

1 **AN ACT** *to amend* 16.425 (3), 70.11 (intro.), 70.11 (4), 70.337 (1) (intro.) and (2) and
2 74.11 (1); and *to create* 70.1103 and 70.116 of the statutes; **relating to:** requests for
3 exemption from the property tax for certain residential housing, the use of leasehold
4 income, and payments for municipal services provided to certain tax-exempt
5 residential housing.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Tax Exemptions for Residential Property (Columbus Park).

Revision and Reorganization of s. 70.11 (intro.) and (4), stats.

Under current law, property owned and used exclusively by certain entities specified under s. 70.11 (4), stats., is exempt from the property tax. This draft reorganizes s. 70.11 (4) to make it more readable and to place the types of property that are exempt under that section into separate statutory subdivisions.

This draft also revises the property tax exemption under current s. 70.11 (4) for “property owned by benevolent associations, including benevolent nursing homes and retirement homes for the aged” by organizing property owned by a benevolent association into the following statutory subdivisions:

- a. Nursing homes licensed under s. 50.03.
- b. Community based residential facilities licensed under s. 50.03.
- c. Adult family homes certified under s. 50.032 or licensed under s. 50.033.
- d. Residential care apartment complexes certified under s. 50.034.
- e. Domestic abuse shelters.
- f. Shelters for the homeless, including transitional housing facilities.
- g. Housing for low-income persons that is operated in compliance with Internal Revenue Service Revenue Procedure 96-32.

- h. Property that is used as residential housing that is equally available to any applicant without requiring a showing of the person's income or economic assets.
- i. Residential housing that is not described under items a. through h.
- j. Property that is not residential housing.

Under this reorganization, the tax-exempt status of property owned by a benevolent association is not changed.

Requests for Property Tax Exemptions

Under current law, by March 31 of each even-numbered year, the owner of every parcel of property that is exempt from property taxes under s. 70.11, stats., must file a form with the clerk of the taxation district where the property is located. The form must include the owner's estimate of the fair market value of the property on January 1 of the even-numbered year. The assessor may review the estimate and adjust it if necessary to reflect the correct fair market value. If the form is not received when due, the clerk must send the property owner a notice that the property will be appraised at the owner's expense if a completed form is not received within 30 days. If the form is not received within 30 days, the property must be appraised by either the taxation district assessor or a person hired by the taxation district to conduct the appraisal.

The clerk of each taxation district is required to deliver to the department of revenue (DOR), by July 1 of each even-numbered year, a form on which the clerk estimates the value of all tax-exempt property, classified by type of owner, within the taxation district. DOR uses this information to prepare a document required under s. 16.425, entitled "Summary of Tax Exemption Devices".

Representatives of DOR told the special committee that DOR does not receive all of the statutorily required information from taxation clerks throughout the state for preparation of the "Summary of Tax Exemption Devices". In 2002, 370 of the 1,900 taxation districts in the state did not provide the required information to DOR. DOR also stated that it appears that the value of much tax-exempt property is under reported by the owners of that property. For these reasons, it is difficult for DOR to carry out its statutory duty under s. 16.425 to report on the approximate costs in lost revenue of various tax exemptions. The statute also directs DOR to report on the effectiveness of the tax exemptions in achieving the policy purposes of the tax exemptions.

Under current law, an owner of property that was exempt the previous year is not required to apply for a property tax exemption for the current year. Property is exempt if it was exempt the previous year and the

owner files a form with the assessor. An application is required for property that was not exempt the previous year, but many properties were “grandfathered” in when the requirement to submit an initial application was first established, and therefore, for many exempt properties, no application was ever submitted. For those properties, the taxing jurisdiction has very little information about the property or the activities of the owner claiming the exemption.

The draft requires a benevolent association that owns property described in newly created s. 70.11 (4) (c) 9., stats. (identified as “i. Residential housing that is not described under items a. through h.” in the previous section of this prefatory note), that wishes to claim a property tax exemption for the property to apply for an exemption from the assessor every year. The application must contain information regarding the benevolent activities of the owner and an appraisal of the fair market value of the property. Specifically, by March 1 of each year, the owner of each parcel of property for which the owner wishes to claim an exemption under s. 70.11 (4) (c) 9., as a benevolent association must file with the assessor of the taxation district in which the property is located a request, on a form prepared and approved by DOR, that the property be exempt from property taxes, and the basis for that request. Along with the request, the owner must provide all of the following:

- (a) The name and address of the owner of the property.
- (b) The acreage, legal description, and tax identification number of the property.
- (c) The date of acquisition of the property.
- (d) An appraisal of the fair market value of the property as of a date within 3 years of the request for exemption performed by an appraiser certified under chapter 458 of the statutes.
- (e) A statement indicating the amount of casualty insurance held on any improvements to the property.
- (f) Information regarding the benevolent activities in which the entity intends to engage at the property, including all of the following:
 1. A description of the benevolent activities expected to be carried out at the property by the entity in the year for which the entity is requesting the exemption, including the approximate dollar value of those benevolent activities.
 2. A description of the organizations or individuals who are eligible to be the recipients of benevolent activities of the entity and a statement of

the expected value of the tax exemption to the beneficiaries of the entity's benevolence.

3. A description of the benefits, if any, provided to the members of the community at large by the entity's activity at the property.

(g) A statement indicating whether any portion of the property was leased to another person during the preceding 2 years. If the property was leased, the statement shall identify the portion of the property that was leased, identify the lessee, and describe the ways in which the lease payments were used by the owner of the property.

Upon receipt of a request for exemption, the assessor must determine whether the request includes all the required information. The assessor may not grant an exemption under s. 70.11 (4) (c) 9. unless all of the required information is provided.

For every property granted an exemption under s. 70.11 (4) (c) 9., the clerk of the taxation district must calculate the amount of property tax that would have been collected if the exemption had not been granted. This information must be made available to the public and must be provided to DOR. DOR must include a statewide compilation of this information in the summary of tax exemption devices that it prepares every even-numbered year.

Each entity requesting an exemption must pay a reasonable fee to the taxation district. The governing body of the taxation district establishes the amount of the fee.

Payments for Municipal Services

Under current law, property owned and used exclusively by a "benevolent association" is exempt from the property tax. The statutes do not define "benevolent association".

The draft establishes legislative findings regarding property tax burdens of residential property owners and a legislative determination that a benevolent association should provide payments for services provided to certain residential property owned by a benevolent association and to residents of the property by a municipality. Municipality is defined as a city, village, or town or special purpose district (town sanitary district, metropolitan sewerage district, or public inland lake protection and rehabilitation district).

This draft requires a benevolent association that owns property described in newly created s. 70.11 (4) (c) 9., stats., described above, to pay an amount determined by the municipality as sufficient to defray the costs

of providing municipal services to the property and to residents of the property.

The draft provides that the amount of payment required by a municipality may not exceed the amount that would be levied as the annual tax of the municipality upon the property. The draft provides that the valuation of a property used to determine the amount of payment required may be challenged by the property owner under s. 70.47, stats., as are property valuations for property tax assessments. Payments for municipal services are subject to s. 74.11, stats., which sets forth dates for payments of taxes, special assessments, and special charges.

Use of Leasehold Income

Under current law, if property that is exempt from taxation under s. 70.11 is leased, the property retains its tax exemption only if the owner uses all of the leasehold income for maintenance of the leased property or construction debt retirement of the leased property or both. [s. 70.11 (intro.), stats.] This is commonly referred to as the “rent use” requirement”. As discussed in Staff Brief 04–5, prepared for the special committee, in *Columbus Park Housing Association v. City of Kenosha*, 267 Wis. 2d 59, 761 N.W.2d 633 (2003), the Wisconsin supreme court stated that the rent use requirement applies to tax–exempt entities that lease property as residential housing.

Several persons testifying to the committee stated that many tax–exempt entities that lease property as residential housing currently use leasehold income for purposes that appear not to be permitted under the statute, and that if they were required to comply with the statute, they could face financial difficulties.

The draft provides that leasing any of the types of residential property that are exempt from property tax under the draft does not render the property taxable if the property owner uses all of the lease income to further the benevolent or religious activities of the owner.

1 **SECTION 1.** 16.425 (3) of the statutes is amended to read:

2 16.425 (3) **REPORT ON TAX EXEMPTION DEVICES.** The department of revenue shall, in each
3 even–numbered year on the date prescribed for it by the secretary, furnish to the secretary a
4 report detailing the approximate costs in lost revenue, the policy purposes and to the extent
5 possible, indicators of effectiveness in achieving such purposes, for all state tax exemption
6 devices, including those based on the internal revenue code, in effect at the time of the report.

1 The report need relate only to chs. 71, 76 and 77 tax exemption devices and to property tax
2 exemptions for which reports are required under s. 70.337 and for which a request for
3 exemption is required under s. 70.1103. The report shall be prepared in such a manner as to
4 facilitate the making of comparisons with the information reported in s. 16.46 (1) to (6).

5 **SECTION 2.** 70.11 (intro.) of the statutes is amended to read:

6 **70.11 Property exempted from taxation.** (intro.) The property described in this
7 section is exempted from general property taxes if the property is exempt under sub. (1), (2),
8 (18), (21), (27) or (30); if it was exempt for the previous year and its use, occupancy or
9 ownership did not change in a way that makes it taxable; if the property was taxable for the
10 previous year, the use, occupancy or ownership of the property changed in a way that makes
11 it exempt and its owner, on or before March 1, files with the assessor of the taxation district
12 where the property is located a form that the department of revenue prescribes or if the
13 property did not exist in the previous year and its owner, on or before March 1, files with the
14 assessor of the taxation district where the property is located a form that the department of
15 revenue prescribes. Property owned by a benevolent association described under sub. (4) (c)
16 9. is exempt only if the requirements of s. 70.1103 are met with respect to that property.
17 Leasing a part of the property described in this section does not render it taxable if, except for
18 property described under sub. (4) (c), the lessor uses all of the leasehold income for
19 maintenance of the leased property or construction debt retirement of the leased property, or
20 both, and, except for residential housing, if the lessee would be exempt from taxation under
21 this chapter if it owned the property. Leasing a part of the property described under sub. (4)
22 (c) does not render it taxable if the property owner uses all of the leasehold income to further
23 the benevolent activities of the owner, or, in the case of a church or religious association, to
24 further the activities of the church or association. Any lessor who claims that leased property

1 is exempt from taxation under this chapter shall, upon request by the tax assessor, provide
2 records relating to the lessor's use of the income from the leased property. Property exempted
3 from general property taxes is:

4 **SECTION 3.** 70.11 (4) of the statutes is amended to read:

5 70.11 (4) EDUCATIONAL, RELIGIOUS AND BENEVOLENT INSTITUTIONS; WOMEN'S CLUBS;
6 HISTORICAL SOCIETIES; FRATERNITIES; LIBRARIES. Property owned and used exclusively by
7 educational any of the entities described in this subsection while such property is used not for
8 profit. Property that is exempt from taxation under this subsection and is leased remains
9 exempt from taxation only if, in addition to the requirements specified in the introductory
10 phrase of this section, the lessee does not discriminate on the basis of race. The amount of land
11 exempt under this subsection may not exceed 10 acres of land necessary for location and
12 convenience of buildings, except as provided in par. (b). This subsection does not include
13 property owned by an organization that is organized under s. 185.981 or ch. 611, 613, or 614
14 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service
15 health organization as defined in s. 609.01 (3) or by an organization that is issued a certificate
16 of authority under ch. 618 and that offers a health maintenance organization or a limited
17 service health organization or by any nonstock, nonprofit corporation which services
18 guaranteed student loans for others or on its own account.

19 (a) Educational institutions offering regular courses 6 months in the year; ~~or by~~
20 churches.

21 (b) Churches or religious, ~~educational or benevolent~~ associations, ~~including benevolent~~
22 ~~nursing homes and retirement homes for the aged but not including an organization that is~~
23 ~~organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance~~
24 ~~organization as defined in s. 609.01 (2) or a limited service health organization as defined in~~

1 ~~s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that~~
2 ~~offers a health maintenance organization or a limited service health organization and not~~
3 ~~including property owned by any nonstock, nonprofit corporation which services guaranteed~~
4 ~~student loans for others or on its own account, and also including property owned and used~~
5 ~~for housing for pastors and their ordained assistants, members of religious orders and~~
6 ~~communities, and ordained teachers, whether or not contiguous to and a part of other property~~
7 ~~owned and used by such associations or churches; or by women's.~~ Property owned by
8 churches or religious associations necessary for location and convenience of buildings, used
9 for educational purposes and not for profit, shall not be subject to the 10-acre limitation but
10 shall be subject to a 30-acre limitation.

11 (c) Benevolent associations if the property is any of the following:

12 1. A nursing home licensed under s. 50.03.

13 2. A community based residential facility licensed under s. 50.03.

14 3. An adult family home certified under s. 50.032 or licensed under s. 50.033.

15 4. A residential care apartment complex certified under s. 50.034.

16 5. A domestic abuse shelter.

17 6. A shelter for the homeless, including transitional housing facilities.

18 7. Housing for low-income persons that is operated in compliance with internal
19 revenue service revenue procedure 96-32.

20 8. Residential housing that is equally available to any applicant without requiring a
21 showing of the person's income or economic assets.

22 9. Residential housing that is not described under subds. 1. through 8.

23 (cm) Benevolent associations if the property is not residential housing.

24 (d) Women's clubs; or by domestic,

1 ~~(e) Domestic~~ incorporated historical societies; ~~or by domestic,~~

2 ~~(f) Domestic~~ incorporated, free public library associations; ~~or by fraternal~~

3 ~~(g) Fraternal~~ societies operating under the lodge system (except university, college and
4 high school fraternities and sororities), ~~but not exceeding 10 acres of land necessary for~~
5 ~~location and convenience of buildings while such property is not used for profit. Property~~
6 ~~owned by churches or religious associations necessary for location and convenience of~~
7 ~~buildings, used for educational purposes and not for profit, shall not be subject to the 10-acre~~
8 ~~limitation but shall be subject to a 30-acre limitation. Property that is exempt from taxation~~
9 ~~under this subsection and is leased remains exempt from taxation only if, in addition to the~~
10 ~~requirements specified in the introductory phrase of this section, the lessee does not~~
11 ~~discriminate on the basis of race.~~

12 **SECTION 4.** 70.1103 of the statutes is created to read:

13 **70.1103 Request for exemption; benevolent associations.** (1) By March 1 of each
14 year, the owner of each parcel of property for which the owner wishes to claim an exemption
15 as a benevolent association under s. 70.11 (4) (c) 9. shall file with the assessor of the taxation
16 district in which the property is located a request, on a form prepared and approved by the
17 department of revenue that the property be exempt from property taxes and the basis for that
18 request. Along with the request for exemption, the owner shall provide all of the following:

19 (a) The name and address of the owner of the property.

20 (b) The acreage, legal description, and tax identification number of the property.

21 (c) The date of acquisition of the property.

22 (d) An appraisal of the fair market value of the property as of a date within 3 years of
23 the request for exemption, performed by an appraiser certified under ch. 458.

1 (e) A statement indicating the amount of casualty insurance held on any improvements
2 to the property.

3 (f) Information regarding the benevolent activities in which the organization engages
4 or intends to engage at the property, including all of the following:

5 1. A description of the benevolent activities expected to be carried out at the property
6 by the entity in the year for which the entity is requesting the exemption, including the
7 approximate dollar value of those benevolent activities.

8 2. A description of the organizations or individuals who are eligible to be the recipients
9 of benevolent activities of the entity and a statement of the expected value of the tax exemption
10 to the beneficiaries of the entity's benevolence.

11 3. A description of the benefits, if any, provided to the members of the community at
12 large by the entity's benevolent activity at the property.

13 (g) A statement indicating whether any portion of the property was leased to another
14 person during the preceding 2 years. If the property was leased, the statement shall identify
15 the portion of the property that was leased, identify the lessee and describe the ways in which
16 the lease payments were used by the owner of the property.

17 (2) Upon receipt of a request for exemption under this section, the assessor of the
18 taxation district shall determine whether the request includes all the information required
19 under this section. The assessor of the taxation district may not exempt any parcel of property
20 from the property tax under s. 70.11 (4) (c) unless all of the information required under this
21 section is provided by the entity requesting the exemption with respect to that parcel.

22 (3) For every property granted an exemption under s. 70.11 (4) (c) 9., the clerk of the
23 taxation district shall calculate the amount of property tax that would have been collected from
24 the entity if the exemption had not been granted. This information shall be made available

1 to the public and shall be provided to the department of revenue under s. 70.337 (2). The
2 department of revenue shall include a statewide compilation of this information in the
3 summary of tax exemption devices prepared under s. 16.425.

4 (4) For each property granted an exemption under s. 70.11 (4) (c) 9., the assessor of the
5 taxation district shall forward the information under sub. (1) (d) and (e) to the clerk of the
6 taxation district.

7 (5) Each entity requesting an exemption under this section shall pay a reasonable
8 application fee to the taxation district. The amount of the fee shall be established by the
9 governing body of the taxation district.

10 **SECTION 5.** 70.116 of the statutes is created to read:

11 **70.116 Payments for municipal services; certain benevolent associations. (1)**

12 FINDINGS. Recognizing that the cost of property taxes is increasingly borne by residential
13 property owners, and that the property tax burden causes a financial hardship to some
14 residential property owners; recognizing that recently, benevolent associations have increased
15 development of residential property from which the associations exclude persons who do not
16 meet minimal financial standards set by the association, and that such property is exempt from
17 the property tax, although municipalities are nevertheless required to provide municipal
18 services to those properties and residents of those properties; and recognizing that numerous
19 statutes require payments for municipal services by tax-exempt entities other than benevolent
20 associations; the legislature finds and determines that benevolent associations should provide
21 payments for municipal services provided to residential property owned by the association
22 that is not recognized as primarily charitable in nature or serving a population with special and
23 significant needs for medical, nursing, mental health, or other similar services.

24 (2) DEFINITIONS. In this section:

1 (a) "Municipality" means a city, village, or town or special purpose district under
2 s.79.095 (1) (bm).

3 (b) "Municipal services" means solid waste management, as defined in s. 287.01 (13),
4 law enforcement and fire protection, street construction, repair and maintenance and all
5 eligible cost items under s. 86.303 (6) (a) through (c), traffic control, street lighting and snow
6 and ice removal and all eligible cost items under s. 86.303 (6) (a) through (c), public library
7 services, and any administrative or debt service costs associated with the provision of these
8 services.

9 (3) PAYMENTS. Except as provided in sub. (3), on or before January 31 of each year, the
10 owner of any property described in s. 70.11 (4) (c) 9. of the statutes shall pay an amount
11 determined by the municipality as sufficient to defray the costs, including administrative costs
12 and debt service costs, of providing municipal services to the property and to residents of the
13 property, if any.

14 (4) AMOUNT; ADMINISTRATION. The amount paid under this section may not exceed the
15 amount that would be levied as the annual tax of the municipality upon the property. The
16 valuation of a property used to determine the amount of payment required under this section
17 may be challenged under s. 70.47, stats. Payments under this section are subject to s. 74.11,
18 stats.

19 **SECTION 6.** 70.337 (1) (intro.) and (2) of the statutes are amended to read:

20 70.337 (1) (intro.) By March 31 of each even-numbered year, the owner of each parcel
21 of property that is exempt under s. 70.11, except property that is described under s. 70.11 (4)
22 (c) 9., shall file with the clerk of the taxation district in which the property is located a form
23 containing the following information:

