



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-0014/2

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## 2005 ASSEMBLY BILL 265

March 28, 2005 – Introduced by Representatives ALBERS, KESTELL, AINSWORTH, BIES, GUNDERSON and MUSSER, cosponsored by Senator LASSA. Referred to Committee on Property Rights and Land Management.

1     **AN ACT to amend** 70.03, 70.05 (5) (a) 1m., 77.21 (1), 77.21 (1m) and 77.22 (1); and  
2             **to create** 70.09 (2) (am), 70.32 (1h), 70.32 (2) (a) 2m., 70.32 (2) (c) 1h. and 77.21  
3             (1b) of the statutes; **relating to:** the sale of development rights separate from  
4             the sale of property.

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### *Analysis by the Legislative Reference Bureau*

Under current law, real property is, generally, subject to the imposition of property taxes. Under this bill, development rights to property that are sold separately from the property are subject to the imposition of property taxes. In addition, the sale of development rights is subject to the real estate transfer fee and must be recorded with the register of deeds in the county where the property related to the development rights is located. The bill also requires the real property lister in each county to prepare and maintain accurate ownership and description information on all development rights recorded in the county and to provide the information to the clerks and assessors of the taxation districts located in the county. Finally, the bill requires that an assessor consider the effect on the value of real property of any sale of development rights related to the property.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

**ASSEMBLY BILL 265****SECTION 1**

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

2           **70.03 Definition of real property.** “Real property”, “real estate” and “land”,  
3 when used in chs. 70 to 76, 78 and 79, include not only the land itself but all buildings  
4 and improvements thereon, and all fixtures and rights and privileges appertaining  
5 thereto, including development rights, as defined in s. 77.21 (1b), except that for the  
6 purpose of time-share property, as defined in s. 707.02 (32), real property does not  
7 include recurrent exclusive use and occupancy on a periodic basis or other rights,  
8 including, but not limited to, membership rights, vacation services and club  
9 memberships.

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

11           70.05 (5) (a) 1m. “Class of property” means residential under s. 70.32 (2) (a) 1.;  
12 commercial under s. 70.32 (2) (a) 2.; development rights under s. 70.32 (2) (a) 2m.;  
13 personal property; or the sum of undeveloped under s. 70.32 (2) (a) 5., agricultural  
14 forest under s. 70.32 (2) (a) 5m.; productive forest land under s. 70.32 (2) (a) 6. and  
15 other under s. 70.32 (2) (a) 7.

16           **SECTION 3.** 70.09 (2) (am) of the statutes is created to read:

17           70.09 (2) (am) 1. To prepare and maintain, separately from other real property  
18 information, accurate ownership and description information on all development  
19 rights recorded in the county under subch. II of ch. 77.

20           2. To distribute the information prepared and maintained under subd. 1. to the  
21 clerk and assessor of each taxation district in the county where the property related  
22 to the sale of development rights is located.

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

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1           70.32 (1h) In addition to the factors set out in sub. (1), the assessor shall  
2 consider the effect on the value of the property of any sale of development rights  
3 related to the property.

4           **SECTION 5.** 70.32 (2) (a) 2m. of the statutes is created to read:

5           70.32 (2) (a) 2m. Development rights.

6           **SECTION 6.** 70.32 (2) (c) 1h. of the statutes is created to read:

7           70.32 (2) (c) 1h. "Development rights" has the meaning given in s. 77.21 (1b).

8           **SECTION 7.** 77.21 (1) of the statutes is amended to read:

9           77.21 (1) "Conveyance" includes deeds and other instruments for the passage  
10 of ownership interests in real estate, including contracts and assignments of a  
11 vendee's interest therein, ~~including;~~ instruments that are evidence of a sale of  
12 time-share property, as defined in s. 707.02 (32), ~~and including;~~ leases for at least  
13 99 years, but excluding leases for less than 99 years, ~~;~~ easements ~~and;~~ wills; and  
14 instruments that are evidence of a sale of development rights.

15           **SECTION 8.** 77.21 (1b) of the statutes is created to read:

16           77.21 (1b) "Development rights" means any device by which the development  
17 potential of real property is severed from the real property's title and made available  
18 for acquisition by a person who is not the owner of the property.

19           **SECTION 9.** 77.21 (1m) of the statutes is amended to read:

20           77.21 (1m) "Real estate" includes, but is not limited to, fixtures; roots, vines  
21 and trees of perennial crops; stock in a cooperative building; improvements on leased  
22 land; development rights; timber; and minerals.

23           **SECTION 10.** 77.22 (1) of the statutes is amended to read:

24           77.22 (1) There is imposed on the grantor of real estate a real estate transfer  
25 fee at the rate of 30 cents for each \$100 of value or fraction thereof on every

**ASSEMBLY BILL 265****SECTION 10**

1 conveyance not exempted or excluded under this subchapter. In regard to land  
2 contracts the value is the total principal amount that the buyer agrees to pay the  
3 seller for the real estate. This fee shall be collected by the register at the time the  
4 instrument of conveyance is submitted for recording. The conveyance of  
5 development rights shall be recorded in the county where the real estate from which  
6 the development rights have been severed is located. Except as provided in s. 77.255,  
7 at the time of submission the grantee or his or her duly authorized agent or other  
8 person acquiring an ownership interest under the instrument, or the clerk of court  
9 in the case of a foreclosure under s. 846.16 (1), shall execute a return, signed by both  
10 grantor and grantee, on the form prescribed under sub. (2). The register shall enter  
11 the fee paid on the face of the deed or other instrument of conveyance before  
12 recording, and, except as provided in s. 77.255, submission of a completed real estate  
13 transfer return and collection by the register of the fee shall be prerequisites to  
14 acceptance of the conveyance for recording. The register shall have no duty to  
15 determine either the correct value of the real estate transferred or the validity of any  
16 exemption or exclusion claimed. If the transfer is not subject to a fee as provided in  
17 this subchapter, the reason for exemption shall be stated on the face of the  
18 conveyance to be recorded by reference to the proper subsection under s. 77.25.

**SECTION 11. Initial applicability.**

20 (1) PROPERTY TAX ASSESSMENTS. The treatment of sections 70.03, 70.05 (5) (a)  
21 1m., 70.09 (2) (am), and 70.32 (1h) and (2) (a) 2m. and (c) 1h. of the statutes first  
22 applies to the property tax assessments of January 1, 2006.

23 (2) REAL ESTATE TRANSFER FEE. The treatment of sections 77.21 (1), (1b), and  
24 (1m) and 77.22 (1) of the statutes first applies to real estate transferred on the  
25 effective date of this subsection.

