



## 2019 ASSEMBLY BILL 146

March 29, 2019 - Introduced by Representatives BROOKS, STEFFEN, KRUG, TAUCHEN, KERKMAN, QUINN, GUNDRUM, TITTL, EDMING, MURSAU, RODRIGUEZ, SCHRAA, KUGLITSCH, SPIROS, NOVAK, KOLSTE, HINTZ, CROWLEY, ANDERSON, STUCK, SARGENT, SUBECK, DOYLE, GOYKE, ZAMARRIPA, HESSELBEIN, C. TAYLOR, RIEMER, OHNSTAD, SHANKLAND, BILLINGS, NEUBAUER, KATSMA, OTT and SPREITZER, cosponsored by Senators STROEBEL, ROTH, OLSEN, BERNIER, PETROWSKI, MARKLEIN, CARPENTER, KOOYENGA, RINGHAND, MILLER, HANSEN, WIRCH, SHILLING, LARSON, BEWLEY, SMITH, COWLES and LEMAHIEU. Referred to Committee on State Affairs.

- 1     **AN ACT** *to amend* 70.03 (1) and 70.32 (1); and *to create* 70.32 (1b) and 70.32 (1d)  
2             of the statutes; **relating to:** property tax assessments regarding leased  
3             property and assessments based on comparable sales and market segments.

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### *Analysis by the Legislative Reference Bureau*

This bill provides that, for property tax purposes, real property includes any leases, rights, and privileges pertaining to the property, including assets that cannot be taxed separately as real property, but are inextricably intertwined with the real property. The bill also requires real property to be assessed at its highest and best use. Current law requires that real property be assessed at its full value and upon actual view or from the best information that the assessor can obtain from “arm’s-length sales” of comparable property. This bill defines an “arm’s-length sale” as a sale between a willing buyer and willing seller, neither being under compulsion to buy or sell and each being familiar with the attributes of the property sold.

The bill also provides that an assessor may determine the value of leased property by considering the lease provisions and actual rent pertaining to property, if the lease provisions and rent are the result of an “arm’s-length transaction.” The bill defines an “arm’s-length transaction” as an agreement between willing parties, neither being under compulsion to act and each being familiar with the attributes of the property.

The Wisconsin Supreme Court decided in 2008 that a property tax assessment of leased retail property using the income approach must be based on “market rents,” which is what a person would pay to rent the property, based on rentals of similar

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property, as opposed to “contract rents,” which is the amount that the lessee actually paid to rent the property. See, *Walgreen Company v. City of Madison*, 2008 WI 80, 752 N.W.2d 689 (2008). This bill reverses that decision.

The bill also provides that to determine the value of property using generally accepted appraisal methods, an assessor must consider all of the following as comparable to the property being assessed:

1. Sales or rentals of properties exhibiting the same or a similar highest and best use with placement in the same real estate market segment.

2. Sales or rentals of properties that are similar to the property being assessed with regard to age, condition, use, type of construction, location, design, physical features, and economic characteristics.

The bill defines “real estate market segment” to mean a pool of potential buyers and sellers that typically buy or sell properties similar to the property being assessed, including potential buyers who are investors or owner-occupants.

The bill also provides that a property is not comparable to the property being assessed if the seller has placed restrictions on the highest and best use of the property or if the property is dark property and the property being assessed is not dark property. The bill defines “dark property” as property that is vacant or unoccupied beyond the normal period for property in the same real estate market segment.

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.** 70.03 (1) of the statutes is amended to read:

2           70.03 (1) In chs. 70 to 76, 78, and 79, “real property,” “real estate,” and “land”  
3 include not only the land itself but all buildings and, fixtures, improvements thereon,  
4 ~~and all fixtures and, leases,~~ rights, and privileges appertaining thereto, including  
5 assets that cannot be taxed separately as real property, but are inextricably  
6 intertwined with the real property, enable the real property to achieve its highest and  
7 best use, and are transferable to future owners, except as provided in sub. (2) and  
8 except that for the purpose of time-share property, as defined in s. 707.02 (32), real  
9 property does not include recurrent exclusive use and occupancy on a periodic basis  
10 or other rights, including, but not limited to, membership rights, vacation services,

**ASSEMBLY BILL 146****SECTION 1**

1 and club memberships. In this subsection, “lease” means a right in real estate that  
2 is related primarily to the property and not to the labor, skill, or business acumen of  
3 the property owner or tenant. In this subsection, “highest and best use” has the  
4 meaning given in s. 70.32 (1).

5 **SECTION 2.** 70.32 (1) of the statutes is amended to read:

6 70.32 (1) Real property shall be valued by the assessor in the manner specified  
7 in the Wisconsin property assessment manual provided under s. 73.03 (2a) at its  
8 highest and best use from actual view or from the best information that the assessor  
9 can practicably obtain, at the full value which could ordinarily be obtained therefor  
10 at private sale. In determining the value, the assessor shall consider recent  
11 arm’s-length sales of the property to be assessed if according to professionally  
12 acceptable appraisal practices those sales conform to recent arm’s-length sales of  
13 reasonably comparable property; recent arm’s-length sales of reasonably  
14 comparable property; and all factors that, according to professionally acceptable  
15 appraisal practices, affect the value of the property to be assessed. In this subsection,  
16 “arm’s-length sale” means a sale between a willing buyer and willing seller, neither  
17 being under compulsion to buy or sell and each being familiar with the attributes of  
18 the property sold. In this subsection, “highest and best use” means the specific  
19 current use of the property or a higher use for which the property may be used as of  
20 the current assessment date, if the property is marketable for that use and the use  
21 is legally permissible, physically possible, not highly speculative, and financially  
22 feasible and provides the highest net return. When the current use of a property is  
23 the highest and best use of that property, value in the current use equals full market  
24 value. In this subsection, “legally permissible” does not include a conditional use  
25 that has not been granted as of the assessment date or any use that has not received

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1 as of the assessment date all federal, state, or local government approvals, permits,  
2 or licenses that are necessary for the use to occur.

3 **SECTION 3.** 70.32 (1b) of the statutes is created to read:

4 70.32 (1b) In determining the value of real property under sub. (1), the assessor  
5 may consider, as part of the valuation under sub. (1), any lease provisions and actual  
6 rent pertaining to a property and affecting its value, including the lease provisions  
7 and rent associated with a sale and leaseback of the property, if all such lease  
8 provisions and rent are the result of an arm's-length transaction involving persons  
9 who are not related, as provided under section 267 of the Internal Revenue Code for  
10 the year of the transaction. The assessor shall reconcile the results of such  
11 consideration with the professionally acceptable appraisal practices regarding  
12 reasonably comparable sales, the cost approach, and other methods specified in the  
13 Wisconsin property assessment manual provided under s. 73.03 (2a). In this  
14 subsection, an "arm's-length transaction" means an agreement between willing  
15 parties, neither being under compulsion to act and each being familiar with the  
16 attributes of the property.

17 **SECTION 4.** 70.32 (1d) of the statutes is created to read:

18 70.32 (1d) (a) To determine the value of property using generally accepted  
19 appraisal methods, the assessor shall consider all of the following as comparable to  
20 the property being assessed:

21 1. Sales or rentals of properties exhibiting the same or a similar highest and  
22 best use with placement in the same real estate market segment.

23 2. Sales or rentals of properties that are similar to the property being assessed  
24 with regard to age, condition, use, type of construction, location, design, physical  
25 features, and economic characteristics, including similarities in occupancy and the

**ASSEMBLY BILL 146****SECTION 4**

1 the potential to generate rental income. For purposes of this subdivision, such  
2 properties may be found locally, regionally, or nationally.

3 (b) For purposes of par. (a), a property is not comparable if any of the following  
4 applies:

5 1. At or before the time of sale, the seller places any deed restriction on the  
6 property that changes the highest and best use of the property, or prohibits  
7 competition, so that it no longer qualifies as a comparable property under par. (a) 1.  
8 or 2. and the property being assessed lacks such a restriction.

9 2. The property is dark property and the property being assessed is not dark  
10 property. In this subdivision, "dark property" means property that is vacant or  
11 unoccupied beyond the normal period for property in the same real estate market  
12 segment. For purposes of this subdivision, what is considered vacant or unoccupied  
13 beyond the normal period may vary depending on the property location.

14 (c) For purposes of par. (a), "highest and best use" has the meaning given in s.  
15 70.32 (1).

16 (d) For purposes of par. (a), "real estate market segment" means a pool of  
17 potential buyers and sellers that typically buy or sell properties similar to the  
18 property being assessed, including potential buyers who are investors or  
19 owner-occupants. For purposes of this paragraph, and depending on the type of  
20 property being assessed, the pool of potential buyers and sellers may be found locally,  
21 regionally, nationally, or internationally.

22 **SECTION 5. Initial applicability.**

23 (1) This act first applies to the property tax assessments as of January 1, 2020.

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(END)