



1997 ASSEMBLY BILL 757

February 3, 1998 - Introduced by Representatives ALBERS, JOHNSRUD, SERATTI, KEDZIE, WARD, MUSSER, FREESE, F. LASEE and HARSDORF, cosponsored by Senators DRZEWIECKI and DARLING. Referred to Joint survey committee on Tax Exemptions.

1 **AN ACT to amend** 70.05 (5) (a) 1m.; and **to create** 16.25, 70.097, 70.11 (38) and
2 (39) and 799.015 of the statutes; **relating to:** property taxation of land adjusted
3 in value by state or local laws, small claims actions to recover property taxes
4 paid and lists of easements granted with respect to real property.

Analysis by the Legislative Reference Bureau

This bill requires parcels of property that include property that has no economically viable use because of restrictions on the use of the property that are imposed by state or local laws to be entered on the property tax assessment roll separately from the rest of the original parcel. The bill exempts from the property tax those parcels that are not economically viable and also certain wetlands.

The bill also requires the department of administration (DOA) to keep a list of easements and requires the register of deeds of each county to report to DOA all of the information that DOA needs to compile that list.

This bill allows the owner of real property to commence an action in small claims court for damages to the value of real property resulting from the adoption of an ordinance or resolution. The plaintiff under this bill, is required to submit an appraisal of the real property to the court. The court may order the county or municipality to submit an appraisal of the real property. Under the bill, the action is dismissed if the plaintiff fails to provide the appraisal. The bill requires the court to order the payment of the amount demanded by the plaintiff if the county or municipality fails to provide the appraisal. If the court determines that the county or municipality fails to demonstrate that the adopted ordinance or resolution

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provides a public benefit, the bill requires the court to determine the value of the real property involved in the action. The bill requires the court to determine the taxes due on the real property based on the court's valuation of the property, compare those taxes to the taxes the plaintiff paid and issue a judgment. If the court issues a judgment for the plaintiff, and the county or municipality fails to pay the judgment within 45 days after the court order is final, the bill requires the court to order the county or municipality to pay 3 times the amount of the original judgment.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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.** 16.25 of the statutes is created to read:

2 **16.25 Record of governmental easements.** The department, in cooperation
3 with the department of revenue, shall annually compile a list of all easements
4 created during the previous year that are held by a governmental unit, that impose
5 a restriction on land use and that have been recorded in the office of the county
6 register of deeds. The list shall categorize the governmental unit holding the
7 easement, the class of property, as defined in s. 70.05 (5) (a) 1m., that is subject to
8 the easement, the rights acquired under the easement, the amount of property
9 subject to the easement and the amount paid for the easement. The department of
10 administration shall require the register of deeds of each county to annually report
11 all information required under this section with respect to easements granted and
12 recorded in the county. The department shall sell the list for the cost of copying it
13 to any person requesting a copy of the list.

14 **SECTION 2.** 70.05 (5) (a) 1m. of the statutes is amended to read:

15 70.05 (5) (a) 1m. "Class of property" means residential under s. 70.32 (2) (a) 1.;
16 commercial under s. 70.32 (2) (a) 2.; personal property; or the sum of swamp or waste

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1 under s. 70.32 (2) (a) 5., productive forest land under s. 70.32 (2) (a) 6., property that
2 is exempt under s. 70.11 (39) and other under s. 70.32 (2) (a) 7.

3 **SECTION 3.** 70.097 of the statutes is created to read:

4 **70.097 Division of parcels on roll.** If a portion of a parcel of taxable property
5 has no economically viable use because of restrictions on its use that are imposed by
6 state or local laws, that portion and the remainder of the original parcel shall be
7 entered separately on the assessment roll.

8 **SECTION 4.** 70.11 (38) and (39) of the statutes are created to read:

9 **70.11 (38) WETLANDS.** Wetlands subject to ordinances adopted under s. 59.692,
10 61.351 or 62.231.

11 **(39) ECONOMICALLY UNVIABLE PROPERTY.** A parcel of property that, under s.
12 70.097, is entered separately on the assessment roll because it has no economically
13 viable use because of restrictions on the use of the property that are imposed by state
14 or local laws.

15 **SECTION 5.** 799.015 of the statutes is created to read:

16 **799.015 Action for change in the value of real property.** (1) In this
17 section:

18 (a) "Certified appraisal" means an appraisal conducted by an appraiser
19 certified under s. 458.06.

20 (b) "Municipality" means a city, village or town.

21 **(2)** The owner of private real property may commence an action under this
22 chapter against a county or municipality to determine if the adoption of an ordinance
23 or resolution by that county or municipality affects the use of the real property and
24 changes the value of the real property.

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1 **(3)** An action under this section shall be commenced within 120 days after the
2 complainant knew or should have known that the ordinance or resolution changed
3 the value of the real property, or be barred. The methods by which the county or
4 municipality gives notice and the information provided in the notice regarding the
5 adoption of an ordinance or resolution are evidence of the complainant's knowledge
6 or opportunity to know of the effect of the ordinance or resolution.

7 **(4)** This section may be used only with respect to a whole parcel of land as
8 assessed for the purpose of property taxation. However, if the taxation district has
9 combined separate parcels of land into a single parcel of land for purposes of property
10 taxation within 5 years prior to the date on which a complaint is filed, this section
11 may be used with respect to any single parcel of land that existed during that 5-year
12 period.

13 **(5)** A plaintiff in an action under this section shall present evidence, including
14 a certified appraisal of the real property affected by the ordinance or resolution,
15 showing that the ordinance or resolution affects the use of the real property and has
16 changed the value of the real property. The certified appraisal, to be admissible,
17 must have been conducted before or within 90 days after the action is commenced.
18 If the plaintiff does not submit the certified appraisal to the court as required, the
19 court shall dismiss the action.

20 **(6)** The court may order the county or municipality to obtain an additional
21 appraisal of the real property involved in an action under this section. If the county
22 or municipality does not submit the ordered appraisal to the court within 30 days
23 after being ordered to do so, the court shall order the county or municipality to pay
24 the plaintiff the amount of damages specified in the complaint, including interest
25 calculated from the effective date of the ordinance or resolution. The county or

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1 municipality shall have the appraisal completed in the manner specified in the
2 Wisconsin property assessment manual distributed under s. 73.03 (2a).

3 (7) If the court determines that the county or municipality adopted the
4 ordinance or resolution involved in the action in order to provide a public benefit, but
5 that the county or municipality has failed to demonstrate to the court that the
6 ordinance or resolution involved in the action will provide that public benefit, the
7 court shall determine the value of the real property. Any findings of fact, statements
8 of intent, legislative history or documents related to and contemporaneous with the
9 adoption of the ordinance or resolution are evidence of the public benefit intended
10 by the ordinance or resolution.

11 (8) The court shall adjust the value of the real property determined under sub.
12 (7) to reflect the most current assessment ratio of the taxation district for the class
13 of property which includes the real property involved in the action. The court shall
14 compute the amount of property tax that would have been levied on this adjusted
15 value of the real property, as determined by the net tax rate of the county or
16 municipality that was in effect for the year during which the ordinance or resolution
17 was adopted. If the amount computed is less than the amount of tax the plaintiff
18 paid, the court shall render judgment for the plaintiff in the amount of the difference,
19 including interest and any penalty computed at the rate under s. 74.47 and shall
20 order the county or municipality to pay the judgment within 45 days after the court
21 order is final. If the amount computed is greater than the amount of tax the plaintiff
22 paid, the court shall render judgment for the county or municipality in the amount
23 of the difference. If the county or municipality is required to make a payment to the
24 plaintiff and does not do so within 45 days after the court order is final, the court,

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1 upon the plaintiff's motion, shall order the county or municipality to pay the plaintiff
2 3 times the amount of the original judgment.

3 (9) The county or municipal assessor shall consider any judgment entered
4 under sub. (8) in the next subsequent assessment of the real property under s. 70.10
5 conducted after the assessment is entered. The plaintiff may submit a complaint to
6 the department of revenue if an assessor fails to comply with this subsection. The
7 department of revenue may file a complaint under s. 73.06 (4) if it determines that
8 an assessor has failed to comply with this subsection.

9 **SECTION 6. Initial applicability.**

10 (1) The treatment of section 16.25 of the statutes first applies to easements
11 created 6 months after the effective date of this subsection.

12 **SECTION 7. Effective dates.** This act takes effect on the day after publication,
13 except as follows:

14 (1) PROPERTY TAX ASSESSMENT. The treatment of sections 70.05 (5) (a) 1m.,
15 70.097 and 70.11 (38) and (39) of the statutes takes effect on the January 1 after
16 publication.

17 (END)