

2009 DRAFTING REQUEST

Bill

Received: **01/21/2009**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Leah Vukmir (608) 266-9180**

By/Representing: **dean**

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

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Property - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Vukmir@legis.wisconsin.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Objecting to property tax assessments

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>
/?							
/1	jkreye 01/26/2009	jdyer 01/27/2009	jfrantze 01/28/2009	_____	sbasford 01/28/2009	sbasford 01/28/2009	

FE Sent For: **NONE**

<END>

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/?	jkreye	1/27 jld	Jo	_____	_____	_____	_____
			1/28	_____	_____	_____	_____

FE Sent For:

<END>

1-21-09

Dear

Rep. Kubacki

repeal Act 86 (AB550)

objecting to amendments

* ruled unconstitutional by Judge DiMotto

in Milwaukee City



2007 Oct 86



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Milwaukee property assessment ordinance ruled unconstitutional

By [Marie Rohde](#) of the Journal Sentinel

Posted: Jan. 20, 2009

In a case being watched closely by municipalities around the state, a judge ruled Tuesday that a state law that prevented Milwaukee property owners from getting full court review of disputed assessments is unconstitutional.

In March 2008, the Legislature passed a law allowing municipalities to adopt ordinances that would prevent property owners who challenge assessments from getting a full-blown court trial if they appealed boards of review decisions. Within weeks, Milwaukee and a few other communities adopted such ordinances.

The law allows property owners to seek a review of an assessment but does not permit a new trial on all the issues.

Metropolitan Associates, which owns 14 apartment buildings in Milwaukee, challenged the law, and Milwaukee County Circuit Judge Jean DiMotto made Tuesday's ruling.

DiMotto, in her ruling, said the law created "favored" and "disfavored" classes by allowing municipalities to enact ordinances that limit taxpayers' rights to the courts.

"Saving money is a laudable goal," DiMotto said. "But not when it's done in a way that deprives some citizens of the equal protection of the law."

Alan Marcuvitz, a lawyer for Metropolitan Associates, noted that the city had lobbied the Legislature for the change.

In 2001, the Wisconsin Supreme Court had ruled another law unconstitutional that had excluded city property owners from getting full trials in property disputes, but allowed them for property owners in every other municipality in the state.

Deputy City Attorney Vincent D. Moschella argued that while the new law does not allow for a full trial on assessment issues, it allows property owners protections. For example, if a property owner believed that an assessment was unfair and the board of review had refused to let the property owner present evidence, the court could order the board to consider the evidence.

Moschella argued that allowing property owners to have full trials before a judge on every assessment would be too costly.

Stanley Kritzik, a principal with Metropolitan Associates, said that if Moschella's argument were accepted, property owners would have to prepare every appeal before the board of review as if it were a trial. That would be unduly expensive, he said, because most disputes are resolved without litigation.

Moschella said the city would weigh its options before deciding whether to appeal DiMotto's decision.

"It's quite possible that we may ask the Legislature for changes," he said.

Find this article at:

<http://www.jsonline.com/news/milwaukee/37904964.html>

Check the box to include the list of links referenced in the article.



JK: a:....
JLd

2009 BILL

in 1-26-09
500M

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Gen

1 AN ACT ...; relating to: the extension for objecting to property tax assessments. ✓

Analysis by the Legislative Reference Bureau

Under current law, pursuant to 2007 Wisconsin Act 86, the taxation district board of review (board) must grant a taxpayer a 60-day extension for a hearing of the taxpayer's objection to a changed assessment, if the taxation district has enacted an ordinance authorizing such extensions and if the taxpayer submits a request for the extension along with the objection and payment of a \$100 fee. In addition, if the taxation district has enacted an ordinance authorizing extensions, each taxpayer who submits an objection, regardless of whether the taxpayer has requested an extension, and the assessor must present to the board all evidence, as specified by the Department of Revenue in its assessment manual, to support their respective positions related to the assessment. At least 10 days before the hearing on the objection, the taxpayer and the assessor must simultaneously exchange all evidence that each one will present at the hearing. *

Under current law, if the taxpayer appeals the board's decision to the court and the court finds an error in the board's proceedings that void the assessment, the court shall remand the assessment to the board to determine the assessment based on the court's order. If the taxpayer challenges the board's value determination, the court presumes that the board's valuation is correct, except that the presumption may be rebutted by a sufficient showing by the taxpayer that the valuation is incorrect. If the presumption is rebutted, the court determines the assessment based on the record before the board, except that the court may consider evidence that was not available at the time of the hearing before the board or that the board refused to consider.

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In January 2009, a Milwaukee county court held that the ordinance and objection provisions of 2007 Wisconsin Act 86 were unconstitutional because those provisions prevented some property owners from getting a full court review of disputed assessments. This bill eliminates the changes made by 2007 Wisconsin Act 86 related to objecting to property tax assessments. *

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

1 **SECTION 1.** 70.47 (7) (c) of the statutes is repealed.

2 **SECTION 2.** 70.47 (8) (d) of the statutes is amended to read:

3 70.47 (8) (d) It may and upon request of either the assessor or the objector shall
4 compel the attendance of witnesses for hearing, except objectors who may testify by
5 telephone, and the production of all books, inventories, appraisals, documents and
6 other data which may throw light upon the value of property, and, with regard to an
7 objection that is subject to sub. (7) (c) or (16) (e), may, on a showing of good cause,
8 compel the attendance of witnesses for depositions.

History: 1973 c. 90; 1975 c. 151, 199, 427; 1977 c. 29 ss. 755, 1647 (8); 1977 c. 273; 1977 c. 300 ss. 2, 8; 1977 c. 414; 1979 c. 34 ss. 878 to 880, 2102 (46) (b); 1979 c. 95, 110, 355; 1981 c. 20, 289; 1983 a. 192, 219, 462; 1985 a. 39; 1985 a. 120 ss. 155, 3202 (46); 1985 a. 188 s. 16; 1987 a. 27, 139, 254, 378, 399; 1989 a. 31; 1991 a. 39, 156, 218, 315, 316; 1993 a. 82, 307; 1997 a. 237, 259, 283; 2001 a. 109; 2005 a. 187; 2007 a. 86.

9 **SECTION 3.** 70.47 (8) (j) of the statutes is repealed.

10 **SECTION 4.** 70.47 (13) of the statutes is amended to read:

11 70.47 (13) REVIEW CERTIORARI. Except as provided in this subsection and in ss.
12 s. 70.85 and 74.37, appeal from the determination of the board of review shall be by
13 an action for certiorari commenced within 90 days after the taxpayer receives the
14 notice under sub. (12). The action shall be given preference. If the court on the appeal
15 finds any error in the proceedings of the board which renders the assessment or the
16 proceedings void, or if the court determines that the board lacked good cause to deny
17 a request for a deposition subpoena, it shall remand the assessment to the board for
18 further proceedings in accordance with the court's determination and retain

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1 jurisdiction of the matter until the board has determined an assessment in
2 accordance with the court's order. For this purpose, if final adjournment of the board
3 occurs prior to the court's decision on the appeal, the court may order the governing
4 body of the assessing authority to reconvene the board. If the appellant challenges
5 ~~the value determination that the board made at a proceeding under sub. (7) (c), the~~
6 ~~court shall presume that the board's valuation is correct, except that the~~
7 ~~presumption may be rebutted by a sufficient showing by the appellant that the~~
8 ~~valuation is incorrect. If the presumption is rebutted, the court shall determine the~~
9 ~~assessment without deference to the board of review and based on the record before~~
10 ~~the board of review, except that the court may consider evidence that was not~~
11 ~~available at the time of the hearing before the board, that the board refused to~~
12 ~~consider, or that the court otherwise determines should be considered in order to~~
13 ~~determine the correct assessment. In the event that an objection to the previous~~
14 ~~year's assessment has not been resolved, the parties may agree that the assessment~~
15 ~~for the previous year shall also apply for the current year and shall be included in~~
16 ~~the court's review of the prior year's assessment without an additional hearing by the~~
17 ~~board.~~ ✓

History: 1973 c. 90; 1975 c. 151, 199, 427; 1977 c. 29 ss. 755, 1647 (8); 1977 c. 273; 1977 c. 300 ss. 2, 8; 1977 c. 414; 1979 c. 34 ss. 878 to 880, 2102 (46) (b); 1979 c. 95, 110, 355; 1981 c. 20, 289; 1983 a. 192, 219, 432; 1985 a. 39; 1985 a. 120 ss. 155, 3202 (46); 1985 a. 188 s. 16; 1987 a. 27, 139, 254, 378, 399; 1989 a. 31; 1991 a. 39, 156, 218, 315, 316; 1993 a. 82, 307; 1997 a. 237, 252, 283; 2001 a. 109; 2005 a. 187; 2007 a. 86.

18 **SECTION 5.** 70.47 (16) (a) of the statutes is amended to read:

19 70.47 (16) (a) In 1st class cities all objections to the amount or valuation of real
20 or personal property shall be first made in writing and filed with the commissioner
21 of assessments on or before the 3rd Monday in May. No person may, in any action
22 or proceeding, question the amount or valuation of real or personal property in the
23 assessment rolls of the city unless objections have been so filed. The board may not
24 waive the requirement that objections be in writing. Persons who own land and

BILL**SECTION 5**

1 improvements to that land may object to the aggregate valuation of that land and
2 improvements to that land, but no person who owns land and improvements to that
3 land may object only to the valuation of that land or only to the valuation of
4 improvements to that land. If the objections have been investigated by a committee
5 of the board of assessors under s. 70.07 (6), the board of review may adopt the
6 recommendation of the committee unless the objector requests or the board orders
7 a hearing. At least 2 days' notice of the time fixed for the hearing shall be given to
8 the objector or attorney and to the city attorney of the city. The provisions of the
9 statutes relating to boards of review not inconsistent with this subsection apply to
10 proceedings before the boards of review of 1st class cities, except that the board need
11 not adjourn until the assessment roll is completed by the commissioner of
12 assessments, as required in s. 70.07 (6), but may immediately hold hearings on
13 objections filed with the commissioner of assessments, and the changes, corrections
14 and determinations made by the board acting within its powers shall be prima facie
15 correct. Appeal from the determination shall be by an action ~~under sub. (13)~~ for
16 certiorari [✓] commenced within 90 days after the taxpayer receives the notice under
17 sub. (12). The action shall be given preference. [✓] ~~If the court on the appeal finds any~~
18 ~~error in the proceedings of the board that renders the assessment or the proceedings~~
19 ~~void or, with regard to an objection that is subject to par. (e),~~ [✓] ~~if the court determines~~
20 ~~that the board lacked good cause to deny a request for a deposition subpoena, it shall~~
21 ~~remand the assessment to the board for further proceedings in accordance with the~~
22 ~~court's determination and retain jurisdiction of the matter until the board has~~
23 ~~determined an assessment in accordance with the court's order. If the appellant~~
24 ~~challenges the value determination that the board made at a proceeding under sub.~~
25 ~~(16) (c),~~ [✓] ~~the court shall presume that the board's valuation is correct, except that the~~

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1 ~~presumption may be rebutted by a sufficient showing by the appellant that the~~
2 ~~valuation is incorrect. If the presumption is rebutted, the court shall determine the~~
3 ~~assessment without deference to the board of review and based on the record before~~
4 ~~the board of review, except that the court may consider evidence that was not~~
5 ~~available at the time of the hearing before the board or that the board refused to~~
6 ~~consider, or that the court otherwise determines should be considered in order to~~
7 ~~determine the correct assessment. In the event that an objection to the previous~~
8 ~~year's assessment has not been resolved, the parties may agree that the assessment~~
9 ~~for the previous year shall also apply for the current year and shall be included in~~
10 ~~the court's review of the prior year's assessment without an additional hearing by the~~
11 ~~board.~~ ✓

History: 1973 c. 90; 1975 c. 151, 199, 427; 1977 c. 29 ss. 755, 1647 (8); 1977 c. 273; 1977 c. 300 ss. 2, 8; 1977 c. 414; 1979 c. 34 ss. 878 to 880, 2102 (46) (b); 1979 c. 95, 110, 355; 1981 c. 20, 289; 1983 a. 192, 219, 442; 1985 a. 39; 1985 a. 120 ss. 155, 3202 (46); 1985 a. 188 s. 16; 1987 a. 27, 139, 254, 378, 399; 1989 a. 31; 1991 a. 39, 156, 218, 315, 316; 1993 a. 82, 307; 1997 a. 237, 250, 283; 2001 a. 109; 2005 a. 187; 2007 a. 86.

12 **SECTION 6.** 70.47 (16) (c) of the statutes is repealed.

13 **SECTION 7.** 73.03 (2a) of the statutes is amended to read:

14 **73.03 (2a)** To prepare and publish, in electronic form and on the Internet,
15 assessment manuals. The manual shall discuss and illustrate accepted assessment
16 methods, techniques and practices with a view to more nearly uniform and more
17 consistent assessments of property at the local level. The manual shall be amended
18 by the department from time to time to reflect advances in the science of assessment,
19 court decisions concerning assessment practices, costs, and statistical and other
20 information considered valuable to local assessors by the department. The manual
21 shall incorporate standards for the assessment of all types of renewable energy
22 resource systems used in this state as soon as such systems are used in sufficient
23 numbers and sufficient data exists to allow the formulation of valid guidelines. The
24 manual shall incorporate standards, which the department of revenue and the state

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SECTION 7

1 historical society of Wisconsin shall develop, for the assessment of nonhistoric
2 property in historic districts and for the assessment of historic property, including
3 but not limited to property that is being preserved or restored; property that is
4 subject to a protective easement, covenant or other restriction for historic
5 preservation purposes; property that is listed in the national register of historic
6 places in Wisconsin or in this state's register of historic places and property that is
7 designated as a historic landmark and is subject to restrictions imposed by a
8 municipality or by a landmarks commission. The manual shall incorporate general
9 guidelines about ways to determine whether property is taxable in part under s.
10 70.1105 and examples of the ways that s. 70.1105 applies in specific situations. The
11 manual shall state that assessors are required to comply with s. 70.32 (1g) and shall
12 suggest procedures for doing so. The manual or a supplement to it shall specify per
13 acre value guidelines for each municipality for various categories of agricultural land
14 based on the income that could be generated from its estimated rental for
15 agricultural use, as defined by rule, and capitalization rates established by rule. The
16 manual shall include guidelines for classifying land as agricultural land, as defined
17 in s. 70.32 (2) (c) 1g., and guidelines for distinguishing between land and
18 improvements to land. The manual shall specify the evidence to be exchanged under
19 ~~s. 70.47 (7) (e) and (16) (e).~~[✓] and [✓](16) (e). The cost of the development, preparation, and Internet
20 publication of the manual and of revisions and amendments to it shall be paid from
21 the appropriation under s. 20.566 (2) (b).

History: 1971 c. 40, 215; 1973 c. 90; 1975 c. 39; 1977 c. 143; 1977 c. 196 s. 130 (7); 1977 c. 313; 1979 c. 34; 1979 c. 110 s. 60 (13); 1979 c. 221, 350; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 275 s. 15 (4); 1983 a. 524; 1983 a. 538 s. 269 (3); 1985 a. 12, 29, 273; 1987 a. 4, 27, 186; 1987 a. 312 s. 17; 1987 a. 328, 378, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 74, 335; 1991 a. 39, 219, 313, 316; 1993 a. 16, 112, 205, 490; 1995 a. 27 ss. 3434g to 3440m, 9145 (1); 1995 a. 209, 233; 1997 a. 27, 35, 191, 237, 252; 1999 a. 9, 31, 185; 2001 a. 16, 44, 104, 107, 109; 2003 a. 33, 127; 2005 a. 25, 259; 2007 a. 20, 86.

22 **SECTION 8.** 74.37 (4) (c) of the statutes is amended to read:

BILL

1 74.37 (4) (c) No claim or action for an excessive assessment may be brought or
2 maintained under this section if the assessment of the property for the same year is
3 contested under s. 70.47 (7) (e), (13), or (16) (e) or 70.85. No assessment may be
4 contested under s. 70.47 (7) (e), (13), or (16) (e) or 70.85 if a claim is brought and
5 maintained under this section based on the same assessment.

6 History: 1987 a. 378; 1989 a. 104; 1993 a. 292p 1995 a. 408; 2007 a. 86.

SECTION 9. 74.37 (4) (d) of the statutes is repealed.

7 **SECTION 10.** 74.37 (5) of the statutes is amended to read:

8 74.37 (5) INTEREST. The amount of a claim filed under sub. (2) or an action
9 commenced under sub. (3) may include interest at the average annual discount rate
10 determined by the last auction of 6-month U.S. treasury bills before the objection per
11 day for the period of time between the time when the tax was due and the date that
12 the claim was paid computed from the date of filing the claim against the taxation
13 district, at the rate of 0.8 percent per month.

14 History: 1987 a. 378; 1989 a. 104; 1993 a. 292p 1995 a. 408; 2007 a. 86.

SECTION 11. Initial applicability.

15 (1) This act first applies retroactively to the property tax assessments as of
16 January 1, 2008.

17 **SECTION 12. Effective date.**

18 (1) This act takes effect retroactively ^{to} on January 1, 2008.

19

(END)

Duerst, Christina

From: Cady, Dean
Sent: Wednesday, January 28, 2009 9:25 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-1684/1 Topic: Objecting to property tax assessments

Please Jacket LRB 09-1684/1 for the ASSEMBLY.