previous employment as the City of Green Bay's grantwriter, I greatly enjoyed the opportunity to be closely involved in reinvigorating a number of brownfields sites in Green Bay, including waterfront redevelopment on both sides of the Fox River and the Arnie Wolff Sports Complex on the east side of town. I also served on the National Association of Local Government Environmental Professionals' (NALGEP) Brownfields Grants Management Task Force as a result of these projects, which has given me an even greater appreciation for the thorough evaluation by the Brownfields Study Group that has resulted in these recommended legislative changes.

Thank you for your consideration.

STANDING COMMITTEES:
Natural Resources & Energy, Chair
Transportation & Veterans Affairs



JOINT COMMITTEES
Audit Committee, Co-Chair
Information Policy and Technology

Testimony on 2017 Senate Bill 173 – Brownfields Redevelopment

Senate Committee on Government Operations, Technology and Consumer Protection – October 10, 2017
Senator Robert Cowles

Thank you Chairman Stroebel and committee members for the opportunity to discuss Senate Bill 173 regarding several legal changes to impact the way we develop brownfield sites. This bill will start utilizing these properties and eliminate the blight in our communities.

I am sure that we have all driven past a blighted property at some point and looked out the window and thought to yourselves “What a waste of space!” or “Couldn’t that property be something better?” The short answer is yes. There are some great examples of brownfield sites being revitalized to become something useful. The Leach Amphitheater in Oshkosh was an old blighted manufacturing gas plant. This summer it will host nearly 100,000 guests through concerts, plays, movies in the park and local performances. In Wausau, brownfield redevelopment has completely transforming over 30 acres of downtown riverfront property that has gained national recognition and brought huge economic and employment opportunities to the community. In our area, Northeast Wisconsin, some of you may have visited the Tundra Lodge on Lombardi Ave. with your children and families, which was also once a brownfield site.

Senate Bill 173 has the opportunity to create even greater success stories from property that is now unusable blight. By eliminating some of the hurdles to begin remediation and development of a brownfield site, communities can revive some of this property by creating useable and taxable properties, creating jobs, increasing property value. Brownfield projects may start at an economic and timeline disadvantage, but remediation and redevelopment of these sites is an important and proven economic development strategy. Senate Bill 173 represents the next steps in strengthening our brownfields programs and will lead to economic progress.

All of the provisions in Senate Bill 173 are consensus-reached recommendations from the Wisconsin Brownfields Study Group. The group, comprised of multi-jurisdictional experts and stakeholders, have advised the DNR on matters that have challenged brownfield redevelopment. Members of the group include municipal officials, scientists, doctors, education professionals and members of our business community. The Group recommendations have been valuable and effective, and are instrumental in the creation and refinement of numerous state policies and procedures related to contaminated land remediation and redevelopment. The various provisions in the bill focus on site liability, property access for remediation purposes, environmental remediation tax increment financing reform, a pilot program on air permitting, and additional tools necessary our local governments to make the right decisions for their community.

Additionally, I have been working together on an amendment with Senator Stroebel and my co-author Representative Jaqcue to address several concerns that were brought up since the companion hearing in the assembly. In this amendment, we include some best practices that will help to ensure that municipalities are utilizing tax increment financing for environmental remediation in a more responsible and concise manner. Thank you Chairman Stroebel and committee members for allowing me to talk about Senate Bill 173.



STATE OF WISCONSIN LEGISLATURE
BEFORE THE
SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TECHNOLOGY
AND CONSUMER PROTECTION

Senate Bill 173
October 10, 2017

Introduction

Good afternoon Senator Stroebel and committee members. The Department of Natural Resources (DNR) appreciates the opportunity to provide the committee information regarding SB 173. My name is Christine Haag and I am the Brownfields Section Chief for DNR's Remediation and Redevelopment program, which oversees the investigation and cleanup of contaminated properties and brownfields. Wisconsin's brownfields program has contributed to the clean-up of 23,836 sites since 1994 and has made 23,680 acres available for redevelopment since 2004.

I need to thank the members of the Brownfields Study Group, an independent group of public and private sector volunteers statutorily created in 1998. We appreciate the time and effort of Study Group members working with DNR to evaluate and improve Wisconsin's brownfields initiatives and recommend incentives for the cleanup and reuse of brownfields. The recommendations in SB 173 were proposed by the Brownfields Study Group in their 2015 report, *Investing in Wisconsin*. 60 people provided input at 30 meetings to prepare the report, which includes 34 detailed proposals to improve the state's brownfields initiative.

Much of this bill includes enhancements to existing programs or authorizes new programs to encourage cleanup and redevelopment of more brownfield sites. In several sections of the bill, DNR would need to either provide technical oversight and approval of reports prepared as part of the cleanup process, or make a determination that a property qualifies as a brownfield. These are reviews the DNR currently provides for a fee. The DNR would continue to provide this technical assistance to support provisions created in SB 173.

Voluntary Party Liability Exemption (VPLE); Property Definition; and property boundary changes

My comments today regard section 20 in the bill related to Voluntary Party Liability Exemption for remediation of contaminated land.

In 1994, the legislature created VPLE under Wis. Stats. § 292.15 of the Spill Law. VPLE is a process by which a person – including a local government – can voluntarily conduct an environmental investigation and cleanup of an *entire* property and, at the conclusion of the approved cleanup, receive future liability limits for past contamination on a property.

This differs from the standard cleanup process; in VPLE, a person volunteers to look for *all* the possible contamination on their property, rather than just *known* concerns. In return, at the completion of a VPLE cleanup, the person receives a liability exemption protecting them if the remedy fails, standards are changed, or more contamination is discovered. 171 properties have received a certificate of completion (COC) since 1994. Some

of the major VPLE sites have been: the Kenosha Lakefront; Holtz-Krause Landfill in Wausau; Domtar Papermill in Port Edwards; Royster Clark in Madison; and former Glatfelter Papermill in Neenah.

Under current law, if additional contamination is found in the future after the exemption is issued and no one is responsible for addressing a priority health or environmental situation, the state may have to expend taxpayer's funds to address the contamination.

The current definition of property is, "a contiguous area of land the entire legal description of which is found in one deed" (Wis. Admin. §§ NR 750.05 (2)(a)(3) and NR 700.03(45e)). The code also states that if a property boundary change is made, the applicant must submit a revised application describing boundaries and legal descriptions of the properties for which the applicant is seeking the liability exemption (Wis. Admin. § NR 750.05(5)). VPLE is often used to facilitate real estate development projects; in these cases, it is common that owners may change property boundaries, combine properties, etc. in accordance with the planned use of the land.

Section 20 of SB 173 provides direction to the DNR on how to handle situations where the site boundaries change while the site is in the VPLE program. The changes in Section 20 may have unintended consequences if interpreted to read that anyone who adds land to a VPLE property (pre- or post- issuance of the exemption) receives all the protections of the exemption without meeting the requirements of current law including a full investigation and cleanup. Further, the proposed changes could also be interpreted to allow a voluntary party to expand their property to include property otherwise prohibited by statute from being entered in the VPLE program – for example: a site listed on the Superfund National Priorities List. This could result in some properties obtaining protections of VPLE that may have unknown and unaddressed contamination.

Conclusion

In closing, overall this bill provides more tools to promote cleanup and reuse of Wisconsin brownfields. A recent study (available at <http://www.uww.edu/news/archive/2015-11-brownfields>) commissioned by the Brownfields Study Group and conducted by the University of Wisconsin – Whitewater, concluded that Wisconsin's efforts to invest in cleanup and reuse of brownfields has resulted in:

- \$1.77 billion in direct state revenues due to the state grant programs and other financial investments;
- \$27.25 in total funds leveraged for every state dollar invested;
- 53,800 direct and indirect jobs created or retained;
- \$88.5 million gain by local governments in annual tax revenue; and
- 14 fold return on investment by the state.

I hope you find this information helpful, and would be happy to address any questions you may have.

TESTIMONY OF MARK A. THIMKE

Good afternoon. I am Mark Thimke. I reside in Oconomowoc, Wisconsin. I have practiced environmental law for about 38 years and, during that time, served on numerous advisory committees and panels addressing environmental policy issues. I am appearing today in my individual capacity as co-chair of the Wisconsin Brownfields Study Group. The Brownfields Study Group was established by the Wisconsin Legislature in 1998 and tasked with reviewing and making recommendations to promote Brownfields redevelopment in the State of Wisconsin. I am pleased to say I am an "original" member of this all volunteer group of dedicated people, all of whom are interested in promoting Brownfields redevelopment in Wisconsin. Members of the Group include a wide range of people and interests, including environmental consultants, redevelopment experts, city and county representatives, business groups, university faculty and community group members.

The Brownfields Study Group's work focuses on legislation, rules and policy reforms intended to maintain the national reputation of the Wisconsin Brownfields program. Since our formation in 1998, we worked on numerous Brownfields related policies, including refining and expanding the state's unique voluntary liability exemption program as well as assisting with the implementation of one of the first comprehensive Brownfields waterfront redevelopment programs in the country. These efforts assist in promoting economic development combined with the remediation of contaminated land and water – a win for both business development and the environment.

Part of the Brownfields Study Group's work is undertaking a five-year review of Wisconsin Brownfields laws, rules and policies and developing consensus-based recommended changes. These consensus-based changes are developed through hours of subcommittee meetings held throughout the state. The subcommittee proposals are then vetted by the entire Brownfields Study Group and only those obtaining Group consensus approval advance into the five-year report.

Our most recent five-year review was compiled with the 2015 Brownfields Study Group report. I am pleased to report progress is being made in implementing many of the 2015 recommendations. Many of the recommendations are part of Senate Bill 173 and its companion Assembly Bill 179.

As to Senate Bill 173, the Brownfields Study Group recommendations range from environmental cleanup liability clarifications to amendments to municipal law, all of which is intended to foster and promote Brownfields redevelopment. In addition, the bill includes an innovative pilot study looking at methods to bring back manufacturing to Brownfields sites. This pilot effort gives manufacturers (that redevelop and operate on Brownfields sites) protections against the legal uncertainties associated with prior contamination liability and financial uncertainties associated with certain changes in air regulations. As a pilot program, the intent is to provide useful information that can be incorporated into a comprehensive program to bring back manufacturing and manufacturing jobs to Wisconsin, while at the same time reusing older manufacturing properties.

With respect to specific language in Senate Bill 173, the Brownfields Study Group noted that the proposed change to the voluntary party liability exemption program's definition of "property" needs a slight adjustment as the Bill's current language may result in unintentionally expanding state liability. The Brownfields Study Group developed recommended language to fix this unintentional issue, while preserving the original intent of allowing flexibility in redrawing property ownership lines after the Department of Natural Resources issues a Certificate of Completion under the liability exemption program. That language is attached.

The Brownfields Study Group also reviewed the recent language additions addressing tax increment financing. Members of the group expert in municipal finance reviewed the language and are fine with the additions.

Thank you for this time today to address the committee. I and others on the Brownfields Study Group appreciate moving this bill forward, and we look forward to continuing to work with the Legislature and the Department of Natural Resources to improve and enhance the highly successful Wisconsin Brownfields Program.

2017 ASSEMBLY BILL 179

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

* * *

SECTION 19. 292.15 (1) (c) of the statutes is created to read:

292.15 (1) (c) "Property" means the area of real property that is included in an application to obtain an exemption under this section, made up of ~~a parcel~~ a legally identifiable parcel or legally identifiable contiguous parcels, the legal description of which is contained in one or more deeds created in compliance with applicable laws.

SECTION 20. 292.15 (2) (at) of the statutes is created to read:

292.15 (2) (at) Subdivision, transfer, or other change in property. ~~The subdivision or transfer of a property, the combination of a property with another property, or any other similar change to the legal boundaries of the property do not~~ subdivision or transfer of a property or portion of a property or the combination of parcels within a property do not affect a voluntary party's eligibility for the liability exemption under this section if the change occurs after the department has approved any required environmental investigation but before the department issues a certificate of completion and if all other applicable requirements for the exemption are met.

(END)



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director

Jessica Karls-Ruplinger, Deputy Director

TO: SENATOR ROBERT COWLES

FROM: Anna Henning, ^{AH} Senior Staff Attorney

RE: 2017 Senate Bill 173, Relating to Brownfields

DATE: October 9, 2017

This memorandum summarizes 2017 Senate Bill 173¹, a bill containing various changes to current law relating to municipal remediation of brownfields.² Although not all of the bill's provisions are specific to brownfields, all of the changes in the bill relate to recommendations made by the Brownfields Study Group³ in its 2015 report, *Investing in Wisconsin: Reducing Risk, Maximizing Return*. The memorandum also provides certain relevant background information.

TAX INCREMENTAL FINANCING

Generally, under **current law**, tax incremental financing (TIF) is a tool that cities and villages (and, to a more limited degree, towns and certain counties) may use to spur economic development. The TIF process allows a political subdivision 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. [s. 66.1105, Stats.]

Current law provides a special TIF option for environmental remediation projects undertaken by cities, villages, towns, or counties. [s. 66.1106, Stats.] A 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

¹ An identical companion bill, 2017 Assembly Bill 179, received a hearing in the Assembly Committee on Environment and Forestry on May 16, 2017.

² 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.]

³ The Brownfields Study Group was created in a nonstatutory provision of 1997 Wisconsin Act 27, the 1997 Biennial Budget Bill.

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.

All of the differences listed above also apply (in the same or functionally similar form) to ERTIDs under current law. Other differences between ERTIDs and other TIDs are eliminated under the bill.

EXPANSION OF PROPERTY ASSESSED CLEAN ENERGY LOAN PROGRAM

Current law authorizes cities, villages, towns, and counties to provide property-assessed clean energy (PACE) financing to property owners who make a loan or enter into an agreement regarding loan repayments for certain energy efficiency improvements. A city, village, town, or county may collect such a loan repayment as a special charge. Those special charges may be collected in installments or by a third party. Generally, if the loan or agreement is for an improvement that costs \$250,000 or more, the owner must obtain a written guarantee with specified assurances from the contractor or project engineer. [s. 66.0627 (8), Stats.]

The bill expands that financing option to include "brownfield revitalization projects," defined to mean certain actions, including site assessment, remediation, lead or asbestos abatement, demolition, and other site preparation actions, taken upon commercial or industrial premises located on a brownfield. The bill also authorizes the repayment period for financing for brownfield revitalization projects to exceed 20 years, and provides an exception for brownfields from the general requirement to obtain a written guarantee for projects that cost \$250,000 or more.

SCOPE OF 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 voluntary party liability exemption (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.

EXEMPTION OF LIABILITY FOR OFF-SITE VAPORS

As described above, **current law** generally holds a current property owner responsible for the remediation of prior contamination. In addition to exemptions under the VPLE program described above, current law provides limited exemptions from certain remediation requirements for contamination originating from an off-site property. Specifically, the exemptions apply to hazardous substances in groundwater if a person conducts an investigation or submits other information, that the DNR determines is adequate, to substantiate both of the following criteria:

- The discharge originated from off-site property.
- The person did not possess or control the hazardous substance on the off-site property or cause the original discharge.

The person must also agree to allow the DNR and certain other parties to access the property, and the person must agree to other conditions that the DNR determines are reasonable and necessary to ensure an adequate response to the discharge. [s. 292.13, Stats.]

The **bill** expands the scope of that exemption to apply to vapors emitted from the soil or groundwater.

PILOT PROGRAM FOR CERTAIN PERMITS UNDER THE CLEAN AIR ACT

Generally, **current law**, under authority delegated to the state under the federal Clean Air Act, requires a person to obtain an air pollution control permit prior to commencing construction, reconstruction, replacement, or modification of a stationary source⁴ ("construction permit"). A person also must obtain a separate permit prior to operating a new or modified source of air pollution ("operation permit"). [s. 285.60 (1), Stats.]

However, current law provides a simplified process for stationary sources with low actual or potential emissions. Under the simplified process, an owner or operator of a stationary source may obtain a "registration permit" in lieu of a construction permit or operating permit, or both, if the owner or operator takes certain steps, and the DNR finds that the stationary source's actual emissions do not exceed 50% of any applicable major source threshold. [s. 285.60 (2g), Stats.]

The bill requires the DNR to implement a pilot program to freeze, for 10 years, state requirements imposed under registration permits for certain types of sources. Specifically, the bill provides that a participating owner or operator is not required to make changes to the air pollution controls for a stationary source due to new or modified legal requirements, except as required under the Clean Air Act, for 10 years after the DNR grants coverage under a registration permit for the stationary source. An owner or operator may participate in the pilot program only if all of the following criteria apply:

- The stationary source is a minor source⁵ and is eligible for coverage under a registration permit.
- The stationary source is a manufacturing facility that the owner or operator is constructing.
- The stationary source is located on property on which the owner or operator has completed certain steps under the voluntary party liability exception, described above.
- The owner or operator participates in the Green Tier Program⁶, and the manufacturing facility is included in the program.

The bill requires the DNR to submit a report to the Governor and relevant standing committees of the Legislature regarding the pilot program within five years after implementing the program.

⁴ A "stationary source" is any facility, building, structure, or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. [s. 285.01 (41), Stats.]

⁵ A "minor source" is a stationary source that is not a major source. A "major source" is defined by the DNR by rule.

⁶ Green Tier is a voluntary program intended to encourage participants to commit to environmental management practices that result in a performance that exceeds the current regulatory requirements. [s. 299.83, Stats.]

ANNEXATION OF PROPERTY TO A BUSINESS IMPROVEMENT DISTRICT OR NEIGHBORHOOD IMPROVEMENT DISTRICT

Under **current law**, a business improvement district (BID) is an area consisting of contiguous parcels, and it includes any parcels that are contiguous to the district but that were tax-exempt when the district boundaries were determined. A neighborhood improvement district (NID) is an area consisting of nearby but not necessarily contiguous parcels, at least some of which are used for residential purposes and are subject to general property taxes.

The process to create a BID or NID begins with a petition to the relevant municipality by a property owner in the proposed district. (For a BID, the property owner must own commercial property.) A proposed BID or NID must develop an operating plan, which must be approved by the municipal planning commission, receive a public hearing, and be approved by the municipality. An operating plan provides for the development, redevelopment, maintenance, operation, and promotion of a BID or NID. With certain limitations, a municipality may impose special assessments on real property located within a BID or NID to implement the operating plan. In a BID, only commercial property is subject to such special assessments. [ss. 66.1109 and 66.1110, Stats.]

Although the statutory definition of a BID refers to the "original or amended boundaries" of a BID, current law does not directly address the procedure for amending the boundaries of a BID. Current law also appears not to address whether boundaries of a NID may be modified.

The **bill** authorizes municipalities to annex property to a BID or NID, following a procedure similar to the procedure for the creation of a BID or NID under current law. In addition, the bill authorizes a municipality to convert a BID into a NID if a residential property owner petitions a municipality for the conversion.

ASSIGNMENT OF TAX DEEDS

Current law authorizes a county to assign the county's right to take judgment in a tax foreclosure action involving a brownfield, if certain conditions are satisfied. Among other requirements, such assignments require an environmental assessment and an agreement with the DNR regarding the clean-up of any hazardous substances. [s. 75.106 (2), Stats.] Current law does not authorize the assignment of tax deeds.

The **bill** authorizes a county to assign its right to take a tax deed prior to the execution of the tax deed, for a brownfield subject to the same requirements that apply to the assignment of rights in tax foreclosure actions for brownfields under current law.

TREATMENT OF LOANS MADE BY THE BOARD OF COMMISSIONERS OF PUBLIC LANDS

Current law authorizes the Board of Commissioners of Public Lands (BCPL)⁷ to make general obligation and revenue obligation loans to certain public entities. For towns, villages, and cities, BCPL loans generally may be made for any purpose for which a town, village, or city may borrow money or issue municipal bonds or notes - i.e., generally for any public purpose. Loan applications generally must be signed by a majority of the members of the relevant governing body. [ss. 24.61 (3) (a) 2. and 24.66 (2), Stats.]

General obligation loans to municipalities may be made for terms not exceeding 20 years and are secured by borrowers' general ability to repay the loans. General obligation loans must bear and draw an annual interest rate of at least 2%. [ss. 24.60 (1w) and 24.63 (1) and (3), Stats.] The loan amount cannot exceed 5% of the valuation of the taxable property within the municipality. [s. 24.63 (1), Stats.]

Revenue obligation loans for cities, villages, and towns may be made for terms not exceeding 30 years and are secured by revenues from the financed projects. Like general obligation loans, revenue obligation loans must bear and draw an annual interest rate of at least 2%. [ss. 24.60 (2m) and 24.63 (2s) and (3), Stats.]

BCPL may make revenue obligation loans in the following circumstances:

- To a municipality for the purpose of financing or refinancing a capital project, secured by a pledge and assignment of the revenue that the municipality will receive from moneys generated by that project.
- To a city, village, town, or county for the purpose of financing or refinancing certain TIF project costs, secured by a pledge and assignment of the tax increments that will be allocated to the city, village, town, or county for those project costs by the Department of Revenue.

[ss. 24.60 (2m) and 24.63 (2s), Stats.]

The Wisconsin Constitution generally provides that: "no county, city, town, village, school district, sewerage district or other municipal corporation may become indebted in an amount that exceeds an allowable percentage of the taxable property located therein equalized for state purposes as provided by the legislature." It further specifies that, with limited

⁷ The three-member BCPL was established under Article X of the Wisconsin Constitution. Comprised of the Secretary of State, the State Treasurer, and the Attorney General, BCPL oversees the investment of the proceeds of sales of land granted to the state by the federal government for the purpose of supporting education and developing the state's infrastructure. It also manages approximately 77,000 acres of land remaining from the original land grants. BCPL manages several trust funds, from which it may make investments: the "school fund," which includes the "normal school fund" and the "common school fund"; the "university fund"; and the "agricultural college fund." The largest of the four trust funds is the common school fund.

exceptions relating to school financing, that allowable percentage is 5%.⁸ [Wis. Const., art. XI, s. 3, cl. 2.]

Several statutory provisions currently specify that the constitutional debt limitation does not apply to certain types of municipal borrowing. For example, current law specifies that the following types of borrowing must not be considered for purposes of the constitutional debt limitation:

- A county's issuance of certain revenue obligation bonds payable solely from specified project revenue. [ss. 59.52 (6) (d) 2. and 59.58 (1) (b), Stats.]
- A municipality's issuance of revenue obligation bonds to purchase, acquire, lease, construct, extend, add to, improve, conduct, control, operate, or manage a public utility or public transportation system. [s. 66.0621 (3), Stats.]
- Temporary municipal obligations issued in anticipation of the receipt of federal or state aids, taxes levied, or other deferred payments. [s. 67.12 (1) (c), Stats.]

Under the bill, a state trust fund loan from BCPL to a city, village, or town made for the purpose of funding a project related to brownfields may not be included in arriving at the statutory debt limitation, described above, applicable to general obligation loans, or the constitutional debt limitation under Wis. Const. art. XI, s. 3, if all of the following criteria apply:

- The term of the loan is not more than 15 years.
- The loan is not in default.
- The DNR verifies to BCPL that the site on which the project will occur is a brownfield, or if the project encompasses more than one site, verifies that no less than 50% of the project area is brownfield.

It appears that the above provision applies to both general obligation and revenue obligation loans issued by BCPL to a city, village, or town for projects relating to brownfields.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AH:ty

⁸ A political subdivision must, before incurring any indebtedness or at the time of doing so, "provide for the collection of a direct annual tax sufficient to pay the interest on the debt as it falls due, and also to pay and discharge the principal [of the debt] within 20 years from the time the debt was contracted." [Wis. Const., art. XI, s. 3, cl. 3.] Certain types of public utility financing are exempt from that constitutional debt limitation.