

1999 ASSEMBLY BILL 855

March 8, 2000 – Introduced by Representatives ALBERS, PETROWSKI, GUNDERSON, STONE, GOETSCH, REYNOLDS, AINSWORTH, SKINDRUD and SERATTI, cosponsored by Senator HUELSMAN. Referred to Committee on Conservation and Land Use.

1 **AN ACT** *to renumber and amend* 32.10; *to amend* 32.10 (title); and *to create*
2 32.10 (1), 32.10 (2), 32.10 (6) and 32.10 (7) of the statutes; **relating to:** inverse
3 condemnation proceedings.

Analysis by the Legislative Reference Bureau

Under current law, if a person's property is occupied by an entity that possesses the power of eminent domain (a condemnor), but the condemnor has not exercised its power (and has not, therefore, compensated the property owner), the owner may commence an inverse condemnation action against the condemnor. If the property owner is successful, the court may order the condemnor to acquire the owner's interest in the affected property, resulting in compensation being paid by the condemnor to the owner.

Currently, if a property owner wishes to allege that his or her property has been taken by a government ordinance, statute, administrative rule or regulation (a regulatory taking), the owner must bring an action under article I, section 13 of the Wisconsin Constitution, which prohibits the taking of property without just compensation.

This bill includes in the definition of "taking", for the purpose of inverse condemnation actions, not only occupancy but also the following:

1. The physical confiscation of property by a person possessing the power of condemnation; and
2. Any action by a person possessing the power of condemnation that directly reduces the fair market value of a person's property by more than 50%.

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This change allows all three types of actions to be brought under the inverse condemnation law.

The bill also provides that if the court determines that the condemnor has reduced the fair market value of the owner's property as described above, the court must either compel the condemnor to acquire the owner's interest in the property (and pay compensation) or declare the condemnor's action void with respect to the property and order the condemnor to pay the owner any damages resulting from the taking.

Finally, the bill reduces from six years to three years the statute of limitations applicable to inverse condemnation actions.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 32.10 (title) of the statutes is amended to read:

2 **32.10** (title) ~~Condemnation proceedings~~ **Proceedings** instituted by
3 **property owner.**

4 **SECTION 2.** 32.10 of the statutes is renumbered 32.10 (3) and amended to read:

5 32.10 **(3)** If any property ~~has been occupied~~ is taken by a person possessing the
6 power of condemnation and if the person has not exercised the power, the owner, ~~to~~
7 within 3 years of the action alleged to constitute the taking, may institute
8 condemnation proceedings, ~~shall present~~ under this section by filing a verified
9 petition ~~to~~ with the circuit judge ~~court~~ of the county ~~wherein~~ in which the land
10 property is situated asking that such proceedings be commenced.

11 **(4)** The petition shall describe the land ~~property~~, state the person against which
12 the condemnation proceedings are instituted and describe the use ~~to which it has~~
13 ~~been put or is designed to have been put~~ action by the person against which the
14 proceedings are instituted that is alleged to constitute a taking. A copy of the petition
15 shall be served upon the person ~~who has occupied~~ petitioner's land, ~~or interest in~~

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1 land. ~~The petition shall be filed in the office of the clerk of the circuit court and~~
2 ~~thereupon the matter shall be deemed an action at law and at issue, with against~~
3 ~~which the proceedings are instituted. The petitioner as shall be the plaintiff and the~~
4 ~~occupying person as alleged to have taken the property shall be the defendant. The~~
5 ~~court shall make a finding of whether the defendant is occupying property of the~~
6 ~~plaintiff without having the right to do so.~~

7 **(5)** If the court determines that the defendant ~~is occupying such~~ has taken the
8 property of the plaintiff under sub. (1) (a) or (b) without having the right to do so
9 exercising the power of condemnation, it shall treat the matter in accordance with
10 the provisions of this subchapter assuming the plaintiff has received from the
11 defendant a jurisdictional offer and has failed to accept the ~~same~~ offer and assuming
12 the plaintiff is not questioning the right of the defendant to condemn the property
13 ~~so occupied.~~

14 **SECTION 3.** 32.10 (1) of the statutes is created to read:

15 32.10 (1) In this section “taking” means any of the following:

16 (a) The physical confiscation of property by a person possessing the power of
17 eminent domain.

18 (b) The occupation of property by a person possessing the power of
19 condemnation.

20 (c) Any action by a person possessing the power of condemnation that directly
21 reduces the fair market value of a person’s property by more than 50%.

22 **SECTION 4.** 32.10 (2) of the statutes is created to read:

23 32.10 (2) This section does not apply to the failure to act on the part of a person
24 possessing the power of condemnation or to any action taken by such a person that
25 is a reasonable response to an obligation required by state or federal law.

