

1999 DRAFTING REQUEST

Bill

Received: **11/24/98**

Received By: **grantpr**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-1039**

By/Representing: **Etzler**

This file may be shown to any legislator: **NO**

Drafter: **grantpr**

May Contact:

Alt. Drafters:

Subject: **Eminent Domain - miscellaneous**

Extra Copies: **PEN**

Topic:

DOA:.....Etzler - Include condemnee's share of property taxes in condemnation award

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>
/?	grantpr 11/24/98	gilfokm 11/24/98		_____			S&L
/1			lpaasch 11/25/98	_____	lrb_docadmin 11/25/98		S&L
/2	grantpr 01/8/99	gilfokm 01/8/99	jfrantze 01/11/99	_____	lrb_docadmin 01/11/99		

FE Sent For:

<END>

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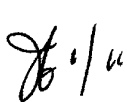


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/?	grantpr 11/24/98	gilfokm 11/24/98		_____			S&L
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FE Sent For:

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DoA: Etzler

**Department of Transportation
1999-2001 Biennial Budget Request
STATUTORY MODIFICATIONS**

DIN NUMBER: 5404

TOPIC: Inclusion of agencies' prorated property taxes in condemnation awards

DESCRIPTION OF CHANGES:

Modify s.32.05 (7), the statute describing how an award of damages (compensation) is made when property is condemned for the improvement of transportation facilities, to provide that if only a portion of a property is taken, and if that portion is less than a 50% interest in the property, the condemnor has the option to either: 1) Withhold from the award the condemnee's prorated share of the property taxes due on the property for the year of the taking (as under current law), or 2) To include in the award the condemnor's (in this case, DOT's) share of the taxes on the property taken, prorated from the date of the taking. Provide that the new option can first apply to property acquisitions covered by jurisdictional offers that have been accepted or rejected or that have been outstanding for 21 days.

JUSTIFICATION:

Under current law, property that is required for a transportation purpose can be taken by condemnation if a sale cannot be negotiated. After an initial offer to purchase is made, the entity seeking to acquire the property must make a formal final offer, called a "jurisdictional offer," prior to commencing condemnation proceedings to acquire the property under the eminent domain law. If the jurisdictional offer is accepted, the acquisition is made by deed, in effect, as the end stage of a negotiation process. But the issuance of a jurisdictional offer also marks the beginning of a 20-day waiting period after which the entity seeking to acquire the property may condemn it even if no response has been received by the property owner or owners. Condemnation may be done earlier if the property owner rejects the jurisdictional offer during the 20-day period. When property is condemned, a compensation payment, known as an "award of damages," is made by the entity taking the property to the owner of the property that is taken.

The person whose property was taken is ultimately entitled to an adjustment in the property taxes due on the entire property for the year, to reflect a proration for only the portion of the year that the person held title to the portion of the property that was taken. However, current law requires the condemnor to subtract from the award of damages the property owner's share of the property taxes for the year. At the end of the year, the former land owner receives a property tax bill for the entire parcel and is responsible for the entire tax bill. The former landowner, having paid the entire tax bill, must prepare, file, and pursue a claim against the condemning entity for a refund of his or her prorated share of the property taxes on the parcel and the share of the year's taxes for which the condemnor is responsible. The landowner does not receive any interest on the money withheld from the award of damages to pay his or her share of the property taxes.

In many cases it would be more efficient if the condemning entity were allowed to add its share of the year's taxes on the condemned parcel to the award of damages. This would allow the two payments to be made at the same time, eliminating the need for the second tax-reimbursement payment. The landowner would then have access to the money needed to satisfy the tax bill on the entire property for the year, without having to complete additional paperwork in order to obtain a refund after paying the taxes due on the property.

This statutory change is proposed in order to provide more efficient government service. The current practice of requiring that in all cases a prorated share of property taxes be withheld from the award of damages is confusing for property owners and adds an inordinate amount of administrative effort for public agencies, to resolve what are often relatively small financial obligations.

If the original intent of the law was to protect public agencies from the risk that a property owner whose land was taken might default on his or her share of the taxes due on that property for the year, this risk is much smaller when less than a 50% interest in the property is condemned. In many partial acquisitions involving an award of damages, the condemning agency is taking only a small percentage of the entire parcel. Since the private property owner continues to have a majority interest in the remaining property, the risk of tax default is presumably not high.

In the majority of partial-acquisition condemnation cases, public agencies would typically prefer to make a single payment including the agency's share of the taxes on the parcel and be done with all transactions relating to the property. However, DOT requests that the language continue to allow condemnors the option of using the process under current law, which may be appropriate if: 1) the assessor creates a separate tax parcel when the condemnation award is recorded, 2) the property owner has a history of tax delinquencies or financial difficulties, 3) the partial acquisition involves large tax obligations, or 4) the condemnor is aware of a pending change in the ownership of the remaining portion of the parcel.

This proposal is appropriate for inclusion in the biennial budget because it affects both the postage budgets and the administrative workload of state agencies. DOT anticipates that the minor efficiencies gained by providing this option for the resolution of property taxes due on property acquired by condemnation will help expedite some real estate transactions needed to deliver a growing highway improvement program. Avoidance of the cost to issue and mail additional checks to the former owners of condemned property to refund to them the cost of property taxes on the property will help to cover within existing funds the expected increase in postage costs.

More important than the relatively minor efficiencies, however, the change will increase the public's satisfaction that state agencies' real estate practices are conducted according to rules of common sense that are similar to those that apply to other real estate transactions. The option proposed is consistent with the standard practice that is currently used to resolve property tax obligations in both: 1) governmental partial property acquisitions by negotiated settlement, and 2) partial sales of real estate between private-sector sellers and buyers. In both cases, a buyer can already include the buyer's share of property taxes for the year in the purchase payment.

1999

Date (time) needed soon

LRB - 1034 / 1

DOA BUDGET DRAFT

PG King

Use the appropriate components and routines developed for bills.

>>FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION<<

AN ACT ... [DO NOT generate catalog]; relating to: the budget.

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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

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

SECTION #.

LRB-1034 /1
PG.

~~1997~~ BILL

head EMINENT DOMAIN

1
2
3

~~AN ACT to amend 32.05 (7) (d); and to create 32.05 (7) (e) of the statutes; relating to: including the condemnor's pro rata share of property taxes in an award payment for a partial condemnation.~~

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:

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.

Prop of Statute

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 no more than a
 15 49% interest in the property under sub. (3) (b), the condemnor may choose not to
 16 subtract the condemnee's prorated taxes of the same year, if any, from the award
 17 payment and may include the condemnor's prorated taxes of the same year, if any,
 18 in the award payment.

9358 ; other

19 **SECTION 3. Initial applicability.**

20 (1) ~~This act~~ first applies to jurisdictional offers that, on the effective date of this
 21 subsection, have either been accepted or have been outstanding for ^{at least} 21 days.

22 (END)

*(15) Prorated property taxes for certain
 condemnations. The
 treatment of section 32.05 (7) (d) of
 the statutes and (e)*

Grant, Peter

From: Etzler, John [John.Etzler@doa.state.wi.us]
Sent: Friday, January 08, 1999 9:30 AM
To: Grant, Peter
Subject: LRB 1034/1

Please make the following changes to LRB 1034/1:

Section 2. 32.05 (7) (e) - The percentage should be changed from "no more than a 49% interest" to "less than a 50% interest".

Page 2, line 22: Insert "...have either been accepted or rejected or have been outstanding for at least 21 days."

If you see any problems with these changes, please let me know. Thanks!



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1034/2
PG:kmg:lp

500m

DOA:.....Etzler - Include condemnee's share of property taxes in
condemnation award

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1

Don't Gen. Cost.
AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

EMINENT DOMAIN

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:

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,
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6 likewise proportionately allocated when necessary against the property taken, shall
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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: *less*

14 32.05 (7) (e) Notwithstanding par. (d), if the condemnor seeks ~~more~~ ^{50%} than a
15 ~~40%~~ interest in the property under sub. (3) (b), the condemnor may choose not to
16 subtract the condemnee's prorated taxes of the same year, if any, from the award
17 payment and may include the condemnor's prorated taxes of the same year, if any,
18 in the award payment.

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

20 (1) PRORATED PROPERTY TAXES FOR CERTAIN CONDEMNATIONS. The treatment of
21 section 32.05 (7) (d) and (e) of the statutes first applies to jurisdictional offers that,
22 on the effective date of this subsection, ~~have either been accepted or have been~~
23 ~~outstanding for at least 21 days.~~

24

(END)

are served upon the owner, or as specified in section 32.05 (6) of the statutes



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1034/2
PG:kmg:jf

DOA:.....Etzler - Include condemnee's share of property taxes in
condemnation award

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

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