

1999 DRAFTING REQUEST

Bill

Received: **09/30/1999**

Received By: **grantpr**

Wanted: **As time permits**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing:

This file may be shown to any legislator: NO

Drafter: **grantpr**

May Contact:

Alt. Drafters:

Subject: **Eminent Domain - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Condemnation proceedings initiated by property owner

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/?	grantpr 10/18/1999	wjackson 10/18/1999		_____			S&L
/P1			martykr 10/19/1999	_____	lrb-docadmin 10/19/1999		S&L
/1	grantpr 12/20/1999	wjackson 12/21/1999	martykr 12/21/1999	_____	lrb-docadmin 12/21/1999		S&L
/2	grantpr 12/22/1999	wjackson 12/22/1999	kfollet 12/22/1999	_____	lrb-docadmin 12/22/1999	lrb-docadmin 02/24/2000	
				_____	lrb-docadmin 02/24/2000		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Reaired

FE Sent For:

3/8/00

<END>

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/2	grantpr 12/22/1999	wjackson 12/22/1999	kfollet 12/22/1999	_____	lrb_docadmin 12/22/1999		
				_____	lrb_docadmin 02/24/2000		

Re-Submitted
(they lost 1st copy)

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/1	grantpr 12/20/1999	wjackson 12/21/1999	martykr 12/21/1999	_____	lrb-docadmin 12/21/1999		

FE Sent For:

1/2 12/22 Wlj

Kjf
12/22
Kjf/Jf
12/22
<END>

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I?	grantpr 10/18/1999	wjackson 10/18/1999		_____			S&L
/P1		/1 wlj 12/21	martykr 10/19/1999	_____	lrb_docadmin 10/19/1999		
FE Sent For:			km 12/21	km 12/21			

<END>

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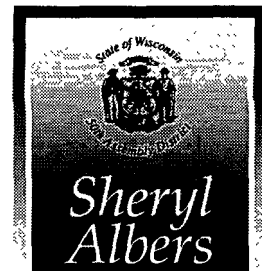
See Attached

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/?	grantpr	/PI WLj 10/18	Km 10/19	JZ 10/19			

FE Sent For:

<END>



To: Legislative Reference Bureau - Bill Drafting
From: Representative Sheryl K. Albers

Date: September 29, 1999
Subject: Takings Legislation
Reference: Attached Draft

Please draft a piece of 1999 legislation from the attached draft. It represents a compilation of a WLCS draft, and discussions with Legislative Council. I do not anticipate any changes.

Thank you.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The manual process involves reviewing each entry individually, while the automated process uses software to identify patterns and anomalies.

The third section describes the results of the analysis. It shows that there are several areas where the data is inconsistent or incomplete. These areas need to be addressed to ensure the overall accuracy of the records.

Finally, the document concludes with a series of recommendations for improving the data collection and analysis process. These include implementing more rigorous checks and balances, as well as investing in better software tools.

1999 Takings Legislation

(Final Draft - 29 Sep 99)

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

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

SECTION 1. 32.10 of the statutes is amended to read:

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

(4) The petition shall describe the land property, state the person against h e ~~condemnation~~ proceedings are instituted and describe the use to which it has been put or is designed to have been put action by the person against which the proceedings are instituted that is alleged to constitute a taking. A copy of the petition shall be served upon the person who has occupied petitioner's land, or interest in land against which the proceedings are instituted. The petition shall be filed in the office of the clerk of the circuit court and thereupon the matter shall be deemed an action at law and at issue with. The petitioner as shall be deemed the plaintiff and the occupying person as alleged to have taken the property shall be deemed the defendant. ~~The court shall make a finding of whether the defendant is occupying property of the plaintiff without having the right to do so.~~

(5) If the court determines that the defendant is occupying such ^{stat mp} ~~has taken the property~~ of the plaintiff without having the right to do so, it shall treat the matter in accordance with the provisions of this subchapter assuming the plaintiff has received from the defendant a

prohibiting from emp.
1

jurisdictional offer and has failed to accept ~~the same~~ it and assuming the plaintiff is not questioning the right of the defendant to condemn the property ~~so occupied~~ taken.

SECTION 2. 32.10 (1) of the statutes is created to read:

32.10 (1) DEFINITIONS. In this section, "taking" means a governmental action that does any of the following:

? person possessing power of unit?

1. Directly affects property in whole or in part in a manner that requires the governmental unit to compensate the owner of the property as provided by the 5th and 14th Amendments to the U.S. Constitution.

2. Directly results in the reduction in the fair market value of any property to an amount that is less than 50% of that value.

SECTION 3. 32.10 (2) of the statutes is created to read:

32.10 (2) This section does not apply to a person's failure to act, or to an action taken by a person that is a reasonable response to an obligation mandated by federal or state law.

poss power of condemnation

3
7

SECTION 4. 32.10 (6) of the statutes is created to read:

32.10 (6) If the court determines that the defendant has taken the property of the plaintiff, the court shall enter an order declaring that the defendant's action is void with respect to the property subject to the defendant's action, unless the defendant pays the owner of the property an amount equal to the value of the property.

prop difference (make on whole)

SECTION 5. Effective date.

(1) This act takes effect on the first day of the 9th month beginning after publication.

see -1367

condition prop of physical things - on -

① 32.10 (1) : what's a "justiciable action" ?

② 32.10 (1) : isn't this circular ?

ie. doesn't it merely say "a taking is an action

that requires compensation because it's a taking" ?
also, definition of "justiciable unit" ?

11.1. ③ 2. : who determines reduction in

value.

④ sec. 3 : (2) : what does this mean ? what's
it intended to do ?

⑤ sec. 1 : 32.10 (3) : does "person possessing the
power of condemnation" mean "justiciable unit" ?

(note that other entities besides governments have
em. dom. power)

⑥ 32.10 (5) & (6) : why 2 sections ?
what's the difference ?

note current law ^{is} _{step} if occupy w/o act to
do so, you've seen it to take w/o right.

If take w/o act to do so, why the we assume

that it does not question that it?

1999

Date (time) needed

SOON

LRB-3683, P1

BILL

DN

PG: WLJ:

Use the appropriate components and routines developed for bills.

AN ACT... [generate catalog] to repeal...; to renumber...; to consolidate and renumber...; to renumber and amend...; to consolidate, renumber and amend...; to amend...; to repeal and recreate...; and to create... of the statutes; relating to: ... inverse ... condemnation ... proceedings ...

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: ... create -> anal: -> title: -> head

For the subheading [old =S], execute: ... create -> anal: -> title: -> sub

For the sub-subheading [old =P], execute: ... create -> anal: -> title: -> sub-sub

This is a preliminary draft. An analysis will be provided with a late version. FE-SL

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

SECTION #.

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

Section #. 32.10 of the statutes is amended to read:

renumbered 32.10 (3) ^{and}

(title) **32.10** PROCEEDINGS **32.10 (3)**
Condemnation proceedings instituted by property owner.

If any property has been occupied by a person possessing the power of condemnation and if the person has not exercised the power, the owner, to institute condemnation proceedings, shall present a verified petition to the circuit judge of the county wherein the land is situated asking that such proceedings be commenced.

The petition shall describe the land, state the person against which the condemnation proceedings are instituted and the use to which it has been put or is designed to have been put by the person against which the proceedings are instituted. A copy of the petition shall be served upon the person who has occupied petitioner's land, or interest in land. The petition shall be filed in the office of the clerk

of the circuit court and thereupon the matter shall be deemed an action at law and at issue, with petitioner as plaintiff and the occupying person as defendant. The court shall make a finding of whether the defendant is occupying property of the plaintiff without having the right to do so. If the court determines that the defendant is occupying such property of the plaintiff without having the right

to do so, it shall treat the matter in accordance with the provisions of this subchapter assuming the plaintiff has received from the defendant a jurisdictional offer and has failed to accept the same and assuming the plaintiff is not questioning the right of the defendant to condemn the property so occupied.

History: 1973 c. 170; Sup. Ct. Order, 67 Wis. 2d 575, 749 (1975); 1975 c. 218; 1977 c. 440; 1983 a. 236 s. 12.

exercising the power of condemnation

within 3 years of the action
alleged to constitute the
taking, may

¶ SEC. # CR. 32.10(1)

¶ 32.10 (1) ^(b) In this section "taking" means any of the following:

¶ (a) The occupation of ~~a~~ ^{by a} person possessing the ^{power} power of ^{condemnation} condemnation.

¶ (b) 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%} 50%.

¶ (c) Any action by a ^{person} person possessing the power of condemnation that ^{deprives} deprives a property ^{owner} owner of all or ~~the~~ ^{substantially} substantially all of the beneficial use of the property.

"Action" does not include the

~~failure to act~~

§ 5 E F §. CR; 32.10(2)

②
§ 32.10(2) This section does not apply to
the failure to act on the part of a
person possessing the power of ~~em~~ condemnation^e
or to any action taken by ^{such} a person
that is a reasonable response to an
obligation required by state or federal law.

§ ~~SEC#~~ CR. 32.10 (6)

§ 32.10 (6) If the ^{court} ~~court~~ determines that the ^{defendant} defendant has ~~not~~ occupied the property ~~but~~ of the plaintiff under sub (1) (b) or (c) ✓ has taken the property (without exercising the power of condemnation, the ^{court} ~~court~~ shall ~~do~~ one ~~of~~ of the following:

§ (a) Treat the matter as described in sub (5) ✓

~~(a) Order the defendant to exercise the power of condemn the property in accordance with this subchapter.~~

§ (b) Declare the defendant's action void with respect to the property and order the defendant to pay the plaintiff any damages resulting ^{from} the taking ✓

(End)

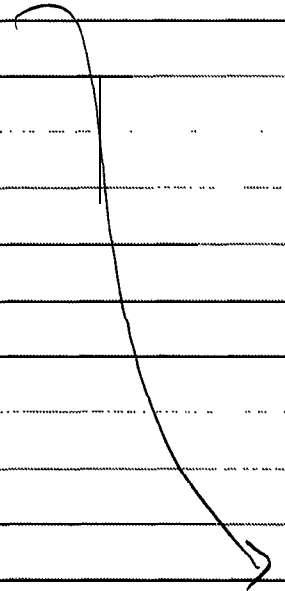
DN

Representative Albers:

After talking with Scott in your office and with Mark Patrosky of the Joint Legislative Council staff, I prepared the attached draft which I think

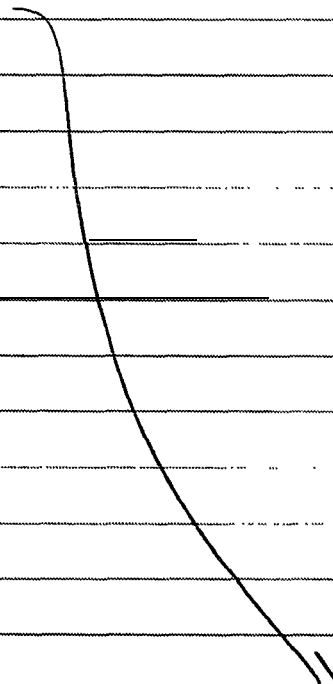
~~captures your intent~~ I would be happy to meet with you at your convenience to discuss it.

~~The two major changes~~



Please note ~~that~~ the changes I made to the ~~you~~ suggested language. There are two reasons for the changes. First, I ~~was concerned~~ ^{assumed} that ~~these persons~~ ^{you} did ^{not} want to limit the options ~~of~~ ^{or} remedies of those persons whose property ~~has been~~ ^{actually} occupied by a condemnor. Second, the definition of "taking" in the suggested ~~draft~~ language seemed circular; essentially, it says that a taking means action that constitutes a taking. ~~Therefore,~~ I tried to ^{craft} ~~craft~~ a definition that reiterates the ^{standard} used by the Wisconsin Supreme Court. However, it was not ^{clear} to me whether you ~~were~~ intended the draft to ↓

delineate more clearly where the line
should be drawn between the exercise
of the ^{police} police power and the



exercise of the power of eminent domain)
If (you do not intend to delineate that line
~~you do not think that is not~~
~~you intend~~ (other than the ~~making it~~
to specify
~~that~~ that a certain reduction in fair
market value ~~is~~ constitutes the exercise of the
power of eminent domain), then ^{you} ~~will~~
may wish to ^{consider} ~~consider~~ eliminating
s. 32.10 (1) (c) altogether.

PG

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3683/P1dn
PG:wlj:km

October 19, 1999

Representative Albers:

After talking with Scott in your office and with Mark Patronskey of the Joint Legislative Council staff, I prepared the attached draft. I would be happy to meet with you at your convenience to discuss it.

Please note the changes I made to the suggested language. There are two reasons for the changes. First, I assumed that you did not want to limit the options or remedies of those persons whose property is actually occupied by a condemnor. Second, the definition of "taking" in the suggested language seemed circular; essentially it says that a taking means action that constitutes a taking. I tried to craft a definition that reiterates the standard used by the Wisconsin Supreme Court. However, it was not clear to me whether you intended the draft to delineate more clearly where the line should be drawn between the exercise of the police power and the exercise of the power of eminent domain. If you do not intend to delineate that line (other than to specify that a certain reduction in fair market value constitutes the exercise of the power of eminent domain), then you may wish to consider eliminating s. 32.10 (1) (c) altogether.

Peter R. Grant
Managing Attorney
Phone: (608) 267-3362
E-mail: Peter.Grant@legis.state.wi.us

12/15/99

TC w/ Scott Southworth

① delete "permanent, physical" from

par. RE occupation because no

substantive change is intended to

s. 32.10 RE "occupation" of property.

② ~~keep 3-year~~ ~~ste~~ yes, 3-year

statute of limitations is intended to apply

to all takings specified in new 32.10.

③ add that including "physical
confiscation" in 32.10 does not bar

actions under art I, sec. 13 of the

Wis. constitution.

ALSO: see Zinn v. State, 112

Wis. 2d 417 (1983) -

∴ must specify that 32.10
procedure is not the exclusive
procedure; i.e. can still bring
actions under art I sec. 13.

need mutual
app permission?
Yes

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3683/P1dn
PG:wlj:km



October 19, 1999

Representative Albers:

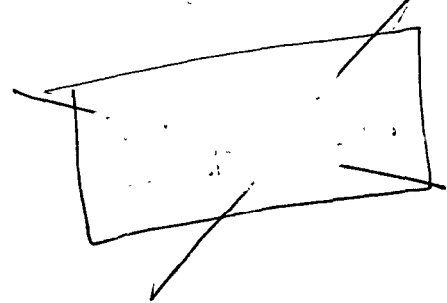
After talking with Scott in your office and with Mark Patronsky of the Joint Legislative Council staff, I prepared the attached **draft**. I would be happy to meet with you at your convenience to discuss it.

Please note the changes I made to the suggested language. There are two reasons for the changes. First, I assumed that you did not want to limit the options or remedies of those persons whose property is actually occupied by a condemnor. Second, the **definition of "taking"** in the suggested language **seemed** circular; essentially it says that a taking means action that constitutes a **taking**. I tried to craft a **definition** that reiterates the standard used by the Wisconsin Supreme Court: However, it was not clear to me whether you intended the **draft** to delineate more clearly where the line should be drawn between **the exercise** of the police power and the exercise of the power of eminent domain. If you do not intend to delineate that line (other than to specify that a certain reduction in fair market value constitutes the exercise of the power of eminent domain), then you may wish to consider eliminating s. 32.10 (1) (c) altogether..

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Managing Attorney
Phone: (608) 267-3362
E-mail: Peter.Grant@legis.state.wi.us



~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~



reinsert

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

Analysis by the Legislative Reference Bureau

(attached)

~~This is a preliminary draft. An analysis will be provided with a later version.~~
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:

4. **SECTION 1.** 32.10 (title) of the statutes is amended to read:
5. 32.10 (title) ~~Condemnation proceedings~~ **Proceedings instituted by**
6. **property owner.**
7. **SECTION 2.** 32.10 of the statutes is renumbered 32.10 (3) and amended to read:
8. 32.10 (3) If any property-is taken by a person possessing the
9. power of condemnation and if the person has not exercised the power, the owner, ~~to~~

1 ~~within 3 years of the action alleged to constitute the taking, may~~ institute
2 ~~condemnation proceedings, shall present under this section by filing~~ a verified
3 petition ~~to~~ with the circuit ~~judge~~ court of the county wherein in which the ~~land~~
4 ~~asking that such proceedings be commenced~~

5 (4) The petition shall describe the land property, state the person against which
6 the ~~condemnation~~ proceedings are instituted and describe the ~~use to which it has~~
7 ~~been put or is designed to have been put~~ action by the person against which the
8 proceedings are instituted ~~that is alleged to constitute a taking~~. A copy of the petition
9 shall be served upon the person ~~who has occupied petitioner's land, or interest in~~
10 ~~land. The petition shall be filed in the office of the clerk of the circuit court and~~
11 ~~thereupon the matter shall be deemed an action at law and at issue, with~~ against
12 ~~which the proceedings are instituted. The~~ petitioner as shall be the plaintiff and the
13 ~~occupying~~ person as alleged to have taken the property shall be the defendant. ~~The~~
14 ~~court shall make a finding of whether the defendant is occupying property of the~~
15 ~~plaintiff without having the right to do so.~~

16 (5) If the court determines that the defendant ~~is occupying such~~ has taken the
17 property of the plaintiff under sub. (1)(a) ^{or (b)} without having the right to do so exercising
18 ~~the power of condemnation~~, it shall treat the matter in accordance with the
19 provisions **of this subchapter assuming the plaintiff** has received from the defendant
20 a jurisdictional offer and has failed to accept the same offer and assuming the
21 plaintiff is not questioning the right of the defendant to condemn the property ~~se~~
22 ~~occupied.~~

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

24 32.10 (1) In this section "taking" means any of the following:

2-24 →

1 (b) ~~is~~ The occupation of 'property by a person possessing the power of
2 condemnation.

3 (c) ~~is~~ Any action by a person possessing the power of condemnation that directly
4 reduces the fair market value of a person's property by more than 50%.

5 (c) Any action by a person possessing the power of condemnation that deprives
6 a property owner of all or substantially all of the beneficial use of the property.

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

8 32.10 (2) This section does not apply to the failure to act on the part of a person
9 possessing the power of condemnation or to any action taken by such a person that
10 is a reasonable response to an obligation required by state or federal law.

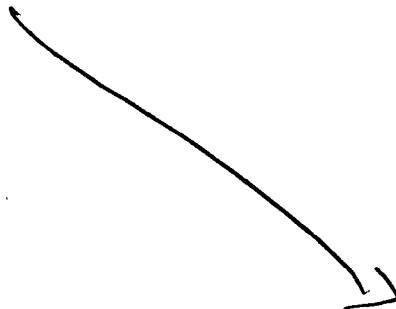
11 SECTION 5. 32.10 (6) of the statutes is created to read:

12 32.10 (6) If the court determines that the defendant has taken the property of
13 the plaintiff under sub. (1) ~~(b) or (c)~~ (c) without exercising the power of condemnation,
14 the court shall do one of the following:

15 (a) Treat the matter as described in sub. (5).

16 (b) Declare the defendant's action void with respect to the property and order
17 the defendant to pay the plaintiff any damages resulting from the taking.

18 ~~(b) or (c)~~



Nonstat File Sequence:

INITIAL APPLICABILITY

- 1. In the component bar:
 For the action phrase, execute: create → action: → *NS: → inappl
 For the budget action phrase, execute: create → action: → *NS: → 93XX
 For the text, execute: create → text: → *NS: → inappl
- 2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, for the budget, fill in the 9300 department code; and fill in "___" or "()" only if a "frozen" number is needed.

~~SECTION # [93]. Initial applicability;

 (#1) ()
 The treatment of sections ..

 of the statutes
 first applies to~~

- 1. In the component bar:
 For the action phrase, execute: create → action: → *NS: → inappl
 For the text, execute: create → text: → *NS: → inappl
- 2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "___" or "()" only if a "frozen" number is needed.

SECTION # ____ . Initial applicability,

 (#1) () This act first ap-
 plies to ... takings that occur on the effective
 date of this subsection.

(End)

2-24

§ (a) The physical ^{confiscation} confiscation of
= property by a person possessing the
power of eminent domain

ANALYSIS

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 ~~expressly or~~ has not exercised its power (and has not, therefore, ^{compensated} compensated the property owner), the owner may commence ~~an~~ an inverse condemnation action against the condemnor. If the property owner is successful, the court may order the condemnor to compel the condemnor to acquire the owner's interest in the affected property, resulting in compensation being paid by the condemnor to the owner.

If currently, ~~a part of 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 ~~property~~ the taking of property without just compensation. ☺

~~This bill makes several changes to the inverse condemnation law:~~

~~1. The bill allows all actions alleging the taking of property by a condemnor who has not exercised the power of condemnation to be brought under the inverse condemnation statute.~~

1. The bill provides that an action ^{includes} ~~includes~~ in the definition of
§ This bill ~~defines~~ "taking," for the

purpose of inverse condemnation actions, an

~~occupancy~~ not only occupancy but also

the following:

§ 1. The physical confiscation of
= property by a person possessing the power
of condemnation
of ~~eminent domain~~, 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%.

§ This change allows all ^{three} types
= of actions to ^{be} brought under the
~~inverse~~ ^{inverse} condemnation law.

§ The bill also provides that if the



1999 BILL

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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 compel 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.

inverse

Finally, the bill reduces from six years to three years the statute of limitations applicable to increase 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:

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

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

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

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

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

BILL

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.~~

1 4 **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.

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 12/22/1999

To: Representative Albers

Relating to LRB drafting number: LIB-3683 / 2

Topic

Condemnation proceedings initiated by property owner

Subject(s)

Eminent Domain - miscellaneous

1. **JACKET** the draft for introduction



in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**, See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Peter R. Grant, Managing Attorney
Telephone: (608) 267-3362