# 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:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Condemnation proceedings initiated by property owner

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**Instructions:**

See Attached

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**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Reauired |
|---|---|---|---|---|---|---|---|
| /? | 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 | |

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|---|---|---|---|---|---|---|---|

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)

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Reauired |
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**<END>**

# 1999 DRAFTING REQUEST

## Bill

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Identical to LRB:

For: **Sheryl Albers (608) 2664531**

By/Representing:

This file may be shown to any legislator: NO

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May Contact:

Alt. Drafters:

Subject: **Eminent Domain - miscellaneous**

Extra Copies:

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**Pre Topic:**

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**Topic:**

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**Instructions:**

See Attached

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| /1 | grantpr 12/20/1999 | wjackson 12/21/1999 | martykr 12/21/1999 | _____ _____ | lrb-docadmin 1212111999 | | S&L |
| /2 | grantpr 12/22/1999 | wjackson 12/22/1999 | kfollet 1212211999 | _____ _____ | lrb-docadmin 12/22/1999 | | |

# 1999 DRAFTING REQUEST

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By/Representing:

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May Contact:

Alt. Drafters:

Subject: **Eminent Domain - miscellaneous**

Extra Copies:

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**Pre Topic:**

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**Topic:**

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**Instructions:**

See Attached

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**Drafting History:**

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|---|---|---|---|---|---|---|---|
| I? | grantpr 10/18/1999 | wjackson 10/18/1999 | | _____ _____ | | | S&L |
| /P1 | | | martykr 10/19/1999 | _____ _____ | lrb-docadmin 10/19/1999 | | S&L |
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FE Sent For: /2 12/22 WLJ Kjf 12/22 Kjf/kjf 12/22

<END>

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By/Representing:

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Drafter: **grantpr**

May Contact:

Alt. Drafters:

Subject: **Eminent Domain - miscellaneous**

Extra Copies:

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**Pre Topic:**

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**Topic:**

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**Instructions:**

See Attached

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**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
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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 | | |

Km 12/21 Km 12/21

FE Sent For:

<END>

# 1999 DRAFTING REQUEST

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Wanted: **As time permits**

Identical to LRB:

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By/Representing:

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May Contact:

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Subject: **Eminent Domain - miscellaneous**

Extra Copies:

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**Topic:**

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**Instructions:**

See Attached

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**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Reauired |
|---|---|---|---|---|---|---|---|
| /? | grantpr | /pl wlj 10/18 | km 10/19 | lz 10/19 kjn | | | |

FE Sent For:

**<END>**

Sheryl Albers

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.

Office: P.O. Box 8952 . State Capitol . Madison, WI 53708-8952 . (608) 266-8531
Home: S6896 Seeley Creek Road . Loganville, WI 53943 . (606) 727-5084

# 1999 Takings Legislation

# (Final Draft - 29 Sep 99)

**AN ACT** *to amend* 32.10; and *to create 32.10* (l), 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 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

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:

? person possessing power to condemn ?

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

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:

poss power of condemnation

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.

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.

**SECTION 5. Effective date.**

prop difference (note 'on whole')

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

see 1367

condemn prop
prop if physical taking
-m-

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

(2) 32.10 (1) 1. : isn't this circular ?

i.e. doesn't it merely say "a taking is an action that requires compensation because it's a taking" ?
also, definition of "quitel unit" ?

(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 "quitel unit" ?
(note there other entities besides governments have em. dom. power)

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

note current law (5) says if occupy w/o st to do so, you've lost it to taken w/o right.
If taken w/o st to do so, why shd we assume

that π does not question that at ?

**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 later 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:

renumbered 32.10 (3) and

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

(B) + (No CS)

32.10 (B) (3)

(title)

**32.10 ~~Condemnation proceedings~~ PROCEEDINGS instituted by property owner.** 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~~ institute ~~condemnation~~ proceedings, ~~shall present~~ under this section by filing a verified petition ~~to~~ with the circuit ~~judge~~ court of the county ~~wherein~~ in which the ~~land~~ property is situated ~~asking that such proceedings be commenced~~.

(B) ¶ (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 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~~ petitioner ~~as~~ shall be the plaintiff and the ~~occupying~~ person ~~as~~ alleged to have taken the property shall be 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) (B) If the court determines that the defendant ~~is occupying such~~ has taken the property of the plaintiff under sub. (1)(a) 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~~ offer 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. # GR. 32.10(1)

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

¶ (a) The occupation of ~~a~~ ~~possessions~~ property by a person possessing the power of 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 possessing the power of condemnation that deprives a property owner of all or ~~a~~ substantially all of the beneficial use of the property.

~~"Action" does not include the failure to act.~~

¶ SEC ¶. CR; 32.10(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 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 determines that the 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 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 Patronsky 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 ~~those persons~~ you did not not want to limit the options ~~of~~ or remedies of those persons whose property ~~has been~~ is 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 a definition that reiterates the standard ~~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 power and the

exercise of the power of eminent domain.

If (~~you do not the le that is not~~ you do not intend to delineate that line ~~you intent~~ (other than ~~the making it~~ to specify ~~clear~~ that a certain reduction in fair market value ~~is~~ constitutes the exercise of the power of eminent domain), then you may wish to 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 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.

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~~ 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 action under art I sec. 13.

need initial app provision? 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 ofeminent 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

# State of Wisconsin
## 1999 - 2000 LEGISLATURE

LRB-3683/~~P1~~ I
PG:wlj:km

~~PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION~~

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

**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 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~~, shall present~~ 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 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~~ against which ~~the proceedings are instituted.~~ The petitioner ~~as~~ shall be the plaintiff and the ~~occupying~~ person as alleged to have taken the property shall be 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~~ has taken the property of the plaintiff under sub. (1)(a) or (b) without ~~having the right to do so~~ exercising ~~the power of condemnation~~, 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 offer and assuming the plaintiff is not questioning the right of the defendant to condemn the property se ~~occupied~~.

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

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

2-24

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

(c) ~~(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%.

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

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

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

**SECTION** 5. 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 under sub. (1) (b) or (c) without exercising the power of condemnation, the court shall do one of the following:

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

(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)

1999

Nonstat File Sequence: **E E E**

LRB _____ / _____

_____ : _____ . _____

# 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: → inapplA**
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)

[rev: 6/2/98 1999inappl(fm)]

2-24

4 (a) The physical 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~~ 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's action 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, ~~a~~ 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 ~~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~~

¶ This bill includes in the definition of "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 ~~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 condemnation law.

¶ The bill also provides that if the

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3683/1
PG:wlj:km

# 1999 BILL

Regen

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.

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### *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%.

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 increase condemnation actions.

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

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***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~~

~~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~~ against which the proceedings are instituted. The petitioner ~~as~~ shall be the plaintiff and the ~~occupying~~ person as alleged to have taken the property shall be 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~~ has taken the property of the plaintiff under sub. (1) (a) or (b) without ~~having the right to do so~~ exercising the power of condemnation, 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 offer and assuming the plaintiff is not questioning the right of the defendant to condemn the property ~~so occupied~~.

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

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

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

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

**(c)** 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%.

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

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

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

2 32.10 (6) If the court determines that the defendant has taken the property of
3 the plaintiff under sub. (1) (c) without exercising the power of condemnation, the
4 court shall do one of the following:

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

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

8 **SECTION** 6. 32.10 (7) of the statutes is created to read:

9 32.10 (7) Nothing in this section prohibits, or prescribes the procedure for, an
10 action under article I, section 13, of the constitution.

11 **SECTION 7. Initial applicability.**

12 (1) This act first applies to takings that occur on the effective date of this
13 subsection.

14 **(END)**

**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** X (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