

2005 DRAFTING REQUEST

Bill

Received: 08/31/2004

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Transportation

By/Representing: Carol Buckmaster

This file may be shown to any legislator: NO

Drafter: pgrant

May Contact:

Addl. Drafters:

Subject: Eminent Domain - miscellaneous

Extra Copies: PJH, ARG

Submit via email: YES

Requester's email: Carol.Buckmaster@dot.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Include prorated taxes in condemnation awards NB050730

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>Required</u>
/?	agary 11/24/2004 pgrant 11/24/2004	lkunkel 12/07/2004					S&L
/1			rschluet 12/08/2004		sbasford 12/08/2004	mbarman 01/13/2005	

FE Sent For:

at intro  
2/8

see attached

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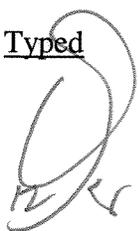
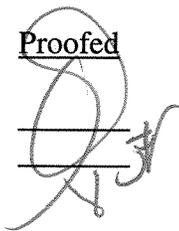
Topic:

Include prorated taxes in condemnation awards NB050730 ✓

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/?	agary	1/1/mk 12/7					

FE Sent For:

<END>

**Gary, Aaron**

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**From:** Buckmaster, Carol  
**Sent:** Thursday, July 22, 2004 9:38 AM  
**To:** Gary, Aaron; Hurley, Peggy  
**Cc:** Trainer, Patricia  
**Subject:** WisDOT NonBudget Legislative Proposals

**Importance:** High

The Wisconsin Department of Transportation would like the following NonBudget proposals drafted:



NB050729.doc



NB050730.doc



NB050731.doc

Thank you for your assistance.

**LEGISLATIVE BUDGET/NON-BUDGET PROPOSAL**  
**2005-2007 BIENNIUM**

Wisconsin Department of Transportation

DT1586 3/2004

**Instructions:** Complete this form for any budget/non-budget legislative initiative for which a Division requests the Secretary's Office (SO) approval. Check the budget box only if the proposal has a fiscal impact on department expenditures or revenue. This form must be signed by the Division Administrator(s). Include this form with your budget submittal materials or return two completed copies to the Office of Policy & Budget (OPB), Attention: Paul Hammer. One copy will be retained by OPB and the other copy provided to the Office of General Counsel. The form is available in the department forms catalog on dotnet.

Short Title of Topic Include Prorated Taxes in Condemnation Awards			
Type of Proposal <input type="checkbox"/> Budget <input checked="" type="checkbox"/> Non-Budget		OGC OFFICE USE ONLY "T" Number Assigned	
		"B" Number Assigned	"NB" Number Assigned NB050730
Date Submitted 4/16/04		Division(s) DTID	
OPB Contact Person Karl Kuecker		Area Code - Telephone Number	
Lead Division Contact Person Rebecca Krugman		Area Code - Telephone Number (608) 266-2362	
OGC Contact Person		Area Code - Telephone Number	
Define Problem Precisely <p>The purpose of this statutory language change is to provide better customer service, cost savings and a sense of current day 'practicality' to the statute language regarding tax proration when acquiring, by condemnation, 49% or less of a property owners land. This change will make our condemnation practices consistent with how governmental agencies treat owners of land that is acquired by deed and how the private sector handles real estate transactions.</p> <p>In small (partial) takings of property by Award of Damage (condemnation), the final resolution of the property tax obligations of the governmental agency (condemnor) and former land owner (condemnee) are frequently time consuming and confusing for the land owner and require an inordinate amount of administrative effort and cost on the part of the condemning agency to resolve what often are small financial obligations.</p> <p>The process for partial acquisition by Award of Damage, under current law, requires that the prorated, current real estate tax obligation of the land owner be subtracted from the overall Award payment. At year's end, the owner receives the tax bill for both his/her remaining property and the portion of the property that was awarded to the State under eminent domain law. The land owner must then pay the entire tax bill. In order to recover his/her prorated share of the condemned portion (amount currently withheld by DOT) as well as the State's prorated obligation, the owner must prepare, file and pursue a claim against the condemning agency. Interest on the withheld amount is not paid to the land owner.</p> <p>The original intent of the law, we believe, was to protect the State from a condemned owner who may default on his/her share of the taxes. The statutory requirement of withholding the taxes for all Awards and then processing the private land owner's claim is time consuming and a nuisance for both the agency and the land owner.</p> <p>The existing law should be reformed to give governmental agencies the option to follow the same standard practice that is currently used in the resolution of property tax obligations for both: (1) partial governmental takings acquired by negotiated settlement and (2) partial real estate transactions in the private sector. If the major interest holder is the private land owner, the law should allow the governmental agency the option of adding the State's pro rata share of takes to the Award payment and have the private owner pay the entire tax bill at year's end. This would eliminated the administrative cost and red tape associated with withholding a prorated tax amount at the time of taking and then forcing the owner to pursue a claim to recover their own money.</p> <p>In most partial acquisitions by Award, the agency only acquires a small percentage of the whole property. The private land owner continues to be the major interest holder in the remaining property. In such cases, the risk of tax default is minimal. In the majority of cases, agencies would elect to pay the state's tax obligation with the award and be done with the whole transaction.</p> <p>An agency may still chose to withhold taxes if: (1) the Assessor creates a separate tax parcel when the Award is</p>			

recorded, (2) the owner has a history of tax delinquencies or financial difficulties, (3) the agency is acquiring the major percentage of the whole property, (4) the partial acquisition involves large tax dollar obligations or (5) the agency is aware of a pending change in ownership.

Description of Proposed Change

Modify s32.05(7) to allow WisDOT, under certain circumstances to include in the award of damages for property taken their prorated share of the property taxes due for the year. This would allow the former landowner to satisfy the year's tax bill and not have to file to receive a refund from the condemnor. Under current law, the process for partial acquisition by Award of Damage requires that the prorated current real estate tax obligation of the land owner be subtracted from the overall Award payment. At the end of the year, the owner receives the tax bill for both his/her remaining property and the portion of the property that was awarded to the State under eminent domain law. The land owner must then pay the entire tax bill and file a claim against the condemning agency to recover the prorated taxes withheld from the Award payment. No interest is paid on the amount withheld.

Provide the option to include a credit in the condemnee's Award payment (equal to the State's pro rata tax obligation for the property being acquired) when the condemnee is the major interest holder in the property described in the year-end tax bill.

The following is current practice according to statute (using an example): A governmental agency (Agency) acquires by condemnation 0.10 acres from a one acre site. A tax proration is calculated and the Agency must deduct the Owners (private property owner) share of taxes from the acquisition payment (what the agency pays the owner for the 0.10 acres of land). At the end of the year, the tax bill goes to the Owner since they are still the major interest holder in that property. The Owner must then send a letter of request to the Agency asking for the Agency's share of the property taxes and asking the Agency to reimburse them for their share of the 0.10 acres taxes that we had withheld so they can pay that years tax bill.

A revised optional proposal would be as follows: Agency acquired the 0.10 acres and calculates the taxes. The Agency's share of the taxes for that year are added to the Owners acquisition payment. At the end of the year, the Owner (the major interest holder), receives the tax bill and pays the tax liability. Note: The proposed language still allows the Agency to use the "withholding" practice if the Agency feels it is in their best interest (i.e. a risk that the Owner may default on their tax obligation, or a change in ownership is anticipated).

Justification for Change

Changing this law would ease the administrative burden on both WisDOT and land owners, reduce confusion and red tape, and improve customer service to land owners.

The actual direct "cost" savings to governmental agencies as a whole is estimated to be \$1400/year. This estimate is based on the assumption that DTID real estate bureaus are acquiring an average of 125 partial acquisitions by Award per year and local governments are acquiring an average of 300 per year. Excluding the cost of employee time, it is estimated that the cost to process a check (paper, printing, computer usage, etc.) is about \$3 per check plus postage.

The major benefit of this change is not in the cost savings to governmental agencies or even the reduction of staff time; less than 500 hours per year. The most important result of this legislative revision would be the improved customer service to private land owners. Currently, after the condemnation process the state with-holds the state's property tax obligation, forcing the owner to file an administrative claim, adding insult to injury.

In the majority of cases, the proposed change would eliminate the land owners need to submit claims to the department at years end to recover their tax prorations. The current law imposes a "red tape" burden on property owners that is in most cases unnecessary.

Describe any legislative history and related statutory language

In 1997 this issue was originally drafted as a potential amendment to the Budget Adjustment Bill, AB 768, but never made it into the bill. The Legislative Committee discussed this issue and recommended this issue go through the budget process. It has been proposed in several Biennial Budget proposals but has yet been pursued

\_\_\_\_\_  
(Division Administrator Signature)

\_\_\_\_\_  
(Date)

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(Division Administrator Signature)

\_\_\_\_\_  
(Date)

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(Division Administrator Signature)

\_\_\_\_\_  
(Date)

LRB-0069/1  
PG:lmk

1999 BILL

ReGen

1 AN ACT to amend 32.05 (7) (d); and to create 32.05 (7) (e) of the statutes;  
2 relating to: the the payment of property taxes when property is condemned.

**Analysis by the Legislative Reference Bureau**

Under current law, a property owner whose property has been partially condemned for a sewer or transportation facility must pay property taxes in the year of the condemnation for both the condemnee's remaining property and the portion of the property that was awarded to the condemnor. Current law also provides that, in a partial condemnation, the prorated portion of the condemnee's current property tax obligation must be subtracted from the award of compensation for the taking. To recover both the condemnor's and the condemnee's prorated share of property taxes, the condemnee must file a claim with the condemnor.

This bill provides that, if the property owner retains a majority interest in the property after the condemnation, the condemnor may choose not to subtract the condemnee's prorated taxes from the award payment and may include the condemnor's prorated taxes in the award payment, thereby eliminating the need to file a claim with the condemnor.

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 #. 32.05 (7) (d) of the statutes is amended to read:

*the condemnee's*  
the condemnee's

X  
32.05 (7) (d) On or before said date of taking, a check, naming the parties in interest as payees, for the amount of the award less outstanding delinquent tax liens, proportionately allocated as in division in redemption under ss. 74.51 and 75.01 when necessary and less prorated taxes of the same year, if any, likewise proportionately allocated when necessary against the property taken, shall at the option of the condemnor be mailed by certified mail to the owner or one of the owners of record or be deposited with the clerk of the circuit court of the county for the benefit of the persons named in the award. The clerk shall give notice thereof by certified mail to such parties. The persons entitled thereto may receive their proper share of the award by petition to and order of the circuit court of the county. The petition shall be filed with the clerk of the court without fee.

History: 1971 c. 244, 287, 307; 1973 c. 244; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 218, 311, 410, 421; 1977 c. 29, 203, 338; 1977 c. 418 ss. 259, 924 (8m); 1977 c. 438, 440, 447, 449; 1979 c. 310; 1981 c. 282 s. 47; 1981 c. 390 s. 252; 1983 a. 27; 1983 a. 219 ss. 3, 46; 1983 a. 236 s. 13; 1983 a. 249; 1985 a. 29 s. 3200 (51); 1985 a. 135; 1987 a. 378; 1989 a. 31, 89; 1991 a. 32, 39, 316; 1993 a. 246, 263, 301, 453, 491; 1995 a. 417; 1997 a. 184, 282; 1999 a. 32, 65; 1999 a. 150 s. 672; 1999 a. 186; 2003 a. 214.

**BILL**

1 **SECTION 1.** 32.05 (7) (d) of the statutes is amended to read:

2 32.05 (7) (d) On or before said date of taking, a check, naming the parties in  
 3 interest as payees, for the amount of the award less outstanding delinquent tax liens,  
 4 proportionately allocated as in division in redemption under ss. 74.51 and 75.01  
 5 when necessary and less the condemnee's prorated taxes of the same year, if any,  
 6 likewise proportionately allocated when necessary against the property taken, shall  
 7 at the option of the condemnor be mailed by certified mail to the owner or one of the  
 8 owners of record or be deposited with the clerk of the circuit court of the county for  
 9 the benefit of the persons named in the award. The clerk shall give notice thereof  
 10 by certified mail to such parties. The persons entitled thereto may receive their  
 11 proper share of the award by petition to and order of the circuit court of the county.  
 12 ~~The petition shall be filed with the clerk of the court without fee.~~

13 **SECTION 2.** 32.05 (7) (e) of the statutes is created to read:

14 32.05 (7) (e) Notwithstanding par. (d), if the condemnor seeks less than a 50%<sup>o</sup> percent  
 15 interest in the property under sub. (3) (b), the condemnor may choose not to subtract  
 16 the condemnee's prorated taxes of the same year, if any, from the award payment and  
 17 may include the condemnor's prorated taxes of the same year, if any, in the award  
 18 payment. ✓

19 **SECTION 9358. Initial applicability; other.**

20 (1) PRORATED PROPERTY TAXES FOR CERTAIN CONDEMNATIONS. This act first applies  
 21 to jurisdictional offers that are served upon the owner, as specified in section 32.05  
 22 (6) of the statutes, on the effective date of this subsection. ✓

23 (END)

LPS: PS  
Change  
component

## Barman, Mike

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**From:** Grant, Peter  
**Sent:** Thursday, January 13, 2005 8:11 AM  
**To:** Barman, Mike  
**Subject:** FW: WisDOT Draft LRB 0069

-----Original Message-----

**From:** Buckmaster, Carol  
**Sent:** Thursday, January 13, 2005 7:57 AM  
**To:** Grant, Peter  
**Cc:** Trainer, Patricia; Frazier, Carson; Romanski, Randy; Klein, Rose  
**Subject:** WisDOT Draft LRB 0069

Representative Ainsworth has indicated he is willing to introduce LRB 0069 (the payment of property taxes when property is condemned). Please jacket this draft for introduction and forward to Representative Ainsworth.

If you have any questions feel free to contact me. Thank you for your assistance.